DEPARTMENT OF AGRICULTURE
Title 3, Chapter 4

Amend: R3-4-203, Table 2, Table 3, Table 4, Table 5, Table 6, R3-4-401, R3-4-402, R3-4-403, R3-4-404, R3-4-406, R3-4-408

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: November 17, 2023

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 4

Amend: R3-4-203, Table 2, Table 3, Table 4, Table 5, Table 6, R3-4-401, R3-4-402, R3-4-403, R3-4-404, R3-4-406, R3-4-408

Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend seven (7) rules and five (5) tables in Title 3, Chapter 4, Articles 2 & 4 of the Plant Services Division related to Quarantine and Seeds respectively. Specifically, the Department is proposing to update provisions making the language more consistent with current Department practices and industry needs; for clarification, making the rules more easily understandable; to make technical corrections and clarify parts of the section; and to come up-to-date with federal requirements by mirroring federal regulations, while continuing to provide adequate safeguards to agriculture and horticulture from dangerous plant pests and diseases. This rulemaking is partially related to a 5YRR approved by the Council on February 5, 2019. The Department is proposing the following changes:

- **R3-4-203. Plant and Crop Safeguards, Inspection, and Certification:**
  - Amend the language of (C)(2) to clarify the intent "commercially harvested or bulk shipments." Amend the language throughout for consistency and to utilize defined terms.

- **Tables 2 through 6**:
    - Add new organisms to their appropriate lists to align with federal quarantine and to address new pest threats that have emerged since the last rule revision.
- **R3-4-401. Definitions:**
    - Update the definition of the "Federal Seed Act" (FSA) to address amendments in 7 C.F.R. Part 201 and to conform with reference formatting. Added a definition for "Non-commercial Seed Sharing".
- **R3-4-402. Labeling:**
    - Reference the FSA when authorizing the terms "foundation", "registered" and "certified" seed. Add requirements for Non-commercial Seed Sharing that match the "Recommended Uniform State Seed Law" (RUSSL). Reference the FSA when listing the requirements for hermetically sealed seed. Adjust the agriculture and vegetable seeds moisture percentages for hermetically sealed seed to match RUSSL. Grammatical changes, for consistency, throughout the rule.
- **R3-4-403. Noxious Weed Seeds:**
    - Add a reference to the seeds listed in the FSA. Change the language to match R3-4-245 for Class A, B and C. Amend the list to match R3-4-245. Add a category for "certified or registered seed".
- **R3-4-404. Germination Standards:**
    - Updated the reference to the FSA and the link to the e-CFR for germination standards. Changed the language for flower seeds to be more concise and match RUSSL. Adjusted the Ipomoea and Linaria list to match R3-4-245.
- **R4-4-406. Sampling and Analyzing Seed:**
    - Updated the reference to the Federal Seed Act under 7 C.F.R. §§ 201.39 - 201.65. Updated the revision date for the "Rules for Testing Seeds" by the Association of Official Seed Analysts.
- **R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees:**
    - Removed a fee exemption from fiscal year 2011 & 2012

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

The Department cites both general and specific statutory authority for these rules.

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

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

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

The Department indicates it did not review and does not propose to rely on any study relevant to this rulemaking.

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

This rulemaking seeks to protect Arizona's agricultural industry and Arizona consumers from dangerous plant pests and diseases that threaten the state. The Department is updating the rules to make the language more consistent with current practices and industry needs, for clarification, to increase understandability, to make technical corrections and clarify parts of the rules, and to ensure an up-to-date treatment of federal requirements and regulations. Additionally, the updated seed guidelines offer continued protections in seed quality and reduce the unnecessary burden of inferior seeds. These changes do not add any additional burdens or costs, rather, help protect crops and ensure production costs do not increase.

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 has determined that there are no less intrusive or less costly alternatives to these changes.

6. What are the economic impacts on stakeholders?

This rulemaking does not increase the cost of regulatory compliance, increase fees, or reduce the procedural rights of any regulated person. Only nurseries, produce distributors, grocers, seed dealers, farmers, and ranchers will be directly affected by this rulemaking. There are no administrative or other costs expected with these changes.

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

The Department indicates it made the following changes to the rules between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council:

- Under rule R3-4-401, the citations for the incorporated reference to the Federal Seed Act and the rules associated were corrected and updated to include the statement, "These materials are incorporated by reference, on file with the Department, and does not include any later amendments or editions."
- Under rule R3-4-402 technical corrections were made to comply with A.A.C. R1-1-401; The incorporated federal reference to the Plant Variety Protection Act was updated and corrected to include the statement, "These materials are incorporated by reference, on file with the Department, and does not include any later amendments or editions."; and a technical correction was made in Subsection (E)(2)(g) to direct to the correct reference.
- Under rule R3-4-404, technical changes were made to comply with A.A.C. R1-1-401.
- Under rule R3-4-406, the incorporated reference to the Federal Seed Act Requirements were updated to comply with A.A.C. R1-1-401. The botanical name was changed for stinknet (Globe chamomile) from *Oncosiphon piluliferum* to *O. pilulifer* to accurately represent the current scientific naming convention in Table 5 and R3-4-403

The Department indicates these changes are not seen as substantive as they were only added to provide clarification and do not have an overall effect on the rules or add any additional burdens on the state, public, or stakeholders.

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 no public comments related to this rulemaking.

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

Not applicable. The Department indicates this rulemaking does not propose amendments to an existing rule that requires the issuance of a regulatory permit, license or agency authorization.

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

The Department indicates federal law applies to rules R3-4-401 through R3-4-409, specifically, 7 U.S.C. §§ 1551-1611. However, the Department indicates the rules are not more stringent than corresponding federal regulations.

11. Conclusion

This regular rulemaking from the Department seeks to amend seven (7) rules and five (5) tables in Title 3, Chapter 4, Articles 2 & 4 of the Plant Services Division related to Quarantine and Seeds respectively. Specifically, the Department is proposing to update provisions making the language more consistent with current Department practices and industry needs; for clarification, making the rules more easily understandable; to make technical corrections and clarify parts of the section; and to come up-to-date with federal requirements by mirroring federal regulations, while continuing to provide adequate safeguards to agriculture and horticulture from dangerous plant pests and diseases.

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.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

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P: (602) 542-0994 F: (602) 542-1004

October 24, 2023

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

RE: Request for Placement on Agenda - Final Rulemaking 3 A.A.C. 4, Articles 2 and 4

Dear Ms. Sornsin:

The Arizona Department of Agriculture (Department) is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and approval. Enclosed with this letter you will find the Department's final rulemaking packet for A.A.C. Title 3, Chapter 4, Articles 2 and 4.

The close of record for the proposed rulemaking occurred on July 5, 2023 following a public hearing for oral comments. During the comment period, the Department did not receive any written comments from stakeholders or the public. The Department did not receive any testimony during the oral proceeding. In order to comply with the new Administration's rulemaking guidelines for requesting approval to proceed with final rulemaking, the Department filed a Notice of Public Information and re-opened the record on September 8, 2023 for thirty additional days. The record was re-closed on October 10, 2023 with no additional comments. The Department received authorization from the Governor's Policy Advisor to proceed with requesting review and comment from the Governor's Regulatory Review Council on October 11, 2023.

This rulemaking activity is partially related to a five-year review report that was approved on February 5, 2019 for Article 4. The rulemaking does not establish any new fees or increase any existing fees. The Department is not requesting an immediate effective date pursuant to A.R.S. § 41-1032. There were no studies conducted related to the rulemaking. No additional employees are necessary to implement and enforce the changes to the rules.

Enclosed with this letter is:

1. A copy of the Notice of Final Rulemaking
2. A copy of the Economic, Small Business, and Consumer Impact Statement
3. A copy of any written comments received and the response provided, if applicable.
4. A copy of the Authorizing statutes

5. A copy of the initial and final requests and authorizations from the Governor's Office for approval to conduct rulemaking and proceed with final rulemaking pursuant to EO 2022-01, and the law pursuant to A.R.S. § 41-1039.

Please contact Brian McGrew at (602) 542-3228 or bmcgrew@azda.gov with any questions about this rulemaking.

Sincerely,

Paul E. Brierley
Director

cc: Jeff Grant, Deputy Director
Jack Peterson, Associate Director

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

PREAMBLE

1. Article, Part, or Section Affected ___ ___ Rulemaking Action

R3-4-203	Amend
Table 2	Amend
Table 3	Amend
Table 4	Amend
Table 5	Amend
Table 6	Amend
R3-4-401	Amend
R3-4-402	Amend
R3-4-403	Amend
R3-4-404	Amend
R3-4-406	Amend
R3-4-408	Amend

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

Authorizing statute: A.R.S. §§ 3-107(A)

Implementing statute: A.R.S. §§ 3-201.01 (A), 3-208(B), 3-232(A)(2)

3. The effective date of the rule:

An immediate effective date has not been requested for this rulemaking and the Department is accepting the standard 60 day delayed effective date pursuant to A.R.S. 41-1032(A)

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: Volume 28, Issue 38 A.A.R. Page 2494, September 23, 2022

Notice of Proposed Rulemaking: Volume 29, Issue 7 A.A.R. pages 567 through 592, February 17, 2023

Notice of Public Information: Volume 29, Issue 36 A.A.R. page 2003, September 8, 2023

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

Name: Jamie Legg

Address: Arizona Department of Agriculture
Environmental & Plant Services Division
1802 W. Jackson Street, #78
Phoenix, AZ 85007

Telephone: (602) 542-0992

Fax: (602) 542-1004

E-mail: jlegg@azda.gov

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

The Department is updating the rules to update provisions making the language more consistent with current Department practices and industry needs; for clarification, making the rules more easily understandable; to make technical corrections and clarify parts of the section; and to come up-to-date with federal requirements by mirroring federal regulations, while continuing to provide adequate safeguards to agriculture and horticulture from dangerous plant pests and diseases. The proposed changes are as follows:

R3-4-203. Plant and Crop Safeguards, Inspection, and Certification: Amend the language of (C)(2) to clarify the intent "commercially harvested or bulk shipments." Amend the language throughout for consistency and to utilize defined terms.

Tables 2 through 6: Add new organisms to their appropriate lists to align with federal quarantine and to address new pest threats that have emerged since the last rule revision.

R3-4-401. Definitions: Update the definition of the "Federal Seed Act" (FSA) to address amendments in 7 C.F.R. Part 201 and to conform with reference formatting. Added a definition for "Non-commercial Seed Sharing".

R3-4-402. Labeling: Reference the FSA when authorizing the terms "foundation", "registered" and "certified" seed. Add requirements for Non-commercial Seed Sharing that match the "Recommended Uniform State Seed Law" (RUSSL). Reference the FSA when listing the requirements for hermetically sealed seed. Adjust the agriculture and vegetable seeds moisture percentages for hermetically sealed seed to match RUSSL. Grammatical changes, for consistency, throughout the rule.

R3-4-403. Noxious Weed Seeds: Add a reference to the seeds listed in the FSA. Change the language to match R3-4-245 for Class A, B and C. Amend the list to match R3-4-245. Add a category for "certified or registered seed".

R3-4-404. Germination Standards: Updated the reference to the FSA and the link to the e-CFR for germination standards. Changed the language for flower seeds to be more concise and match RUSSL. Adjusted the Ipomoea and Linaria list to match R3-4-245.

R4-4-406. Sampling and Analyzing Seed: Updated the reference to the Federal Seed Act under 7 C.F.R. §§ 201.39 - 201.65. Updated the revision date for the "Rules for Testing Seeds" by the Association of Official Seed Analysts.

R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees: Removed a fee exemption from fiscal year 2011 & 2012

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:

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:

This rulemaking does not increase the cost of regulatory compliance, increase fees, or reduce the procedural rights of any regulated person; yet does amend the rules that are currently outdated, makes them more easily understandable and makes technical corrections, an improvement that could provide greater protection to the regulated community and consumers in Arizona.

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

Under rule R3-4-401, the citations for the incorporated reference to the Federal Seed Act and the rules associated were corrected and updated to include the statement, "*These materials are incorporated by reference, on file with the Department, and does not include any later amendments or editions.*". Under rule R3-4-402 technical corrections were made to comply with A.A.C. R1-1-401; The incorporated federal reference to the Plant Variety Protection Act was updated and corrected to include the statement, "*These materials are incorporated by reference, on file with the Department, and does not include any later amendments or editions.*"; and a technical correction was made in Subsection (E)(2)(g) to direct to the correct reference. Under rule R3-4-404, technical changes were made to comply with A.A.C. R1-1-401. Under rule R3-4-406, the incorporated reference to the Federal Seed Act Requirements were updated to comply with A.A.C. R1-1-401. The botanical name was changed for stinknet (Globe chamomile) from *Oncosiphon piluliferum* to *O. pilulifer* to accurately represent the current scientific naming convention in Table 5. Class B Noxious Weeds and R3-4-403. Noxious Weed Seeds. These additions are not seen as a substantive change since it is only added to provide clarification and does not have an overall effect on the rules or add any additional burdens on the state, public, or stakeholders.

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

No comments were received in regards to this 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.R.S. § 3-104(F) requires the Arizona Department of Agriculture Advisory Council assist the Director of the Department on all rulemaking activities. The council shall review, advise and make recommendations before they are adopted by the director. During the August 22, 2022 Advisory Council Meeting, council members approved the Department's recommendations to amend Title 3, Articles 2 and 4.

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 proposed changes do not change the permitting or licensing requirement currently set forth in the amended rules.

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

Federal Law, 7 U.S.C. §§ 1551-1611, applies for R3-4-401 through R3-4-409 but are not more stringent.

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

No analysis was submitted.

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

The Federal Seed Act (7 U.S.C. §§ 1551-1611, as amended, August 6, 2020) in R3-4-401 Definitions defining "Federal Seed Act".

7 C.F.R §§ 201.1 *et seq.* (as amended, January 7, 1992) in R3-4-401 Definitions defining "Federal Seed Act".

The Plant Variety Protection Act (7 U.S.C. §§ 2321-2582) in R3-4-402 Labeling.

R3-4-245 Noxious Weeds in R3-4-403 Noxious Weed Seeds.

7 C.F.R. § 201.31 (as amended, July 7, 2020) in R3-4-404 Germination Standards.

7 C.F.R. §§ 201.39 - 201.65 (as amended, July 7, 2020) in R3-4-407

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

Not applicable.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

ARTICLE 4. SEEDS

Section

ARTICLE 2. QUARANTINE

R3-4-203. Plant and Crop Safeguards, Inspection, and Certification

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following terms apply to this Section:

1. "Actionable arthropod pest" means any arthropod pest that the Associate Director has determined to be an imminent threat to agriculture and horticulture within the state. Table 2, Actionable Arthropod Pests includes, but is not limited to, arthropod pests that would require immediate action and are prohibited from entry into the state.
2. "Actionable nematode pest" means any nematode pest that the Associate Director has determined to be an imminent threat to agriculture and horticulture within the state. Table 3, Actionable Nematode Pests includes, but is not limited to, nematode pests that would require immediate action and are prohibited from entry into the state.
3. "Pest Management Program" means any state or federally recognized program designed for the prevention, monitoring, and control of an actionable arthropod pest or actionable nematode pest. Based on a targeted management (Integrated Pest Management) or holistic approach (Total Systems Approach Program) that incorporates best management practices, monitoring, cultivation practices, cultural controls, treatment programs and/or pest resistant plant varieties, cultivars or hybrids for the control of any live life stages of an actionable arthropod pest or actionable nematode pest associated with the commodity, with a zero pest presence tolerance.

B. Regulated area. Unless otherwise indicated, all states, districts, and territories of the United States.

C. Commodities covered.

1. All plants and plant products for propagation, including nursery stock (bareroot or potted), budwood, seed for planting, cuttings, stolons, and tissue culture shipped or transported into the state that is a known host for an actionable arthropod pest or actionable nematode pest from the place of origin. Additionally, all agricultural, ornamental, and vegetable seed shall comply with the laws and regulations in Article 4 and any other law, order or federal regulation enforced by the Department.
2. All commercially harvested or bulk shipments of a plant or crop, excluding processed products, which are shipped or transported into the state that may harbor an actionable arthropod pest.
3. All domestic soil shipped or transported into the state that is:
   a. Not authorized under a permit or compliance agreement issued by the U.S. Department of Agriculture;
   b. Not sterilized and not packaged for retail sale;
   c. Attached to a plant for the purpose of propagation; or
   d. Used for the purpose of landscaping or grading.
4. All firewood and green lumber with attached bark.
5. All used equipment utilized for the propagation, harvesting, transport, and/or maintenance of a commodity listed in subsections (C)(1), (2), (3), or (4).

D. Restrictions.

1. For commodities listed in subsection (C) that are not accompanied by proof of compliance with this Section as indicated in the remainder of subsection (D); or are found infested with, or exposed to, an actionable arthropod pest or

actionable nematode pest may be placed under quarantine until a disposition is determined by an inspector, A.R.S § 3-203.

2. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(1), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a quarantine compliance certificate ~~of origin~~ and statement of compliance with this Section by one of the following:
   a. For an actionable arthropod pest known to occur at origin:
      i. The commodities in the shipment or shipments are inspected and a plant regulatory official provides a certificate attesting that the commodity is apparently free of any live life stages of an actionable arthropod pest;
      ii. The Associate Director and State Plant Regulatory Official of the origin state has placed the producer under a compliance agreement, authorizing a Pest Management Program for actionable arthropod pests, and has provided certification of compliance to the producer if all provisions of a Pest Management Program are met; or
      iii. A certificate attesting to treatment for actionable arthropod pests known to occur in the origin location is issued by a plant regulatory official.
   b. For an actionable nematode pest known to occur at origin:
      i. The origin state determined through an annual survey conducted within the 12-month period immediately before shipment that the actionable nematode pests do not exist on the property or in the facility used to grow the commodity.
      ii. The commodity in the shipment was sampled two weeks before shipment, and found free of actionable nematode pests.
      iii. The commodity was protected from infestation of the actionable nematode pests by implementing all of the following steps:
         (1) Propagated from clean seed or from cuttings taken 12 inches or higher above ground level;
         (2) Planted in sterilized soil or other media prepared or treated to ensure freedom from actionable nematode pests;
         (3) Retained in a sterilized container or bed;
         (4) Placed on a sterilized bench or sterilized support 18 inches or higher from the ground or floor level; and
         (5) Found pest-free using a sampling method approved by the Associate Director.
3. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(2), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a quarantine compliance certificate ~~of origin~~ and statement of compliance with this Section by one of the following:
   a. Authorize and validate compliance for an area-wide control program for actionable arthropod pests known to occur at the origin location;
   b. Inspect bulk shipments of commodities by standard risk-based sampling rates to achieve a 95% confidence level that the shipment is apparently free of any live life stages of an actionable arthropod pest known to occur at

origin; or

c. Require treatment for actionable arthropod pests known to occur in the origin location by a method known to control the pest and verify effectiveness of treatment.

4. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(3), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a quarantine compliance certificate ~~of origin~~ and statement of compliance with this Section by one of the following:

   a. Authorize and validate a Pest Management Program or an area-wide control program for actionable arthropod pests; or

   b. Require treatment for actionable arthropod pests known to occur in the origin location by a method known to control the pest.

5. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(4), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a quarantine compliance certificate ~~of origin~~ and statement of compliance with this Section by one of the following:

   a. Heat treatment as indicated in the USDA Treatment Manual, Heat Treatment Schedule: T314-a; and accompanied by a treatment certificate issued by a certified heat-treatment facility, or a state or federal regulatory official; or

   b. Any other method approved by the Associate Director that eliminates all live life stages of an actionable arthropod pest.

6. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, ~~a plant regulatory official shall ensure that the commodity~~ the equipment listed in subsection (C)(5), are authorized for shipment or transport into the state provided it is accompanied by a quarantine compliance certificate issued by the origin state attesting that the commodity is reasonably free of all soil and extraneous plant material that could harbor a live life stage of an actionable arthropod pest.

E. Exemptions.

1. The Associate Director may issue an exemption to a restriction in this Section at the request of a State Plant Regulatory Official on an area-wide or county-wide basis, under the following conditions:

   a. For an area-wide or county-wide exemption of a commodity (Master Permit):

      i. The State Plant Regulatory Official agrees to comply with the conditions of a Master Permit that indicates the necessary safeguarding measures including monitoring, inspection, treatment, alternate treatment, and/or certification of the commodity.

      ii. The Department may suspend or revoke a Master Permit if one or more shipments of a commodity are not in compliance with the conditions of the authorized Master Permit or live life stages of an actionable arthropod pest or actionable nematode pest are found.

   b. For an exemption provided to a shipper of a commodity (Origin Inspection Agreement):

      i. The State Plant Regulatory Official and the shipper agree to comply with the conditions of an Origin Inspection Agreement that indicates the necessary safeguarding measures including monitoring, inspection, treatment, alternate treatment, and/or certification of the commodity.

ii. The Department may suspend or revoke an Origin Inspection Agreement if one or more shipments of a commodity are not in compliance with the conditions of the Origin Inspection Agreement or live life stages of an actionable arthropod or actionable nematode pest are found.

2. Notwithstanding any other restriction, the Associate Director may declare a state, or an area within a state, exempt to a condition in this Section if it is demonstrated by a State Plant Regulatory Official that an actionable arthropod pest or actionable nematode pest is known not to occur in the origin state and that the actionable arthropod pest or actionable nematode pest is part of a state or federal authorized pest monitoring program that justifies the "free from" status.

F. Violations. Any shipper of a commodity listed in subsection (C) that is not in compliance with the restrictions indicated in subsection (D), or an actionable arthropod pest or actionable nematode pest are found on the shipment, the shipper may be temporarily suspended from shipping or transporting commodities listed in subsection (C) into the state under the following guidelines:

a. The shipper will be notified of the violations and corrective measures will be provided;

b. The origin State Plant Regulatory Official will be notified of the violation and suspension;

c. The shipper will be required to contact the origin State Plant Regulatory Official to confirm completion of corrective measures;

d. The origin State Plant Regulatory Official will contact the Department to request approval to retract the suspension upon successful completion of the corrective measures; and

e. The Associate Director may retract the suspension upon satisfactory completion of the corrective measures.

Table 2. Actionable Arthropod Pests

Common Name	**Scientific Name**
Acuminate scale	*Kilifia acuminata*
African cotton leafworm	*Spodoptera litura*
African false powder-post beetle	*Bostrychoplites cornutus*
African honey bee	*Apis mellifera scutellata*
Alfalfa plant bug	*Adelphocoris lineolatus*
Allium (Onion) Leafminer	*Phytomyza gymnostoma*
American palm cixid	*Haplaxius (Myndus) crudus*
Apple maggot	*Rhagoletis pomonella*
Apple mealybug	*Phenacoccus aceris*
Apple skinworm	*Tortrix franciscana*
Army ant	*Labidus coecus*
Asian citrus psyllid	*Diaphorina citri*
Asian conifer auger beetle	*Sinoxylon unidentatum*

Asian Longhorned beetle	*Anoplophora glabripennis*
Asiatic garden beetle	*Maladera castanea*
Asiatic rice borer	*Chilo suppressalis*
Asparagus beetle	*Crioceris asparagi*
Avocado red mite	*Oligonychus yothersi*
Avocado seed weevil	*Helipus lauri*
Avocado whitefly	*Trialeurodes floridensis*
Azalea whitefly	*Pealius azaleae*
Bagworm	*Thyridopteryx ephemeraeformis*
Bean butterfly	*Lampides boeticus*
Bean fly	*Ophiomyia phaseoli*
Bean leaf beetle	*Cerotoma trifurcata*
Bean pod borer	*Maruca vitrata*
Bifasciculate scale	*Chrysomphalus bifasciculatus*
Black cherry fruit fly	*Rhagoletis fausta*
Black imported fire ant	*Solenopsis richteri*
Black orangeworm	*Holcocera iceryaeella*
Black thread scale	*Ischnaspis longirostris*
Black walnut curculio	*Conotrachelus retentus*
Blueberry maggot	*Rhagoletis mendax*
Boxwood leafminer	*Monarthropalpus buxi*
Brown citrus aphid	*Toxoptera citricida*
Brown cockroach	*Periplaneta brunnea*
Brown Marmorated Stink Bug	*Halyomorpha halys*
Browntail moth	*Nygmia phaeorrhoea*
Butternut curculio	*Conotrachelus juglandis*
Cabbage moth	*Mamestra brassicae*
Cabbage thrips	*Idolothrips augusticeps*

Cactus moth	*Cactoblastis cactorum*
Cactus weevil	*Gerstaeckeria nobilis*
California red scale	*Aonidiella aurantii*
Camphor scale	*Pseudaonidia duplex*
Caribbean fruit fly	*Anastrepha suspensa*
Carob moth	*Ectomyelois ceratoniae*
Carrot rust fly	*Psila rosae*
Cereal leaf beetle	*Oulema melanopus*
Chaff scale	*Parlatoria pergandii*
Chestnut moth	*Cydia splendana*
Chilean false red mite	*Brevipalpus chilensis*
Chilli thrips	*Scirtothrips dorsalis*
Chinch bug	*Blissus leucopterus*
Chinese obscure scale	*Parlatoreopsis chinensis*
Chinese rose beetle	*Adoretus sinicus*
Citron bug	*Leptoglossus gonagra*
Citrus blackfly	*Aleurocanthus woglumi*
Citrus snow scale	*Unaspis citri*
Citrus spiny whitefly	*Aleurocanthus spiniferus*
Citrus whitefly	*Dialeurodes citri*
Cloudy-winged whitefly	*Singhiella citrifolii*
Clover root borer	*Hylastinus obscurus*
Clover seed midge	*Dasineura leguminicola*
Coconut scale	*Aspidiotus destructor*
Coffee bean weevil	*Araecerus fasciculatus*
Community wireworm	*Melanotus communis*
Comstock mealybug	*Pseudococcus comstocki*
~~Conifer Auger Beetle~~	~~*Sinoxylon unidentatum*~~
Corn silk beetle	*Calomicrus brunneus*
Corn stem weevil	*Hyperodes humilis*
Cotton blister mite	*Acalitus gossypii*

Cottony grape scale	*Pulvinaria vitis*
Cowpea curculio	*Chalcodermus aeneus*
Crapemyrtle scale	*Acanthococcus lagerstroemiae*
Croton soft scale	*Phalacrococcus howertoni*
Croton whitefly	*Orchamoplatus mammaeferus*
Cuban cockroach	*Panchlora nivea*
Curtain fig psyllid	*Macrohomotoma gladiata*
Cycad aulacaspis scale	*Aulacaspis yasumatsui*
Cycad weevil	*Tranes internatus*
Date palm mite	*Oligonychus afrasiaticus*
Death's head cockroach	*Blaberus craniifer*
Dogwood borer	*Synanthedon scitula*
Eastern subterranean termite	*Teticulitermes flavipes*
Eastern tent caterpillar	*Malacosoma americanum*
Eggplant pinworm	*Keiferia peniculo*
Egyptian cotton leafworm	*Spodoptera littoralis*
Emerald ash borer	*Agrilus plannipennis*
Euonymus scale	*Unaspis euonymi*
European chafer	*Amphimallon majalis*
European cherry fruit fly	*Rhagoletis cerasi*
European corn borer	*Ostrinia nubilalis*
European cranefly	*Tipula paludosa*
European grape vine moth	*Lobesia botrana*
European peach scale	*Parthenolecanium persicae*
European pine shoot moth	*Rhyacionia bouliana*
Eyespotted bud moth	*Spilonota ocellana*
Face fly	*Musca autumnalis*
False codling moth	*Thaumatotibia leucotreta*

False parlatoria scale	*Pseudoparlatoria parlatorioides*
Florida black scale	*Saissetia neglecta*
Florida carpenter ant	*Camponotus floridanus*
Florida red scale	*Chrysomphalus aonidum*
Forida subterranean termite	*Reticulitermes virginicus*
Florida wax scale	*Ceroplastes floridensis*
Florida woods cockroach	*Eurycotis floridana*
Fruit fly	*Anastrepha* spp.
Fruit piercing moth	*Eudocima fullonia*
Fuller rose weevil	*Naupactus cervinus*
Giffard whitefly	*Bemisia giffardi*
Glacial whitefly	*Trialeurodes glacialis*
Glassy-winged sharpshooter	*Homalodisca vitripennis*
Globose scale	*Sphaerolecanum prunastri*
Glover scale	*Lepidosaphes gloverii*
Grape thrips	*Drepanothrips reuteri*
Grass aphid	*Rhopalomyzus poae*
Grass scolytid	*Hypothenemus pubecens*
Grass webworm	*Herpetogramma licarsisalis*
Gray sugarcane mealybug	*Dysmicoccus boninsis*
Green cloverworm	*Plathypena scabra*
Ground mealybug	*Ripersiella hibisci*
Gypsy moth	*Lymantra dispar*
Haanchen barley mealybug	*Trionymus haancheni*
Hall scale	*Mercetaspis halli*
Hessian fly	*Mayetiola destructor*
Hickory shuckworm	*Cydia caryana*
Holly leafminer	*Phytomyza ilicis*
Indian wax scale	*Ceroplastes ceriferus*

Italian pear scale	*Epidiaspis leperii*
Jack Beardsley mealybug	*Pseudococcus jackbeardsleyi*
Japanese beetle	*Popillia japonica*
Japanese maple scale	*Lopholeucaspis japonica*
~~Juniper scale~~	~~*Carulaspis juniperi*~~
Khapra beetle	*Trogoderma granarium*
Kirkaldy whitefly	*Dialeurodes kirkaldyi*
Kondo ground mealybug	*Ripersiella kondonis*
Lantana defoliator	*Hypena strigata*
Lantana mealybug	*Phenacoccus parvus*
Lawn armyworm	*Spodoptera mauritia*
Leek moth	*Acrolepiopsis assectella*
Lesser clover leaf weevil	*Hypera nigrirostris*
Lesser snow scale	*Pinnaspis strachani*
Light brown apple moth	*Epiphyas postvittana*
Lilly weevil	*Agasphaerops nigra*
Little fire ant	*Wasmannia auropunctata*
Lobate lac scale	*Paratachardina pseudolobata*
Malaysian fruit fly	*Bactrocera latifrons*
Mango shield scale	*Milviscutulus mangiferae*
Maskell scale	*Lepidosaphes pallida*
Mealybug	*Delottococcus confusus*
Mealybug	*Hypogeococcus pungens*
Mealybug	*Planococcus lilacinus*
Mediterranean fruit fly	*Ceratitis capitata*
Melon fruit fly	*Bactrocera curcurbitae*
Melon worm	*Diaphania hyalinata*
Mexican fruit fly	*Anastrepha ludens*
Mimosa webworm	*Homadaula anisocentra*
Mining scale	*Howardia biclavis*
~~Minute cypress scale~~	~~*Carulaspis minima*~~

Myrmicine ant	*Monomorium destructor*
Myrmicine ant	*Monomorium floricola*
Northern citrus root weevil	*Pachnaeus opalus*
Obscure scale	*Melanaspis obscura*
Old house borer	*Hylotrupes bajulus*
Oleander pit scale	*Russellaspis pustulans*
Orchid aphid	*Macrosiphum lutea*
Oriental fruit fly	*Bactrocera dorsalis*
Oriental fruit moth	*Grapholita molesta*
Oriental scale	*Aonidiella orientalis*
Palm fiorinia scale	*Fiorinia fioriniae*
Palm thrips	*Thrips palmi*
Papaya fruit fly	*Toxotrypana curvicauda*
Pear leaf blister moth	*Leucoptera malifoliella*
Pecan leaf casebearer	*Acrobasis juglandis*
Pecan leaf phylloxera	*Phylloxera notabilis*
Pecan weevil	*Curculio caryae*
Pepper flower bud moth	*Gnorimoschema gudmannella*
Pepper maggot	*Zonosemata electa*
Pepper tree psyllid	*Calophya schini*
Persimmon borer	*Sannina uroceriformis*
Pickleworm	*Diaphania nitidalis*
Pine false webworm	*Acantholyda erythrocephala*
Pink hybiscus mealybug	*Maconellicoccus hirsutus*
Pink sugarcane mealybug	*Saccharicoccus sacchari*
Pitmaking pittosporum scale	*Planchonia arabidis*
Plum curculio	*Conotrachelus nenuphar*
Plum fruit moth	*Cydia funebrana*
Plumeria whitefly	*Paraleyrodes perseae*

Potato stalk borer	*Trichobaris trinotata*
Potato weevil	*Epicaerus cognatus*
Powder-post termite	*Cryptotermes brevis*
Primary Screwworm	*Cochliomyia hominivorax*
Proteus scale	*Parlatoria proteus*
Purple scale	*Lepidosaphes beckii*
Pyriform scale	*Protopulvinaria pyriformis*
Queensland fruit fly	*Bactrocera tryoni*
Range caterpillar	*Hemileuca oliviae*
Red imported fire ant	*Solenopsis invicta*
Red palm mite	*Raoiella indica*
Red-banded thrips	*Selenothrips rubrocinctus*
Rednecked cane borer	*Agrilus ruficollis*
Rhododendron whitefly	*Massilieurodes chittendeni*
Rose chafer	*Macrodactylus subspinosus*
Royal palm bug	*Xylastodoris luteolus*
Rufous scale	*Selenaspidus articulatus*
Saddleback caterpillar	*Acharia stimulea*
Satin moth	*Leucoma salicis*
Scurfy scale	*Chionaspis furfura*
Sirex woodboring wasp	*Sirex noctilo*
South African pit scale	*Planchonia stentae*
South American fruit fly	*Anastrepha fraterculus*
South American palm weevil	*Rhynchophorus palmarum*
Southeastern Boll Weevil Biotype	*Anthonomus grandis*
Southern chinch bug	*Blissus insularis*
Southern citrus root weevil	*Pachnaeus litus*
Southern cornstalk borer	*Diatraea crambidoides*
Southern green stink bug	*Nezara viridula*

Southern potato wireworm	*Conoderus falli*
Spotted Lanternfly	*Lycorma delicatula*
Spotted wing drosophila	*Drosophila suzukii*
Spruce needleminer	*Taniva abolineana*
Square-necked grain beetle	*Cathartus quadricollis*
Stalk borer	*Papaipema nebris*
Strawberry root weevil	*Otiorhynchus ovatus*
Subtropical pine tip moth	*Rhyacionia subtropica*
Sugarcane borer	*Diatraea saccharalis*
Sugarcane root borer	*Diaprepes abbreviatus*
Summer fruit tortrix	*Adoxophyes orana*
Sweetpotato weevil	*Cylas formicarius*
Tawny mole cricket	*Neoscapteriscus vicinus*
Tea parlatoria scale	*Parlatoria theae*
Tea scale	*Fiorinia theae*
Texas leaf-cutter ant	*Alta texana*
Tobacco wireworm	*Conoderus vespertinus*
Trilobe scale	*Pseudaonidia trilobitiformis*
Tropical fire ant	*Solenopsis geminata*
Tropical palm scale	*Hemiberlesia palmae*
Tuber flea beetle	*Epitrix tuberis*
Two-spotted leaf hopper	*Sophonia rufofascia*
Velvet longhorn beetle	*Trichoferus campestris*
Biburnum whitefly	*Aleurotrachelus jelinekii*
Weevil	*Artipus floridanus*
Weevil	*Hyperodes humilis*
West Indian fruit fly	*Anastrepha obliqua*
West Indian Sweet potato weevil	*Euscepes postfaciatus*
Western subterranean termite	*Reticulitermes hesperus*

Wheat strawworm	*Harmolita grandis*
White peach scale	*Pseudaulacaspis pentagona*
White waxy scale	*Ceroplastes destructor*
White-footed ant	*Technomyrmex difficilis*
Whitefringed beetles	*Graphognathus* spp
Willamette spider mite	*Eotetranychus willamettei*
Yellow scale	*Aonidiella citrina*
Yellow margined leaf beetle	*Microtheca ochroloma*

Table 3. Actionable Nematode Pests

Common Name	**Scientific Name**
Burrowing nematode	*Radopholus similis*
Cobb's awl nematode	*Dolichodorus heterocephalus*
European dagger nematode	*Xiphinema diversicaudatum*
Golden nematode	*Globodera rostochiensis*
Oat cyst nematode	*Heterodera avenae*
Reniform nematode	*Rotylenchulus reniformis*
Sheath nematode	*Hemicycliophora arenaria*
Soybean cyst nematode	*Heterodera glycines*
Sting nematode	*Belonolaimus longicaudatus*
White cyst potato nematode	*Globodera pallida*

Table 4. Class A Noxious Weeds

Common name	**Scientific name**
African rue	*Peganum harmala*
Canada thistle	*Cirsium arvense*
Dudaim melon	*Cucumis melo v. Dudaim Naudin*
Dyer's woad	*Isatis tinctoria*
Floating water hyacinth	*Eichhornia crassipes*

Giant salvinia	*Salvinia molesta*
Globe-podded hoary cress	*Lepidium (Cardaria) draba*
Hydrilla	*Hydrilla verticillata*
Leafy spurge	*Euphorbia esula*
Plumeless thistle	*Carduus acanthoides*
Purple loosestrife	*Lythrum salicaria*
Purple starthistle	*Centaurea calcitrapa*
Quackgrass	*Elymus repens (Elytrigia repens)*
Rush skeletonweed	*Chondrilla juncea*
Southern sandbur	*Cenchrus echinatus*
Spotted knapweed	*Centaurea stoebe ssp. micranthos*
Sweet resinbush	*Euryops subcarnosus*
Ward's weed	*Carrichtera annua*
Wild mustard	*Sinapis arvensis*

Table 5. Class B Noxious Weeds

Common name	**Scientific name**
African sumac	*Searsia lancea*
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*
Ripgut brome	*Bromus diandrus*
Russian knapweed	*Acroptilon repens*
Russian olive	*Elaeagnus angustifolia*
Saharan mustard	*Brassica tournefortii*
Siberian elm	*Ulmus pumila*
Stinknet (Globe chamomile)	*Oncosiphon pilulifer (O. piluliferum)*
Scotch thistle	*Onopordum acanthium*
Yellow bluestem	*Bothriochloa ischaemum*
Yellow starthistle	*Centaurea solstitialis*

Table 6. Class C Noxious Weeds

Common name	**Scientific name**
Buffelgrass	*Cenchrus ciliaris (Pennisetum ciliare)*
Cheatgrass	*Bromus tectorum*
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*
Lehman's lovegrass	*Eragrostis lehmanniana*
Morning glory	*Ipomoea triloba*
Morning glory	*Ipomoea x leucantha*

Puncturevine	*Tribulus terrestris*
Red brome	*Bromus rubens*
Salt cedar	*Tamarix ~~ramosissima~~* spp.
Siberian elm	*Ulmus pumila*
Tree of heaven	*Ailanthus altissima*

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 (Federal Seed Act of 1939, as amended 85 FR 40571, August 6, 2020. https://www.federalregister.gov/d/2020-12920) and the regulations promulgated under ~~the Act: 20 C.F.R. part 201~~ 7 C.F.R. §§ 201.1 *et seq.* (as amended 47 FR 746, January 7, 1992. https://www.ecfr.gov/current/title-7/part-201). These materials are incorporated by reference, on file with the Department, and does not include any later amendments or editions.
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.

11. “Inert matter” means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones.
12. “Mixture”, “mix”, or “mixed” means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
13. “Mulch” means a protective covering of any suitable substance placed with seed that acts to retain sufficient moisture to support seed germination, sustain early seedling growth and aid in preventing soil moisture evaporation, control of weeds, and erosion prevention.
14. “Non-commercial Seed Sharing” means that no monetary consideration or compensation may be transferred in return for receiving seeds. Additionally, anyone distributing seeds under the rules of this definition may not expect, or create the expectation, that seeds must be returned in exchange for receiving seeds. If distribution of seeds is found to be in anticipation or connected to money paid for work or services rendered by the same person distributing seeds, such distribution shall not be considered non-commercial within these rules.

~~14~~15. “Origin” means the state where the seed was grown, or if not grown in the United States, the country where the seed was grown.

~~15~~16. “Other crop seed” means seeds of plants grown as crops other than the kind or variety included in the pure seed, as determined by methods defined in this Article.

~~16~~17. “Pure live seed” means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by 100. The result is expressed as a whole number.

~~17~~18. “Pure seed” means a kind of seed excluding inert matter and all other seed not of the kind being considered.

~~18~~19. “Replacement date sticker” means a sticker on a label that displays a new test date.

~~19~~20. “Retail” means sales that are not intended for agricultural use and are prepared for use by a consumer in home gardens or household plantings only.

~~20~~21. “Seed count” means the number of seeds per unit weight in a container.

~~21~~22. “Seizure” means taking possession of seed pursuant to a court order.

~~22~~23. “Wholesale” means sales of seeds that are intended for agricultural use normally in quantities for resale, as by an agricultural retail merchant and are not prepared for use in home gardening or household plantings.

~~23~~24. “Working sample” means the number of seeds required under §§ 402 and 403 of the Federal Seed Act.

R3-4-402. Labeling

A. General requirements:

1. Blank spaces or the words “free or none” mean “0” and “0.00%” for the purpose of applying the tolerances prescribed in this Article.
2. Labeling for purity and germination shall not show higher results than actually found by test.
3. The terms “foundation seed,” “registered seed,” and “certified seed”, as defined in the “Federal Seed Act”, are authorized for use on seed certified by a seed certifying agency under the laws of Arizona as delineated in R3-4-405.
4. Relabeling. Any person relabeling seed in its original container shall include the following information on a label or a replacement date sticker:
    a. The calendar month and year the germination test was completed to determine the germination percentage and the sell-by date as required by subsection (C)(3)(i)(iv) or (C)(5)(c)(i),

b. The same lot designation as on the original labels, and

c. The identity of the person relabeling the seed if different from the original labeler.

5. Labeling of seed distributed ~~to wholesalers~~ for wholesale. After seed has been conditioned, a labeler shall ensure the seed is labeled as follows:

a. When supplied ~~to a retailer~~ for retail or directly to a consumer, each bag or bulk lot must be completely labeled.

b. When supplied ~~to a wholesaler~~ for wholesale, if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk, the labeling of seed may be by invoice.

c. When supplied ~~to a wholesaler~~ for wholesale, if each bag or container is not identified by a lot number, it must carry complete labeling.

6. Seeds for sprouting. All labels of seeds sold for sprouting for salad or culinary purposes shall indicate the following information:

a. Commonly accepted name of kind or kinds;

b. Lot number;

c. Percentage by weight of each pure seed component in excess of 5 percent of the whole, other crop seeds, inert matter, and weed seeds, if occurring;

d. Percentage of germination of each pure seed component;

e. Percentage of hard seed, if present; and

f. The calendar month and year the germination test was completed to determine the percentages in subsections (c), (d) and (e).

7. Non-Commercial Seed Sharing. Agricultural, vegetable, or flower seeds that are distributed for sowing purposes in a non-commercial setting shall bear on each container a plainly written or printed label or tag in English with the following information:

a. The name of the kind or kinds and variety of each agricultural, vegetable, or flower seed component present. Hybrids shall be labeled as hybrids.

b. A word or statement indicating if the seed has been treated. And if treated, must be labeled as provided in subsection (C)(2).

c. Some form of reference identification that provides traceability. Retention of posterity file samples are not required.

d. Name and city or address of the non-commercial seed sharing entity.

e. The full name of the donor and calendar month and year the seed was donated.

f. The seed shall be free of foreign material, other than coatings or treatments, including germination medium, mulch, fertilizer, pre-planted containers, mats, tapes or other planting devices.

g. No distributed container shall hold more than eight (8) ounces of agricultural seed or four (4) ounces of vegetable or flower seed.

h. Germination and purity analysis are not required, however if a germination or purity percentage is noted on the label, it must be noted whether or not the analysis was performed according to the Association of Official Seed Analysts rules for testing seed.

i. At each location involved with non-commercial seed sharing a legible and visible sign shall state that the seeds being distributed may not meet germination or varietal purity standards prescribed by the state seed law. The sign must also state that patented seed or varieties protected by the Plant Variety Protection Act will not be accepted or distributed without permission of the certificate holder. (P.L. 91-577: 84 Stat. 1542; 7 U.S.C. §§ 2321 through 2582 as amended December 20, 2018, https://uscode.house.gov/view.xhtml?path=/prelim@title7/chapter57&edition=prelim. The materials are incorporated by reference, on file with the Department, and does not include any later amendments or editions).

B. Kind, variety, or type.

1. All agricultural seeds sold in this state, except as stated in subsection (B)(2), shall be labeled to include the recognized variety name or type or the words "Variety not stated." A brand is not a kind and variety designation and shall not be used instead of a variety name.
2. All cotton planting seed sold, offered for sale, exposed for sale, or transported for planting purposes in this state, shall have a label that includes both kind and variety.

C. Agricultural, vegetable, or flower seeds that ~~is~~ are sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. No misleading information shall appear on the label. The label shall include the following information:

1. For agricultural, vegetable, and flower seeds that have been treated, the following is required and may appear on a separate label:
   a. Language indicating that the seed has been treated;
   b. The commonly-accepted chemical name of the applied substance or a description of the process used;
   c. If a substance that is harmful to human or animals is present with the seed, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for highly toxic substances shall be a poison statement and symbol; and
   d. If the seed is treated with an inoculant, the date of expiration, which is the date beyond which the inoculant is not to be considered effective.
2. For agricultural seeds, except for lawn and turf grass seed and mixtures of lawn and turf grass seed as provided in subsection (C)(3); for seed sold on a pure live seed basis as provided in subsection (C)(7); and for hybrids that contain less than 95 percent hybrid seed as provided in subsection (C)(8):
   a. The name of the kind and variety for each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. If the variety of the kinds generally labeled as a variety designated in this Article is not stated, the label shall show the name of the kind and the words, "variety not stated." Hybrid seed shall be labeled as hybrid;
   b. Lot number or other lot identification;
   c. Origin of alfalfa, red clover, and field corn (except hybrid corn) or if the origin is unknown, a statement that the origin is unknown;
   d. Percentage by weight of all weed seeds;
   e. The name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

f. Percentage by weight of agricultural seeds other than those required to be named on the label. Agricultural seeds may be designated as "crop seeds;"

g. Percentage by weight of inert matter;

h. The sum total of weight identified in subsections (a), (d), (f), and (g) shall equal 100 percent;

i. For each named agricultural seed:

i. Percentage germination, excluding hard seed;

ii. Percentage of hard seeds, if present; and

iii. The calendar month and year the test was completed to determine the percentages. The statement "total germination and hard seed" may be included following the percentages required under subsections (i) and (ii).

j. Net weight of seed in the container or seed count per unit weight; and

k. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.

3. For lawn and turf grass seed and lawn and turf grass seed mixtures:

a. For single kinds, the name of the kind or kind and variety and the percentage by weight.

b. For mixtures, the word "mix, "mixed", or "mixture" or "blend" shall be stated with the name of the mixture, along with the commonly accepted name of each kind or kind and variety of each agricultural seed component in excess of five percent of the whole and the percentages by weight.

c. The percentage by weight of each kind of pure seed shall be listed in order of its predominance and in columnar form. The heading "pure seed" and "germination" or "germ" shall be placed consistent with generally accepted industry practices.

d. Percentage by weight of agricultural seed other than those required to be named on the label which shall be designated as "crop seed."

e. The percentage by weight of inert matter for lawn and turf grass shall not exceed ten percent, except that 15 percent inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material that is not common to grass seed shall not be added, other than material used for coating, as in subsection (C)(4), or combination products, as in subsection (C)(9).

f. Percentage by weight of all weed seeds. Weed seed content shall not exceed one-half of one percent by weight.

g. The sum total for subsections (a), (b), (c), (d), (e) and (f) shall equal 100 percent.

h. Noxious weeds that are required by this Article to be labeled shall be listed under the heading "noxious weed seeds."

i. For each lawn and turf seed named under subsection (a) or (b):

i. Percentage of germination, excluding hard seed;

ii. Percentage of hard seed, if present;

iii. Calendar month and year the germination test was completed to determine percentages in subsections (i) and (ii); and

iv. For seed sold for retail non-farm usage the statement "sell by (month/year)" which shall be no more than 15 months from the date of the germination test excluding the month of the test.

j. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state.

4. For coated agricultural, vegetable, flower, or lawn and turf seeds that are sold by weight:
    a. Percentage by weight of pure seeds with coating material removed;
    b. Percentage by weight of coating material;
    c. Percentage by weight of inert material not including coating material;
    d. Percentage of germination determined on 400 pellets with or without seeds;
    e. All other applicable requirements in subsections (C)(1), (2), and (3).
5. For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices:
    a. Name of kind and variety of seed;
    b. Lot identification, such as by lot number or other means;
    c. One of the following:
        i. The calendar month and year the germination test was completed and the statement "Sell by (month/year)." The date indicated shall be no more than ~~12~~15 months from the date of the test, excluding the month of the test;
        ii. The calendar year for which the seed was packaged for sale as "packed for (year)" and the statement "sell by (year)"; or
        iii. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within ~~12~~15 months, excluding the month of the test;
    d. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state;
    e. For seeds that germinate less than the standard established under R3-4-404(A), (B) and (C)(i): percentage of germination, excluding hard seed; percentage of hard seed, if present; and the words "Below Standard" in not less than 8-point type;
    f. For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.
6. For vegetable seeds in containers other than packets prepared for use in home gardens, household plantings, pre-planted containers, mats, tapes, or other planting devices:
    a. The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
    b. Lot number or other lot identification;
    c. For each named vegetable seed:
        i. Percentage germination, excluding hard seed;
        ii. Percentage of hard seed, if present; and
        iii. The calendar month and year the test was completed to determine the percentages; The statement "Total germination and hard seed" may be included following the percentages required under subsections (C)(6)(c)(i) and (C)(6)(c)(ii);
    d. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state; and

e. The labeling requirements for vegetable seeds in containers of more than one pound are met if the seed is weighed from a properly labeled container in the presence of the purchaser.

7. For agricultural seeds sold on a pure live seed basis, each container shall bear a label containing the information required by subsection (C)(2), except:
   a. The label need not show:
      i. The percentage by weight of each agricultural seed component as required by subsection (C)(2)(a); or
      ii. The percentage by weight of inert matter as required by subsection (C)(2)(g); and
   b. For each named agricultural seed, the label must show instead of the information required by subsection (C)(2)(h):
      i. The percentage of pure live seed; and
      ii. The calendar month and year in which the test determining the percentage of live seed was completed.
8. For agricultural and vegetable hybrid seeds that contain less than 95 percent hybrid seed:
   a. Kind or variety shall be labeled as "hybrid,"
   b. The percentage that is hybrid shall be labeled parenthetically in direct association following the named variety; for example – comet (85% hybrid), and
   c. Varieties in which the pure seed contains less than 75 percent hybrid seed shall not be labeled hybrids.
9. For combination mulch, seed, and fertilizer products:
   a. The word "combination" followed by the words "mulch – seed – fertilizer", as appropriate, shall appear on the upper 30 percent of the principal display panel. The word "combination" shall be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch – seed – fertilizer", as appropriate, shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination."
   b. The products shall not contain less than 70 percent mulch.
   c. Agricultural, flower, vegetable, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch shall be labeled as follows:
      i. Product name;
      ii. Lot number;
      iii. Percentage by weight of pure seed of each kind and variety named. The kind and variety named may be less than 5 percent of the whole;
      iv. Percentage by weight of other crop seeds;
      v. Percentage by weight of inert matter, which shall not be less than 70 percent;
      vi. Percentage by weight of weed seeds;
      vii. The total of subsections (iii), (iv), (v), and (vi) shall equal 100 percent;
      viii. Name and number of noxious weed seeds per pound, if present;
      ix. Hard seed percentage, if present, and percentage of germination of each kind or kind and variety named and the month and year the test was completed; and
      x. Name and address of the labeler or the person who sells, offers or exposes the product for sale within this state.

D. Labeling requirements: flowers.

1. For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in pre-planted containers, mats, tapes, or other planting devices:
    a. For all kinds of flower seeds:
        i. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3); and
        ii. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state, and one of the following subsections (D)(1)(a)(iii) through (v);
        iii. The calendar month and year the germination test was completed and the statement "Sell by (month/year)." The date indicated shall be no more than ~~12~~15 months from the date of the test excluding the month of the test; or
        iv. The calendar year for which the seed was packaged for sale as "packed for (year)" and the statement "sell by (year)"; or
        v. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within ~~12~~15 months, excluding the month of the test.
    b. For kinds of flower seeds for which standard testing procedures are prescribed by the Association of Official Seed Analysts and that germinate less than the germination standards prescribed under the provisions of R3-4-404(B):
        i. Percentage of germination, excluding hard seeds;
        ii. Percentage hard seed, if present; and
        iii. The words "Below Standard" in not less than eight-point type.
    c. For flower seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.
2. For flower seeds in containers other than packets and other than pre-planted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:
    a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3), and for wildflowers, the genus and species and subspecies, if appropriate;
    b. The lot number or other lot identification;
    c. For wildflower seed with a pure seed percentage of less than 90 percent:
        i. The percentage, by weight, of each component listed in order of the component's predominance;
        ii. The percentage by weight of weed seed, if present; and
        iii. The percentage by weight of inert matter;
    d. For kinds of seed for which standard testing procedures are prescribed by the Association of Official Seed Analysts:
        i. Percentage of germination, excluding hard or dormant seed;
        ii. Percentage of hard or dormant seed, if present; and
        iii. The calendar month and year that the test was completed to determine the percentages in subsections (D)(2)(d)(i) and (ii);

e. For those kinds of flower seed for which standard testing procedures are not prescribed by the Association of Official Seed Analysts, the year of production or collection; and

f. Name and address of the labeler, or the person who sells, offers, or exposes the flower seed for sale within this state.

3. Requirements to label flower seeds with kind and variety, or type and performance characteristics as prescribed in subsection (D)(1)(a)(i) and (D)(2)(a) shall be met as follows:

a. For seeds of plants grown primarily for their blooms:

i. If the seeds are of a single named variety, the kind and variety shall be stated, for example, "Marigold, Butterball";

ii. If the seeds are of a single type and color for which there is no specific variety name, the type of plant, if significant, and the type and color of bloom shall be indicated, for example, "Scabiosa, Tall, Large Flowered, Double, Pink";

iii. If the seeds consist of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, if significant, and the type or types of bloom shall be indicated. It shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is "Marigold, Dwarf Double French, Mixed Colors";

iv. If the seeds consist of an assortment or mixture of kinds or kinds and varieties, it shall clearly indicate that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated, for example, "Cut Flower Mixture", or "Rock Garden Mixture". Statements such as "General Purpose Mixture", "Wonder Mixture", or any other statement that fails to indicate the specific use of the seed shall not be considered as meeting the requirements of this subsection unless the specific use of the mixture is also stated. Containers with over three grams of seed shall list the kind or kind and variety names of each component present in excess of five percent of the whole in the order of their predominance, giving the percentage by weight of each. Components equal to or less than five percent shall be listed, but need not be listed in order of predominance. A single percentage by weight shall be given for these components that are less than five percent of the whole. If no component of a mixture exceeds five percent of the whole, the statement, "No component in excess of 5%" may be used. Containers with three grams of seed or less shall list the components without giving percentage by weight and need not be in order of predominance.

b. For seeds of plants grown for ornamental purposes other than their blooms, the kind and variety shall be stated, or the kind shall be stated together with a descriptive statement concerning the ornamental part of the plant, for example, "Ornamental Gourds, Small Fruited, Mixed."

E. Label requirement for tree and shrub seeds. Tree or shrub seeds that ~~is~~ are sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. Labeling of seed supplied under a contractual agreement meets this requirement if the shipment is accompanied by an invoice or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk. Each bag or container not clearly identified by a lot number must carry complete labeling. The label shall include the following information:

1. For tree and shrub seeds that have been treated, the following may appear on a separate label:
    a. Language indicating that the seed has been treated;
    b. The commonly accepted chemical name of the applied substance or description of the process used;
    c. If the substance is harmful to human or animals, a caution statement such as "do not use for food or feed or oil purposes". The caution for highly toxic substances shall be a poison statement and symbol; and
    d. If the seed has been treated with an inoculant, the date of expiration, which is the date the inoculant is no longer considered effective;
2. For all tree and shrub seeds subject to this Article:
    a. Common name of the species of seed and if appropriate, the subspecies;
    b. The scientific name of the genus and species and if appropriate, the subspecies;
    c. Lot number or other lot identification;
    d. Origin.
        i. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, a geographic description, or identification of a political subdivision, such as a state or county; or
        ii. For seed collected from other than a predominantly indigenous stand, identification of the area of collection and the origin of the stand, or the statement "origin not indigenous";
    e. The elevation or the upper and lower limits of elevations within which the seed was collected;
    f. Purity as a percentage of pure seed by weight;
    g. For those species listed under R3-4-404(C), the following apply except as provided in subsection (E)(2)(h):
        i. Percentage germination excluding hard seed;
        ii. Percentage of hard seed, if present;
        iii. The calendar month and year the test was completed to determine the percentages in subsection ~~(a)(i) and (b)(ii)~~ (E)(2)(g)(i) and (ii);
    h. Instead of complying with subsections (E)(2)(g)(i), (ii), and (iii), the seed may be labeled, "Test is in process, results will be supplied upon request";
    i. For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected; and
    j. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.

F. Hermetically sealed seed shall meet the following requirements as prescribed in the "Federal Seed Act:"

1. The seed shall have been packaged within nine months of harvest;
2. The container used shall not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100°F with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured in accordance with the U.S. Bureau of Standards as: gm H20/24 hr/100 sq in/ 100°F /90% RHV 0% RH;
3. The seed in the container shall not exceed the percentage of moisture, on a wet weight basis, as listed below:
    a. Agricultural Seeds,
        i. Beet, Field: 7.5;
        ii. Beet, Sugar: 7.5;

iii. Bluegrass, Kentucky: 6.0;

iv. Clover, Crimson: 8.0;

v. Fescue, Red: 8.0;

vi. Mustard, India: 5.0;

~~vi.~~vii. Ryegrass, Annual: 8.0;

~~vii.~~viii. Ryegrass, Perennial: 8.0; and

~~viii.~~ix. All Others: 6.0; ~~and~~

~~ix. Mixture of Above: 8.0;~~

b. Vegetable Seeds,

i. Bean, Garden: 7.0;

ii. Bean, Lima: 7.0;

iii. Beet: 7.5;

iv. Broccoli: 5.0;

v. Brussels Sprouts: 5.0;

vi. Cabbage: 5.0;

vii. Carrot: 7.0;

viii. Cauliflower: 5.0;

ix. Celeriac: 7.0;

x. Celery: 7.0;

xi. Chard, Swiss: 7.5;

xii. Chinese Cabbage: 5.0;

xiii. Chives: 6.5;

xiv. Collards: 5.0;

xv. Corn, Sweet: 8.0;

xvi. Cucumber: 6.0;

xvii. Eggplant: 6.0;

xviii. Kale: 5.0;

xix. Kohlrabi: 5.0;

xx. Leek: 6.5;

xxi. Lettuce: 5.5;

xxii. ~~Muskm~~Melon: 6.0;

xxiii. Mustard, India: 5.0;

xxiv. Onion: 6.5;

xxv. Onion, Welsh: 6.5;

xxvi. Parsley: 6.5;

xxvii. Parsnip: 6.0;

xxviii. Pea: 7.0;

xxix. Pepper: 4.5;

xxx. Pumpkin: 6.0;

xxxi. Radish: 5.0;

xxxii. Rutabaga: 5.0;

xxxiii. Spinach: 8.0;

xxxiv. Squash: 6.0;

xxxv. Tomato: 5.5;

xxxvi. Turnip: 5.0;

xxxvii. Watermelon: 6.5; and

xxxviii. All others: 6.0.

4. The container shall be conspicuously labeled in not less than 8-point type to indicate:
   a. That the container is hermetically sealed,
   b. That the seed has been preconditioned as to moisture content, and
   c. The calendar month and year in which the germination test was completed; and
5. The germination percentage of the seed at the time of packaging shall have been equal to or higher than the standards specified elsewhere in subsection R3-4-404.

R3-4-403. Noxious Weed Seeds

A. In addition to the noxious weeds prohibited in the "Federal Seed Act" a~~A~~ person shall not allow Class A, B, or C ~~the following~~ prohibited noxious weed seeds in seed regulated under this Article as prescribed under the provisions of R3-4-245:

1. *Acroptilon repens* (L.) DC. – Russian knapweed;
2. *Aegilops cylindrica* Host. – Jointed goatgrass;
3. *Ailanthus altissima* – Tree of heaven;
~~3.~~4. *Alhagi maurorum* – Camelthorn;
5. *Arundo donax* – Giant reed;
~~4. *Alternanthera philoxeroides* (Mart.) Griseb. – Alligator weed;~~
6. *Asphodelus fistulosus* – Onionweed;
7. *Bothriochloa ischaemum* – Yellow bluestem;
8. *Brassica nigra* – Black mustard;
9. *Brassica tournefortii* – Saharan mustard;
10. *Bromus diandrus* – Ripgut brome;
11. *Bromus rubens* – Red brome
12. *Bromus tectorum* - Cheatgrass
~~5. *Cardaria pubescens* (C.A. Mey) Jarmolenko – Hairy whitetop;~~
~~6. *Cardaria chalepensis* (L.) Hand-Maz – Lens podded hoary cress;~~
~~7. *Cardaria draba* (L.) Desv. – Globed-podded hoary cress (Whitetop);~~
~~8~~13. *Carduus acanthoides* L. – Plumeless thistle;
14. *Cardus nutans* – Musk thistle;
15. *Carrichtera annua* – Ward's weed;

16. *Cenchrus cilaris (Pennisetum ciliare)* – Buffelgrass;

~~9~~17. *Cenchrus echinatus* L. – Southern sandbur;

~~10~~18. *Cenchrus spinifex (C. incertus)* ~~M.A. Curtis~~ – Field sandbur;

~~11~~19. *Centaurea calcitrapa* L. – Purple starthistle;

20. *Centaurea diffusa* – Diffuse knapweed;

~~12. *Centaurea iberica Trev. ex Spreng.* – Iberian starthistle;~~

21. *Centaurea melitensis* – Malta starthistle;

~~13. *Centaurea squarrosa Willd.* – Squarrose knapweed;~~

~~14. *Centaurea sulphurea* L. – Sicilian starthistle;~~

~~15~~22. *Centaurea solstitialis* L. – Yellow starthistle (St. Barnaby's thistle);

~~16. *Centaurea diffusa* L. – Diffuse knapweed;~~

~~17~~23. *Centaurea stoebe (C. maculosa)* ~~L~~. – Spotted knapweed;

~~18~~24. *Chondrilla juncea* L. – Rush skeletonweed;

~~19~~25. *Cirsium arvense* L. Scop. – Canada thistle;

26. *Cirisium vulgare* – Bull thistle;

~~20~~27. *Convolvulus arvensis* L. – Field bindweed;

~~21. *Coronopus squamatus* (Forskal) Ascherson – Creeping wartcress (Coronopus);~~

~~22~~28. *Cucumis melo* L. var. Dudaim Naudin – Dudaim melon (Queen Anne's melon);

~~23. *Cuscuta* spp. – Dodder;~~

~~24. *Cyperus rotundus* – Purple Nutgrass or Nutsedge;~~

~~25. *Cyperus esculentus* – Yellow Nutgrass or Nutsedge;~~

~~26. *Drymaria arenarioides* H.B.K. – Alfombrilla (Lightningweed);~~

~~27. *Eichhornia azurea* (SW) Kunth. – Anchored Waterhyacinth;~~

29. *Eichornia crassipes* – Floating water hyacinth;

30. *Elaeagnus angustifolia* – Russian olive;

~~28~~31. *Elymus repens* – Quackgrass;

32. *Eragrostis lehmanniana* – Lehman's lovegrass;

~~29~~33. *Euphorbia esula* L. – Leafy spurge;

34. *Euryops subcarnosus* – Sweet resinbush;

~~30~~35. *Halogeton glomeratus* (M. Bieb.) C.A. Mey – Halogeton;

~~31. *Helianthus ciliaris* DC. – Texas Blueweed;~~

~~32~~36. *Hydrilla verticillata* (L.f.) Royle – Hydrilla (Florida-elodea);

~~33. *Ipomoea* spp. – Morning glory. All species except I*pomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); *Ipomoea aborescens*, morning glory tree; *Ipomea batatas* – sweetpotato; *Ipomoea quamoclit,* Cypress Vine; *Ipomoea noctiflora*, Moonflower – Morning Glories, Cardinal Climber, Hearts and Honey Vine;~~

37. *Ipomoea hederacea* – Ivy-leaf mrning glory;

38. *Ipomoea purpurea* – Garden or common morning glory;

39. *Ipomoea tricolor* – Grannyvine;

40. *Ipomoea triloba* – Morning glory;

41. *Ipomoea x leucantha* – Morning glory;

~~34~~42. *Isatis tinctoria* L. – Dyers woad;

43. *Kochia scoparia* – Kochia;

44. *Lepidium draba* (*Crdaria draba*) - Globed-podded hoary cress (Whitetop);

~~35~~45. *Linaria dalmatica (L. genistifolia* var. dalmatica) – Dalmation toadflax;

~~36~~46. *Lythrum salicaria* L. – Purple loosestrife;

~~37. *Medicago polymorpha* L. – Burclover;~~

47. *Melinis repens* – Natal grass;

~~38. *Nassella trichotoma* (Nees.) Hack. – Serrated tussock;~~

48. *Oncosiphon pilulifer (O. piluliferum)* – Stinknet (Globe chamomile);

~~39~~49. *Onopordum acanthium* L. – Scotch thistle;

~~40~~50. *Orobanche ramosa* L. – Branched broomrape;

~~41. *Panicum repens* L. – Torpedo grass;~~

~~42~~51. *Peganum harmala* L. – African rue (Syrian rue);

52. *Pennisetum setaceum* – Fountain grass;

53. *Searsia lancea* – African sumac;

~~43. *Portulaca oleracea* L. – Common purslane;~~

~~44. *Rorippa austriaca* (Crantz.) Bess. – Austrian fieldcress;~~

~~45~~54. *Salvinia molesta* – Giant Salvinia;

~~46. *Senecio jacobaea* L. – Tansy ragwort;~~

55. *Sinapis arvensis* – Wild mustard;

~~47. *Solanum carolinense* – Carolina horsenettle;~~

~~48. *Solanum elaegnifolium* – Silverleaf Nightshade;~~

~~49. *Sonchus arvensis* L. – Perennial sowthistle;~~

~~50. *Solanum viarum* Dunal – Tropical Soda Apple;~~

56. ~~Sorghum species, perennial (~~*Sorghum halepense~~, Johnson grass, Sorghum almum~~*, and perennial sweet sudangrass)~~ - Johnsongrass;

~~52. *Stipa brachychaeta Godr.* – Puna grass;~~

~~53. *Striga* spp. – Witchweed;~~

57. *Tamarix* spp. – Salt cedar

~~54. *Trapa natans* L. – Water-chestnut;~~

~~55~~58. *Tribulus terrestris* L. – Punctureviney;

59. *Ulmus pumila* – Siberian elm.

B. ~~A person shall not allow more than the number shown of the following restricted noxious weed seeds in a working sample of seed regulated by this Article; or, any more than 50 of any combination of the following restricted noxious weed seeds~~

~~per working sample.~~ A person shall not allow the following restricted noxious weeds, as a contaminant, in certified or registered seed:

1. *Amaranthus* spp. – Pigweeds;

~~1~~2. *Avena fatua* – Wild oat~~: 5~~;

~~2. *Brassica campestris* – Bird rape: 30;~~

~~3. *Brassica juncea* – Indian mustard: 30;~~

~~4. *Brassica niger* – Black mustard: 30;~~

~~5. *Brassica rapa* – Field mustard: 30;~~

3. *Brassica* spp. – Cabbage and mustards;

~~6~~4. *Cenchrus ~~pauciflorus~~* spp. – Sandburs~~: 10~~;

5. *Centaurea* spp. – Thistles;

6. *Cuscuta* spp. – Dodder;

7. *Cyperus* spp. – Sedges;

~~7. *Eichhornia crassipes (Mart.) Solms* – Floating waterhyacinth: 10;~~

~~8. *Euryops sunbcarnosus subsp. vulgaris* – Sweet resinbush: 10;~~

~~9~~8. *Ipomoea ~~triloba~~* L.spp. – Morning glories ~~Three-lobed morning glory: 10~~;

9. *Lepidium* spp. – Cresses and worts;

10. *Medicago* spp. – Burclovers;

11. *Nassella* spp. – Needlegrasses;

12. *Poa annua* – Annual bluegrass;

~~10. *Rumex crispus* – Curly dock: 30;~~

~~11~~13. *Salsola kali var. tenuifolia* – Russian thistle~~: 30~~;

~~12. *Sinapis arvensis* – Charlock or Wild mustard: 30; and~~

~~13. *Sida hederacea* – Alkali mallow: 30.~~

14. *Solanum* spp. – Niteshades;

15. Xanthium spp. – Cockleburs.

R3-4-404. Germination Standards

A. Vegetable seed shall have the following minimum percent germination or the minimum percent germination as found in the ~~Federal Seed Act, 20 CFR~~ "Federal Seed Act", 7 C.F.R. § 201.31 (as amended ~~January 1, 2002~~July 7, 2020), which is incorporated by reference, not including future editions or amendments. The material is on file with the Department and available for purchase from the U. S. Government Bookstore (http://bookstore.gpo.gov/) or at the U.S. Government Printing Office, 732 N. Capitol St., NW, Washington, DC 20401 or it can be found online at ~~http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=42bcf6d966081e2f2cf9d03315fb999f&rgn=div8&view=text&node=7:3.1.1.7.28.0.317.38&idno=7~~ https://www.ecfr.gov/current/title-7/section-201.31.

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1. Artichoke: 60;
2. Asparagus: 70;

3 Asparagusbean: 75;

4. Bean, garden: 70;

5. Bean, Lima: 70;

6. Bean, runner: 75;

7. Beet: 65;

8. Broadbean: 75;

9. Broccoli: 75;

10. Brussels sprouts: 70;

11. Burdock, great: 60;

12. Cabbage: 75;

13. Cabbage, tronchuda: 70;

14. Cardoon: 60;

15. Carrot: 55;

16. Cauliflower: 75;

17. Celeriac: 55;

18. Celery: 55;

19. Chard, Swiss: 65;

20. Chicory: 65;

21. Chinese cabbage: 75;

22. Chives: 50;

23. Citron: 65;

24. Collards: 80;

25. Corn, sweet: 75;

26. Cornsalad: 70;

27. Cowpea: 75;

28. Cress, garden: 75;

29. Cress, upland: 60;

30. Cress, water: 40;

31. Cucumber: 80;

32. Dandelion: 60;

33. Dill: 60;

34. Eggplant: 60;

35. Endive: 70;

36. Kale: 75;

37. Kale, Chinese: 75;

38. Kale, Siberian: 75;

39. Kohlrabi: 75;

40. Leek: 60;

41. Lettuce: 80;
42. Melon: 75;
43. Mustard, India:75;
44. Mustard, spinach: 75;
45. Okra: 50;
46. Onion: 70;
47. Onion, Welsh: 70;
48. Pak-choi: 75;
49. Parsley: 60;
50. Parsnip: 60;
51. Pea: 80;
52. Pepper: 55;
53. Pumpkin: 75;
54. Radish: 75;
55. Rhubarb: 60;
56. Rutabaga: 75;
57. Sage: 60;
58. Salsify: 75;
59. Savory, summer: 55;
60. Sorrel: 65;
61. Soybean: 75;
62. Spinach: 60;
63. Spinach, New Zealand: 40;
64. Squash: 75;
65. Tomato: 75;
66. Tomato, husk: 50;
67. Turnip: 80;
68. Watermelon: 70; and
69. All Others: The germination standard for all other vegetable and herb seed for which a standard has not been established shall be 50 percent.

B. ~~Flower seed shall meet the following minimum percent germination standards.~~ The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination percentage. For the kinds marked with an asterisk, the percentage listed is the sum total of the percentage germination and percentage of hard seed. A mixture of kinds does not meet the germination standard if the germination of any kind or combination of kinds constituting 25 percent or more of the mixture by number of seed is below the germination standard for the kind or kinds involved.

1. Archillea (The Pearl) – *Achillea ptarmica*: 50;
2. African Daisy – *Dimorphotheca aurantiaca*: 55;

3. African Violet – *Saintpaulia* spp: 30;
4. Ageratum – *Ageratum mexicanum*: 60;
5. Agrostemma (rose campion) – *Agrostemma coronaria*: 65;
6. Alyssum – *Alyssum compactum, A. maritimum, A. procumbens, A. saxatile*: 60;
7. Amaranthus – *Amaranthus* spp: 65;
8. Anagalis (primpernel) – *Anagalis arvensis, Anagalis coerulia, Anagalis grandiflora*: 60;
9. Anemone – *Anemone coronaria, A. pulsatilla*: 55;
10. Angel's Trumpet – *Datura arborea*: 60;
11. Arabis – *Arabis alpine*: 60;
12. Arctotis (African lilac daisy) – *Arctotis grandis*: 45;
13. Armeria – *Armeria formosa*: 55;
14. Asparagus, fern – *Asparagus plumosus*: 50;
15. Asparagus, sprenger, *Asparagus sprenger*: 55;
16. Aster, China – *Callistephus chinensis*; except Pompon, Powderpuff, and Princess types: 55;
17. Aster, China – *Callistephus chinensis*; Pompon, Powderpuff, and Princess types: 50;
18. Aubretia – *Aubretia deltoids*: 45;
19. Baby Smilax – *Aparagus asparagoides*: 25;
20. Balsam – *Impatiens balsamina*: 70;
21. Begonia – (*Begonia fibrous rooted*): 60;
22. Begonia – (*Begonia tuberous rooted*): 50;
23. Bells of Ireland – *Molucella laevis*: 60;
24. Brachycome (swan river daisy) – *Brachycome iberidifolia*: 60;
25. Browallia – *Browallia elata and B. speciosa*: 65;
26. Bupthalum (sunwheel) – *Buphthalum salicifolium*: 60;
27. Calceolaria – *Calceolaria* spp: 60;
28. Calendula – *Calendula officinalis*: 65;
29. California Poppy – *Eschscholtzia californica*: 60;
30. Calliopsis – *Coreopsis bicolor*, *C. drummondi, C. elegans*: 65;
31. Campanula:
    a. Canterbury Bells – *Campanula medium*: 60;
    b. Cup and Saucer Bellflower – *Campanula medium calycanthema*: 60;
    c. Carpathian Bellflower – *Campanula carpatica*: 50;
    d. Peach Bellflower – *Campanula persicifolia*: 50;
32. Candytuft, Annual – *Iberis amara, I. umbellate*: 65;
33. Candytuft, Perennial – *Iberis gibraltarica, I. sempervirens*: 55;
34. Castor Bean – *Ricinus communis*: 60;
35. Cathedral Bells – *Cobaea scandens*: 65;
36. *Celosia argentea*: 65;

37. Centaurea: Basket Flower – *Centaurea americana*, Cornflower – *C. cyanus*, Dusty Miller – *C. candidissima*, Royal Centaurea – *C. imperialis*, Sweet Sultan – *C. moschata*, Velvet Cantaurea – *C. gymnocarpa*: 60;
38. Snow-in-Summer *Cerastium biebersteini and C. tomentosum*: 65;
39. Chinese Forget-me-not – *Cynoglossum amabile*: 55;
40. Chrysanthemum, Annual – *Chrysanthemum carinatum, C. coronarium, C. Cineraria – Senecio cruentus*: 60;
41. Clarkia – *Clarkia elegans*: 65;
42. Cleome – *Cleome gigante*a: 65;
43. Coleus – *Coleus blumei*: 65;
44. Columbine – *Aquilegia* spp.: 50;
45. Coral Bells – *Heuchera sanguinea*: 55;
46. Coreopsis, Perennial – *Coreopsis lanceolata*: 40;
47. Corn, ornamental – *Zea mays*: 75;
48. Cosmos: Sensation, Mammoth and Crested types – *Cosmos bipinnatus*; Klondyke type – *C. sulphureau*: 65;
49. Crossandra – (*Crossandra infundibuliformis*): 50;
50. Dahlia – *Dahlia* spp: 55;
51. Daylily – *Hemerocallis* spp: 45;
52. Delphinium, Perennial – *Belladonna* and *Bellamosum* types; Cardinal Larkspur – *Delphinium cardinale*; *Chinensis types;* Pacific Giant*,* Gold Medal and other hybrids of *D. elatum*: 55;
53. Dianthus:
    a. Carnation – *Dianthus caryophyllus*: 60;
    b. China Pinks – *Dianthus chinensis, heddewigi, heddensis*: 70;
    c. Grass Pinks – *Dianthus plumarius*: 60;
    d. Maiden Pinks – *Dianthus deltoids*: 60;
    e. Sweet William – *Dianthus barbatus*: 70;
    f. Sweet Wivelsfield – *Dianthus allwoodi*: 60;
54. Didiscus – (blue lace flower) – *Didiscus coerulea*: 65;
55. Doronicum (leopard's bane) – *Doronicum caucasicum*: 60;
56. Dracaena – *Dracaena indivisa*: 55;
57. Dragon Tree – *Dracaena draco*: 40;
58. English Daisy – *Bellis perennis*: 55;
59. Flax – Golden flax *(Linum flavum);* Flowering flax L. *randiflorum;* Perennial flax*,* L. *perenne*: 60;
60. Flowering Maple – *Abutilon* spp: 35;
61. Foxglove – *Digitalis* spp: 60;
62. Gaillardia, Annual – *Gaillardia pulchella; G. picta*; Perennial – G. *grandiflora*: 45;
63. Gerbera (transvaal daisy) – *Gerbera jamesoni*: 60;
64. Geum – *Geum* spp: 55;
65. Gilia – *Gilia* spp: 65;
66. Glosiosa daisy (*rudbeckia*) – *Echinacea purpurea and Rudbeckia Hirta*: 60;

67. Gloxinia – (*Sinningia speciosa*): 40;
68. Godetia – *Godetia amoena, G. grandiflora*: 65;
69. Gourds: Yellow Flowered – *Cucurbita pepo*; White Flowered – *Lagenaria sisceraria*; Dishcloth – *Luffa cilíndrica*: 70;
70. Gypsophila: Annual Baby's Breath – Gypsophlla elegans; Perennial Baby's Breath – *G. paniculata, G. pacifica G. repens*: 70;
71. Helenium – *Helenium autumnale*: 40;
72. Helichrysum – *Helichrysum monstrosum*: 60;
73. Heliopsis – *Heliopsis scabra*: 55;
74. Heliotrope – *Heliotropium* spp: 35;
75. Helipterum (Acroclinium) – *Helipterum roseum*: 60;
76. Hesperis (sweet rocket) – *Hesperis matronalis*: 65;
77. *Hollyhock – *Althea rosea*: 65;
78. Hunnemania (mexican tulip poppy) – *Hunnemania fumariaefolia*: 60;
79. Hyacinh bean – *Dolichos lablab*: 70;
80. Impatiens – *Impatiens hostii*, *I. sultani*: 55;
81. **Ipomoea* – Cypress Vine – *Ipomoea quamoclit*; Moonflower – I. *noctiflora*; Morning Glories, Cardinal Climber, Hearts and Honey Vine – *Ipomoea* spp: 75, exception: *I. hederacea* – Ivy-leaf morning glory, *I. purpurea* – Garden or common morning glory, *I. tricolor* – Grannyvine, *I. triloba* and *I. x leucantha* – morning glory which are noxious weeds;
82. Jerusulem cross (maltese cross) – *Lychnis chalcedonica*: 70;
83. Job's Tears – *Coix lacrymajobi*: 70;
84. Kochia – *Kochia childsi*: 55;
85. Larkspur, Annual – *Delphinium ajacis*: 60;
86. Lantana – *Lantana camara, L. hybrida*: 35;
87. Lilium (regal lily) – *Lilium regale*: 50;
88. Linaria – *Linaria* spp: 65, exception: *Linaria genistifolia* var. dalmatica – Dalmation toadflax which is a ~~prohibited~~ noxious weed;
89. Lobelia, Annual – *Lobelia erinus*: 65;
90. Lunaria, Annual – *Lunaria annua*: 65;
91. *Lupine – *Lupinus* spp: 65;
92. Marigold – *Tagetes* spp: 65;
93. Marvel of Peru – *Mirabilis jalapa*: 60;
94. Matricaria (feverfew) – *Matricaria* spp: 60;
95. Mignonette – *Reseda odorata*: 55;
96. Myosotis – *Myosotis alpestris, M. oblongata, M. palustres*: 50;
97. Nasturtium – *Tropaeolum* spp: 60;
98. Nemesia – *Nemesia* spp: 65;
99. Nemophila – *Nemophila insignis*: 70;

100. Nemophila, spotted – *Nemophila maculate*: 60;
101. Nicotiana – *Nicotiana affinis, N. sanderae, N. sylvestris*: 65;
102. Nierembergia – *Nierembergia* spp: 55;
103. Nigella – *Nigella damascena*: 55;
104. Pansy – *Viola tricolor*: 60;
105. Penstemon – *Penstemon barbatus, P. grandflorus, P. laevigatus, P. pubescens*: 60;
106. Petunia – *Petunia* spp: 45;
107. Phacelia – *Phacelia campanularia, P. minor, P. tanacetifolia*: 65;
108. Phox, Annual – *Phlox drummondi* all types and varieties: 55;
109. Physalis – *Physalis* spp: 60;
110. Platycodon (balloon flower) – *Platycodon grandiflorum*: 60;
111. Plumbago, cape – *Plumbago capensis*: 50;
112. Ponytail – *Beaucarnea recurvata*: 40;
113. Poppy: Shirley Poppy – *Papaver rhoeas;* Iceland Poppy – *P. nudicaule*; Oriental Poppy – *P. orientale*; Tulip Poppy – *P. glaucum*: 60;
114. Portulace – *Portulaca grandiflora*: 55;
115. Primula (primrose) – *Primula* spp: 50;
116. Pyrethrum (painted daisy) – *Pyrethrum coccineum*: 60;
117. Salpiglossis – *Salpiglossis gloxinaeflora, S. sinuata*: 60;
118. Salvia – Scarlet Sage – *Salvia splendens;* Mealycup Sage (Blue bedder) – *Salvia farinacea*: 50;
119. Saponaria – *Saponaria ocymoides, S. vaccaria*: 60;
120. Scabiosa, Annual – *Scabiosa atropurpurea*: 50;
121. Scabiosa, Perennial – *Scabiosa caucasica*: 40;
122. Schizanthus – *Schizanthus* spp: 60;
123. *Sensitive plant (mimosa) – *Mimosa pudica*: 65;
124. Shasta Daisy – *Chrysanthemum maximum C. leucanthemum*: 65;
125. Silk Oak – *Grevillea robusta*: 25;
126. Snapdragon – *Antirrhinum* spp: 55;
127. Solanum – *Solanum* spp: 60, exceptions; *Solanum carolinense* – Carolina horsenettle and *Solanum elaegnifolium* Silverleaf Nightshade which are prohibited noxious weeds;
128. Statice – *Statice sinuata, S. suworonii* (flower heads): 50;
129. Stocks: Common – *Mathiola incana;* Evening Scented – *Mathiola bicornis*: 65;
130. Sunflower – *Helianthus* spp: 70, exception; *Helianthus ciliaris* DC. – Texas blueweed which is a prohibited noxious weed;
131. Sunrose – *Helianthemum* spp: 30;
132. *Sweet Pea, Annual and Perennial other than dwarf bush – *Lathyrus odoratus,* L. *latifolius*: 75;
133. *Sweet Pea, Dwarf Bush – *Lathyrus odoratus*: 65;
134. Tahoka Daisy – *Machaeanthera tanacetifolia*: 60;

135. Thunbergia – *Thunbergia alata*: 60;

136. Torcn Flower – *Tithonia speciosa*: 70;

137. Torenia (Wishbone Flower) – *Torenia fournieri*: 70;

138. *Tritoma kniphofia* Spp: 65;

139. Verbena, Annual – *Verbena hybrida*: 35;

140. Vinca – *Vinca rosea*: 60;

141. Viola – *Viola cornuta*: 55;

142. Virginian Stocks – *Malcolmia maritima*: 65;

143. Wallflower – *Cheiranthus allioni*: 65;

144. Yucca (Adam's Needle) – *Yucca filamentosa*: 50;

145. Zinnia (Except Linearis and Creeping) – *Zinnia angustifolia, Z. elegans, Z.grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, Z. pumila*: 65;

146. Zinnia, Linearis and Creeping – *Zinnia linearis, Sanvitalia procumbens*: 50;

147. All Other Kinds: 50.

C. The germination labeling provisions of R3-4-402(E) apply to the following tree and shrub species:

1. *Abies amabilis* (Dougl.) Forbes – Pacific Silver Fir;
2. *Abies balsamea* (L.) Mill. – Balsam Fir;
3. *Abies concolor* (Gord. Glend.) Lindl. – White Fir;
4. *Abies fraseri* (Pursh.) Poir – Fraser Fir;
5. *Abies grandis* (Dougl.) Lindl. – Grand Fir;
6. *Abies homolepis* Sieb Zucc. – Nikko Fir;
7. *Abies lasiocarpa* (Hook) Nutt. – Subalpine Fir;
8. *Abies magnifica* A. Murr. – California Red Fir;
9. *Abies magnifica* var. *shastensis* Lemm. – Shasta Red Fir;
10. *Abies procera* Rehd. – Nobel Fir;
11. *Abies veitchii* (Lindl.) – Veitch Fir;
12. *Acer ginnala* Maxim. – Amur Maple;
13. *Acer macrophyllum* Pursh. – Bigleaf Maple;
14. *Acer negundo* L. – Boxelder;
15. *Acer pensylvanicum* L. – Striped Maple;
16. *Acer platanoides* L. – Norway Maple;
17. *Acer pseudoplatanus* L. – Sycamore Maple;
18. *Acer rubrum* L. – Red Maple;
19. *Acer saccharinum* L. – Silver Maple;
20. *Acer saccharum Marsh*, – Sugar Maple;
21. *Acer spicatum* Lam. – Mountain Maple;
22. *Aesculus pavia* L. – Red Buckeye;
23. *Ailanthus altissima* (Mill.) *Swingle* – Tree of Heaven, Ailanthus;

24. *Berberis thunbergil* DC. – Japanese Barberry;
25. *Berberis vulgaris* L. European Barberry;
26. *Betula lenta* L. – Sweet Birch;
27. *Betula alleghaniensis* Britton – Yellow Birch;
28. *Betula nigra* L. – River Birch;
29. *Betula papyrifera* Marsh. – Paper Birch;
30. *Betula pendula* Roth. – European White Birch;
31. *Betula populifolian* Marsh. – Gray Birch;
32. *Carya illinoensis* (Wang.) K. Koch – Pecan;
33. *Carya ovata* (Mill) K. Koch – Shagbark Hickory;
34. *Casuarina* spp. – Beefwood;
35. *Catalpa bignonioides* Walt. – Southern Catalpa;
36. *Catalpa speciosa* Warder. – Northern Caralpa;
37. *Cedrus atlantica* Manetti – Atlas Cedar;
38. *Cedrus deodara* (Roxb.) Loud. – Deodar Cedar;
39. *Cedrus libani* (Loud.) – Cedar of Lebanon;
40. *Clastrus scandens* L. – American Bittersweet;
41. *Celastrus orbiculata* Thunb. – Oriental Bittersweet;
42. *Chamaecyparis lawsoniana* (A. Murr.) Parl – Port Oxford Cedar;
43. C*hamaecyparis nootkatensis* (D. Don.) Spach. – Alaska Cedar;
44. *Cornus florida* L. – Flowering Dogwood;
45. *Cornus stolonifera* Michx. – Red-osier Dogwood;
46. *Crataegus mollis* – Downy Hawthorn;
47. *Cupressus arizonica* Greene – Arizona Cypress;
48. *Eucalyptus deglupta*;
49. *Eucalyptus gradis*;
50. *Fraxinus americana* L. – White Ash;
51. *Fraxinus excelsior* L. – European Ash;
52. *Fraxinus latifolia* Benth. – Oregon Ash;
53. *Fraxinus nigra* Marsh. – Black Ash;
54. *Fraxinus pensylvanica* Marsh. – Green Ash;
55. *Fraxinus pensylvanica* var. *lanceolata* (Borkh.) Sarg. – Green Ash;
56. *Gleditsia triacanthos* L. – Honey Locust;
57. *Grevillea robusta* – Silk-oak;
58. *Larix decidua* Mill, – European Larch;
59. *Larix eurolepis* Henry – Dunkfeld Larch;
60. *Larix leptolepis* (Sieb. Zucc.) Gord. – Japanese Larch;
61. *Larix occidentalis* Nutt. – Western Larch;

62. *Larix sibirica* Ledeb. – Siberian Larch;
63. *Libocedrus decurrens* – Incense-Cedar;
64. *Liquidambar styraciflua* L. – Sweetgum;
65. *Liriodendron tulipifera* L. – Yellow-Poplar;
66. *Magnolia grandiflora* – Southern Magnolia;
67. *Malus* spp. – Apple;
68. *Malus* spp. – Crabapple;
69. *Nyssa aquatica* L. – Water Tupelo;
70. *Nyssa sylvatica* var. sylvatica – Black Tupelo;
71. *Picea abies* (L.) Karst. – Norway Spruce;
72. *Picea engelmanni* Parry – Engelmann Spruce;
73. *Picea glauca* (Moench.) Voss – White Spruce;
74. *Picea glauca* var. albertiana (S. Brown) Sarg. – Western White Spruce, Alberta White Spruce;
75. *Picea glehnii* (Fr. Schmidt) Mast. – Sakhalin Spruce;
76. *Picea jezoensis* (Sieb. Zucc.) Carr – Yeddo Spruce;
77. *Picea koyamai* Shiras. – Koyama Spruce;
78. *Picea mariana* (Mill.) B.S.P. – Black Spruce;
79. *Picea omorika* (Pancic.) Purkyne – Serbian Spruce;
80. *Picea orientalis* (L.) Link. – Oriental Spruce;
81. *Picea polita* (Sieb. Zucc.) Carr – Tigertail Spruce;
82. *Picea pungens* Engelm. – Blue Spruce, Colorado Spruce;
83. *Picea pungens* var. *glauca* Reg. – Colorado Blue Spruce;
84. *Picea rubens* Sarg. – Red Spruce;
85. *Picea sitchensis* (Bong.) Carr – Sitka Spruce;
86. *Pinus albicaulis* Engelm. – Whitebark Pine;
87. *Pinus aristata* Engelm. – Bristlecone Pine;
88. *Pinus banksiana* Lamb. – Jack Pine;
89. *Pinus canariensis* C. Smith – Canary Pine;
90. *Pinus caribaea* – Caribbean Pine;
91. *Pinus cembroides* Zucc. – Mexican Pinyon Pine;
92. *Pinus clausa* – Sand Pine;
93. *Pinus conorta* Dougl. – Lodgepole Pine;
94. *Pinus contorta* var. *latifolia* Engelm. – Lodgepole Pine;
95. *Pinus coulteri* D. Don. – Coulter Pine, Bigcone Pine;
96. *Pinus densiflora* Sieb. Zucc. – Japanese Red Pine;
97. *Pinus echinata* Mill. – Shortleaf Pine;
98. *Pinus elliottii* Engelm. – Slash Pine;
99. *Pinus flexilis* James – Limber Pine;

100.*Pinus glabra* Walt. – Spruce Pine;

101.*Pinus griffithi* McClelland – Himalayan Pine;

102.*Pinus halepensis* Mill. – Aleppo Pine;

103.*Pinus jeffreyi* Grev. Balf. – Jeffrey Pine;

104.*Pinus khasya* Royle – Khasia Pine;

105.*Pinus lambertiana* Dougl. – Sugar Pine;

106.*Pinus heldreichii* var. *leucodermis* (Ant.) Markgraf ex Fitschen – Balkan Pine, Bosnian Pine;

107.*Pinus markusii* DeVriese – Markus Pine;

108.*Pinus monticola* Dougl. – Western White Pine;

109.*Pinus mugo* Turra. – Mountain Pine;

110.*Pinus mugo* var. *mughus* (Scop.) Zenari – Mugo Swiss Mountain Pine;

111.*Pinus muricata* D. Don. – Bishop pine;

112.*Pinus nigra* Arnold – Austrian Pine;

113.*Pinus nigra* poiretiana (Ant.) Aschers Graebn. – Corsican Pine;

114.*Pinus palustris* Mill. – Longleaf Pine;

115.*Pinus parviflora* Sieb. Zucc. – Japanese White Pine;

116.*Pinus patula* Schl. Cham. – Jelecote Pine;

117.*Pinus pinaster* Sol. – Cluster Pine;

118.*Pinus* pinea L. – Italian Stone Pine;

119.*Pinus ponderosa* Laws. – Ponderosa Plne, Western Yellow Pine;

120.*Pinus radiata* D. Don. – Monterey Pine;

121.*Pinus resinosa* Ait. – Red Pine, Norway Pine;

122.*Pinus rigida* Mill. – Pitch Pine;

123.*Pinus serotina* Michx. – Pond Pine;

124.*Pinus strobus* L. – Eastern White Pine;

125.*Pinus sylvestris* L. – Scots Pine;

126.*Pinus taeda* L. – Loblolly Pine;

127.*Pinus taiwanensis* Hayata – Formosa Pine;

128.*Pinus thunbergii* Parl. – Japanese Black Pine;

129.*Pinus virginiana* Mill. – Virginia Pine, Scrub Pine;

130.*Platanus occidentalis* L. – American Sycamore;

131.*Populus* spp. – Poplars;

132.*Prunus armeriaca* L. – Apricot;

133.*Prunus avium* L. – Cherry;

134.*Prunus domestica* L. – Plum, Prune;

135.*Prunus persica* Batsch. – Peach;

136.*Pseudotsuga menziesii* var. *glauca* (Beissn.) Franco – Blue Douglas Fir;

137.*Pseudotsuga menziesii* var. *caesia* (Beissn.) Franco – Gray Douglas Fir;

138. *Pseudotsuga menziesii* var. *viridis* – Green Douglas Fir;

139. *Pyrus communis* L. – Pear;

140. *Quercus* spp. – (Red or Black Oak group);

141. *Quercus alba* L. – White Oak;

142. *Quercus muehlenbergii* Engelm. – Chinkapin Oak;

143. *Quercus virginiana* Mill. – Live Oak;

144. *Rhododendron* spp. – Rhododendron;

145. *Robinia pseudoacacia* L. – Black Locust;

146. *Rosa multiflora* Thunb. – Japanese Rose;

147. *Sequoia gigantea* (Lindl.) Decne. – Giant Sequoia;

148. *Sequoia sempervirens* (D. Don.) Engl. – Redwood;

149. *Syringa vulgaris* L. – Common Lilac;

150. *Thuja occidentalis* L. – Northern White Cedar, Eastern Arborvitae;

151. *Thuja orientalis* L. – Oriental Arborvitae, Chinese Arborvitae;

152. *Thuja plicata* Donn. – Western Red Cedar – Giant Arborvitae;

153. *Tsuga canadensis* (L.) Carr. – Eastern Hemlock, Canada Hemlock;

154. *Tsuga heterophylla* (Raf.) Sarg. – Western Hemlock, Pacific Hemlock;

155. *Ulmus americana* L. – American Elm;

156. *Ulmus parvifolia* Jacq. – Chinese Elm;

157. *Ulmus pumila* L. – Siberian Elm; and

158. *Vitis vulpina* L. – Riverbank Grape.

D. A person shall not indicate a quality of seed higher than the actual quality as found through germination test.

E. The labeler or the person who sells, offers, or exposes for sale within this state seeds in hermetically-sealed containers more than 36 months after the last day of the month in which the seeds were tested prior to packaging, shall retest the seeds within nine months, excluding of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

R3-4-406. Sampling and Analyzing Seed

A. A person shall follow the methods of taking, handling, analyzing, and testing samples of seed and the tolerances and methods of determination as prescribed in the Federal Seed Act Regulations, ~~7 CFR 201.39 through 201.65, amended January 1, 2002~~ 7 C.F.R. §§ 201.39 thhrough 201.65 (as amended July 7, 2022, https://www.ecfr.gov/current/title-7/part-201), and in the Rules for Testing Seeds, ~~2006~~2017, published by the Association of Official Seed Analysts. This material is incorporated by reference and is on file with the Department. The materials incorporated by reference do not include any later amendments or editions. The Rules for Testing Seeds are also available through the web site: http://www.aosaseed.com. The CFR may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250-7954 and the Rules for Testing Seeds may be ordered from the AOSA Management Office, Mail Boxes Etc. #285, 601 S. Washington, Stillwater, OK 74074-4539. If there is a conflict between the two documents, the requirements in CFR will prevail.

B. A labeler offering a seed for sale shall pay the cost of original germination and purity tests on each lot of seed offered for sale, and a dealer or labeler shall pay the cost of any subsequent germination test required by A.R.S. § 3-237. The Department shall pay the cost of testing seed samples drawn by a seed inspector from lots bearing valid labels. The dealer or labeler shall reimburse the Department for the cost of the test if the dealer or labeler chooses to use the Department's germination and purity results in subsequent re-labeling.

R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees

A. An applicant for a seed dealer or seed labeler license shall provide the following to the Department:

1. The year for which the applicant wishes to be licensed;
2. The applicant's name, company name, telephone number, fax number and e-mail address, as applicable;
3. Verification of previous seed dealer or labeler license, if applicable;
4. The mailing and physical address of each business location being licensed;
5. Company Tax ID number or if not a legally-recognized business entity, the applicant's Social Security number;
6. The date of the application; and
7. The signature of the applicant.

B. Seed dealer and seed labeler licenses are not transferable, expire on June 30, and are valid for no more than one year, or period thereof, unless otherwise revoked, suspended, denied or otherwise acted upon by the Department as provided in A.R.S. § 3-233(A)(6).

C. An applicant shall submit a completed application to the Department accompanied by the following fee, which is nonrefundable unless A.R.S. § 41-1077 applies.

1. Seed dealers, $50.00 per location; and
2. Seed labelers, $100.00.

~~**D.** During fiscal year 2011 and fiscal year 2012, notwithstanding subsection (C), there is no fee to obtain a seed dealer or seed labeler license.~~

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

ARTICLES 2 AND 4

Summary

The statutory purpose of the Arizona Department of Agriculture's (Department) Plant Services Division is to protect Arizona's $23.3 billion agricultural industry and Arizona consumers from injurious plant pests, weeds and diseases that threaten this state, increasing crop losses and potentially increasing treatment costs from non-native organisms. These quarantine measures help maintain a "free from" status that ensures continued market access throughout the world for Arizona's agricultural goods.

Chapter 4, Article 2 Quarantine, enables the Department to target specific risks associated with the importation of high risk commodities from throughout the United States. Portions of the article are necessary to maintain compliance with The Plant Protection Act of 2000, 7 U.S.C. section 7711(a).

Chapter 4, Article 3 Seeds enables the Department to regulate accurate labeling, quality and purity standards for seeds offered for sale in Arizona. This article mirrors the Federal Seed Act of 1939, 7 C.F.R. part 201.

1. Identification of the proposed rulemaking.

The proposed changes are as follows:

- R3-4-203. Plant and Crop Safeguards, Inspection, and Certification
    - Amend the language of (C.)(2) to clarify the intent "commercially harvested or bulk shipments."
    - Amend the language throughout for consistency and to utilize defined terms.
- Tables 2 through 6
    - Add new organisms to their appropriate lists to align with federal quarantine and to address new pest threats that have emerged since the last rule revision.
- R3-4-401. Definitions
    - Update the definition of the "Federal Seed Act" (FSA) to address amendments in 7 C.F.R. Part 201 and to conform with reference formatting.

- Added a definition for “Non-commercial Seed Sharing”.

- R3-4-402. Labeling
  - Reference the FSA when authorizing the terms “foundation”, “registered” and “certified” seed.
  - Add requirements for Non-commercial Seed Sharing that match the “Recommended Uniform State Seed Law” (RUSSL).
  - Reference the FSA when listing the requirements for hermetically sealed seed.
  - Adjust the agriculture and vegetable seeds moisture percentages for hermetically sealed seed to match RUSSL.
  - Grammatical changes, for consistency, throughout the rule.
- R3-4-403. Noxious Weed Seeds
  - Add a reference to the seeds listed in the FSA.
  - Change the language to match R3-4-245 for Class A, B and C.
  - Amend the list to match R3-4-245.
  - Add a category for “certified or registered seed”.
- R3-4-404. Germination Standards
  - Updated the reference to the FSA and the link to the e-CFR for germination standards.
  - Changed the language for flower seeds to be more concise and match RUSSL
  - Adjusted the Ipomoea and Linaria list to match R3-4-245
- R4-4-406. Sampling and Analyzing Seed
  - Updated the reference to the Federal Seed Act under 7 C.F.R. §§ 201.39 - 201.65.
  - Updated the revision date for the "Rules for Testing Seeds" by the Association of Official Seed Analysts.
- R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees
  - Removed a fee exemption from fiscal year 2011 & 2012

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Article 2 Quarantine places specific guidelines and requirements on the importation of certain commodities or the hosts of certain invasive and potentially harmful organisms into this State. The parties generally affected by this Article are nurseries and produce distributors including grocery stores. The proposed changes do not add additional burdens or costs to these industries. The benefit to these changes is increased protections from the possible introduction of harmful plant pests and noxious weeds that could increase production costs and crop losses to Arizona’s farmers and ranchers,

the loss of market access both domestically and internationally of agricultural goods, and protecting Arizona residents from the burdens of controlling an invasive pest or weed. Additionally, these changes protect Arizona's natural habitats that could be negatively impacted by these pests or weeds by reducing the stresses on sensitive native plants and wildlife and the untold potential for increased wildfires and other negative impacts on our desert environment.

Article 4 Seeds places specific guidelines on seeds that are offered for sale in this state. These guidelines insure seed quality and cleanliness through specific labeling and testing requirements. The parties generally affected by this Article are seed distributors. The proposed changes do not add additional burdens or costs to this industry and meet the national standards dictated by the Federal Seed Act of 1939. The benefit of these changes are continued protections in seed quality for Arizona's farmers, ranchers and residents and the unnecessary burden of inferior quality seeds. As with Article 2 Quarantine, these standards also protect Arizonan's and our environment from the possible introduction of invasive weeds or other harmful organisms.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

These proposed changes do not increase costs to the Department and do not require an increase in full-time employees.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

There are no identified costs or benefits to any political subdivision of the state.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

These proposed changes are not expected to have a direct impact in costs or benefits including increased revenues or payroll expenditures.

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 proposed rule making.

These proposed changes are not expected to have any impact on private and public employment in business, agencies or political subdivisions.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

The small businesses subject to these changes will be nurseries, produce distributors, grocers, seed dealers, farmers and ranchers.

(b) The administrative and other costs required for compliance with the proposed rule making.

There are no additional administrative or other costs expected with these changes.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The Department has determined that any reductions proposed in A.R.S. 41-1035 would have the opposite effect on Arizona small business by increasing the costs associated with the introduction of a plant pest, weed or disease and not meeting the standards prescribed in the Plant Protection Act or the Federal Seed Act.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

The proposed rulemaking does not infer any costs or benefits to private persons or consumers.

6. A statement of the probable effect on state revenues.

There are no fees associated with these changes to generate state revenue.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

There are no less intrusive or less costly alternatives for these changes.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

No statistical data was used in the establishment of these changes.

Table 1 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 3812, effective August 10, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4). Amended Section references under Arizona Native Plants to correspond to recodification at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2665, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

ARTICLE 2. QUARANTINE

R3-4-201. Definitions

In addition to the definitions provided in A.R.S. §§ 3-201, 3-231, 3-441, 3-481, and R3-4-101, the following terms apply to this Article:

"Associate Director" means the Associate Director of the Plant Services Division.

"Common carrier" means any person transporting a commodity or equipment for compensation or commercial purpose.

"Compliance agreement" means a written agreement or permit between a person and the Department for the purpose of allowing the movement or production of a regulated commodity or used equipment from a quarantined area of this state and containing demonstrated safeguarding measures to ensure compliance with the purposes of A.R.S. Title 3, Chapter 2, Article 1.

"Cotton harvesting machine" means any machine used to pick or harvest raw cotton in a field.

"Firewood" means wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel, or other wood intended for fuel.

"Fumigate" means to apply a gaseous substance to a commodity or used equipment in a closed area to eradicate a pest.

"Green lumber" means freshly sawn, unseasoned wood.

"Hull" means the dry outer covering of a seed or nut.

"Infected" means any plant or other material on or in which a disease is found.

"Label" means all tags and other written, printed, or graphic representations in any form, accompanying or pertaining to a plant or other commodity.

"Limited permit" means a permit issued by the Department to a common carrier or responsible party to transport a commodity or used equipment that would otherwise be restricted.

"Master permit" means a permit issued by the Department to another state department of agriculture that gives that other state authority to certify, in accordance with the terms of the permit, that a regulated commodity or used equipment may enter Arizona without a quarantine compliance certificate.

"Origin inspection agreement" means a permit issued by the Department to a person that specifies terms to ship or transport a regulated commodity or used equipment into Arizona, which importation would otherwise be prohibited by this Article, and that the State Plant Regulatory Official agrees with.

"Package" means:

(i) Any container, box, bag, or envelope used for the shipment of a commodity or used equipment through postal and parcel services, or

(ii) Individual packets of seeds for planting.

"Pest free" means apparently free from all regulated plant pests, as determined by an inspection.

vide the receiver with a bill of lading, manifest, or other

"Pest Management Program" means any state or federally recognized program designed for the prevention, monitoring, and control of a pest or disease. Based on a targeted management (Integrated Pest Management) or holistic approach (Total Systems Approach Program) that incorporates best management practices, monitoring, cultivation practices, cultural controls, treatment programs and/or pest resistant plant varieties, cultivars or hybrids for the control or effective management of any live life stages of a pest or disease.

"Quarantine compliance certificate" means a certificate issued by a plant regulatory official of the originating state that establishes that a commodity or used equipment has been treated or inspected to comply with Arizona quarantine rules and orders and includes a certificate of inspection.

"Receiver" means any person or place of business listed on a bill of lading, manifest, or freight bill as a consignee or destination for a commodity or used equipment.

"Regulated plant pest" means all live life stages of an arthropod, disease, plant, nematode, or snail that is regulated or considered under quarantine by a state or federal law, rule or order enforced by the Department.

"Responsible party" means a common carrier, person, or place of business that is legally responsible for the possession of a commodity or used equipment.

"Stub or soca cotton" means cotton stalks of a previous crop that begin to show signs of growth.

"Treatment Manual" means the USDA-APHIS-PPQ Treatment Manual, T301—Cotton and Cotton Products, revised May 2017. The Treatment Manual is incorporated by reference, does not include any later amendments or editions, and is available from the Department and online at http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

Historical Note

Former Rule, Quarantine Regulation 2; Amended effective July 1, 1975 (Supp. 75-1). Former Section R3-4-50 repealed, new Section R3-4-50 adopted effective October 23, 1978 (Supp. 78-5). Section R3-1-50 renumbered to R3-4-201 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-202. Domestic Importation

A. Any commodity shipped or transported into the state shall be made available for inspection if required to determine whether the commodity is free of all live pests subject to federal and state laws and rules.

B. Restrictions.

1. Prior to or upon delivery, a shipper, consignor, or broker of a commodity, regulated or otherwise, (excluding processed products) which is shipped into the state must prosimilar documentation that indicates:

a. The contact information of the consignor and consignee;
b. The contents of the shipment; and
c. The origin of the commodity.

2. A shipper, consignor, or broker must provide common carriers documentation prior to shipment containing the following additional information for any commodity that is shipped or transported into the state that is regulated by this Article or other state or federal law, rule or order enforced by the Department:
a. The name and physical address of the shipper and receiver;
b. A certificate of inspection for nursery stock, if applicable;
c. The botanical or common name of the commodity, if applicable;
d. The trade or descriptive name of the used container or used equipment, if applicable;
e. The quantity of each type of commodity;
f. The county and state or foreign country where each commodity originated;
g. Any other certificate or permit required by this Article or other state or federal law, rule or order enforced by the Department.

3. Common carriers shall provide the receiver of a commodity regulated by this Article or other state or federal law, rule or order enforced by the Department, with the documentation required under subsection (B)(2) at the time the regulated commodity is delivered to the receiver.

4. Certificate of Release. Any person receiving a regulated commodity from a post office, package transportation and delivery terminal, or any carrier without a Certificate of Release shall immediately notify the Department and request an inspection.

E. Disposition of commodity. When a common carrier is in possession of, or responsible for, a commodity that has been inspected by an inspector and found in violation of this Article or other state or federal law, rule or order enforced by the Department, and elects to ship the commodity out-of-state, A.R.S. § 3-210:

1. The inspector shall notify the shipper, consignor or broker that the commodity is being shipped out-of-state.
2. The common carrier shall follow the directions provided by the inspector on moving the commodity out-of-state.

Historical Note

Former Rule, Quarantine Regulation 3. Section R3-1-51 renumbered to R3-4-202 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). New Section R3-4-202 renumbered from R3-4-201 and amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-203. Plant and Crop Safeguards, Inspection, and Certification

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following terms apply to this Section:

1. "Actionable arthropod pest" means any arthropod pest that the Associate Director has determined to be an imminent threat to agriculture and horticulture within the state. Table 2, Actionable Arthropod Pests includes, but is not
a. For an actionable arthropod pest known to occur at limited to, arthropod pests that would require immediate action and are prohibited from entry into the state.

2. "Actionable nematode pest" means any nematode pest that the Associate Director has determined to be an imminent threat to agriculture and horticulture within the state. Table 3, Actionable Nematode Pests includes, but is not limited to, nematode pests that would require immediate action and are prohibited from entry into the state.

3. "Pest Management Program" means any state or federally recognized program designed for the prevention, monitoring, and control of an actionable arthropod pest or actionable nematode pest. Based on a targeted management (Integrated Pest Management) or holistic approach (Total Systems Approach Program) that incorporates best management practices, monitoring, cultivation practices, cultural controls, treatment programs and/or pest resistant plant varieties, cultivars or hybrids for the control of any live life stages of an actionable arthropod pest or actionable nematode pest associated with the commodity, with a zero pest presence tolerance.

B. Regulated area. Unless otherwise indicated, all states, districts, and territories of the United States.

C. Commodities covered.

1. All plants and plant products for propagation, including nursery stock (bareroot or potted), budwood, seed for planting, cuttings, stolons, and tissue culture shipped or transported into the state that is a known host for an actionable arthropod pest or actionable nematode pest from the place of origin. Additionally, all agricultural, ornamental, and vegetable seed shall comply with the laws and regulations in Article 4 and any other law, order or federal regulation enforced by the Department.
2. All commercially harvested bulk shipments of a plant or crop, excluding processed products, which are shipped or transported into the state that may harbor an actionable arthropod pest.
3. All domestic soil shipped or transported into the state that is:
a. Not authorized under a permit or compliance agreement issued by the U.S. Department of Agriculture;
b. Not sterilized and not packaged for retail sale;
c. Attached to a plant for the purpose of propagation; or
d. Used for the purpose of landscaping or grading.
4. All firewood and green lumber with attached bark.
5. All used equipment utilized for the propagation, harvesting, transport, and/or maintenance of a commodity listed in subsections (C)(1), (2), (3), or (4).

D. Restrictions.

1. For commodities listed in subsection (C) that are not accompanied by proof of compliance with this Section as indicated in the remainder of subsection (D); or are found infested with, or exposed to, an actionable arthropod pest or actionable nematode pest may be placed under quarantine until a disposition is determined by an inspector, A.R.S § 3-203.
2. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(1), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a certificate of origin and statement of compliance with this Section by one of the following:
origin:

i. The commodities in the shipment or shipments are inspected and a plant regulatory official provides a certificate attesting that the commodity is apparently free of any live life stages of an actionable arthropod pest;

ii. The Associate Director and State Plant Regulatory Official of the origin state has placed the producer under a compliance agreement, authorizing a Pest Management Program for actionable arthropod pests, and has provided certification of compliance to the producer if all provisions of a Pest Management Program are met; or

iii. A certificate attesting to treatment for actionable arthropod pests known to occur in the origin location is issued by a plant regulatory official.

b. For an actionable nematode pest known to occur at origin:

i. The origin state determined through an annual survey conducted within the 12-month period immediately before shipment that the actionable nematode pests do not exist on the property or in the facility used to grow the commodity.

ii. The commodity in the shipment was sampled two weeks before shipment, and found free of actionable nematode pests.

iii. The commodity was protected from infestation of the actionable nematode pests by implementing all of the following steps:

(1) Propagated from clean seed or from cuttings taken 12 inches or higher above ground level;

(2) Planted in sterilized soil or other media prepared or treated to ensure freedom from actionable nematode pests;

(3) Retained in a sterilized container or bed;

(4) Placed on a sterilized bench or sterilized support 18 inches or higher from the ground or floor level; and

(5) Found pest-free using a sampling method approved by the Associate Director.

3. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(2), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a certificate of origin and statement of compliance with this Section by one of the following:

a. Authorize and validate compliance for an area-wide control program for actionable arthropod pests known to occur at the origin location;

b. Inspect bulk shipments of commodities by standard risk-based sampling rates to achieve a 95% confidence level that the shipment is apparently free of any live life stages of an actionable arthropod pest known to occur at origin; or

c. Require treatment for actionable arthropod pests known to occur in the origin location by a method known to control the pest and verify effectiveness of treatment.

4. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(3), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a certificate of origin and statement of compliance with this Section by one of the following:

a. Authorize and validate a Pest Management Program or an area-wide control program for actionable arthropod pests; or

b. Require treatment for actionable arthropod pests known to occur in the origin location by a method known to control the pest.

5. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, the commodities listed in subsection (C)(4), are authorized for shipment or transport into the state provided a plant regulatory official at the place of origin issues a certificate of origin and statement of compliance with this Section by one of the following:

a. Heat treatment as indicated in the USDA Treatment Manual, Heat Treatment Schedule: T314-a; and accompanied by a treatment certificate issued by a certified heat-treatment facility, or a state or federal regulatory official; or

b. Any other method approved by the Associate Director that eliminates all live life stages of an actionable arthropod pest.

6. In addition to the requirements under any other Section in this Article, law, order, or federal law enforced by the Department, a plant regulatory official shall ensure that the commodity listed in subsection (C)(5) is accompanied by a certificate issued by the origin state attesting that the commodity is reasonably free of all soil and extraneous plant material that could harbor a live life stage of an actionable arthropod pest.

E. Exemptions.

1. The Associate Director may issue an exemption to a restriction in this Section at the request of a State Plant Regulatory Official on an area-wide or county-wide basis, under the following conditions:

a. For an area-wide or county-wide exemption of a commodity (Master Permit):

i. The State Plant Regulatory Official agrees to comply with the conditions of a Master Permit that indicates the necessary safeguarding measures including monitoring, inspection, treatment, alternate treatment, and/or certification of the commodity.

ii. The Department may suspend or revoke a Master Permit if one or more shipments of a commodity are not in compliance with the conditions of the authorized Master Permit or live life stages of an actionable arthropod pest or actionable nematode pest are found.

b. For an exemption provided to a shipper of a commodity (Origin Inspection Agreement):

i. The State Plant Regulatory Official and the shipper agree to comply with the conditions of an Origin Inspection Agreement that indicates the necessary safeguarding measures including monitoring, inspection, treatment, alternate treatment, and/or certification of the commodity.

ii. The Department may suspend or revoke an Origin Inspection Agreement if one or more ship-

ments of a commodity are not in compliance with the conditions of the Origin Inspection Agreement or live life stages of an actionable arthropod or actionable nematode pest are found.

2. Notwithstanding any other restriction, the Associate Director may declare a state, or an area within a state, exempt to a condition in this Section if it is demonstrated by a State Plant Regulatory Official that an actionable arthropod pest or actionable nematode pest is known not to occur in the origin state and that the actionable arthropod pest or actionable nematode pest is part of a state or federal authorized pest monitoring program that justifies the "free from" status.

F. Violations. Any shipper of a commodity listed in subsection (C) that is not in compliance with the restrictions indicated in subsection (D), or an actionable arthropod pest or actionable nematode pest are found on the shipment, the shipper may be temporarily suspended from shipping or transporting commodities listed in subsection (C) into the state under the following guidelines:

a. The shipper will be notified of the violations and corrective measures will be provided;
b. The origin State Plant Regulatory Official will be notified of the violation and suspension;
c. The shipper will be required to contact the origin State Plant Regulatory Official to confirm completion of corrective measures;
d. The origin State Plant Regulatory Official will contact the Department to request approval to retract the suspension upon successful completion of the corrective measures; and
e. The Associate Director may retract the suspension upon satisfactory completion of the corrective measures.

Historical Note

Former Rule, Quarantine Regulation 4. Repealed effective October 23, 1978 (Supp. 78-5). Section R3-1-52 renumbered to R3-4-203 (Supp. 91-4). New Section made by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-204. Cotton Pest Management: Interior

A. Definitions. The following terms apply to this Section:

1. "Crop remnant" means the stalks, leaves, bolls, lint, pods, and seeds of cotton.
2. "Stub cotton" means cotton stalks of a previous crop that begin to show signs of growth.
3. "Volunteer cotton" means a sprout from seed of a previous crop.

B. Regulated commodities and appliances. Cotton, all parts.

C. Cultural practices.

1. Arizona's cultural zones are:
   a. Zone "A" -- Yuma County west of a line extended directly north and directly south of Avenue 58E.
   b. Zone "B" -- Cochise County, Graham County, and Greenlee County.
   c. Zone "C" -- Mohave County and La Paz County, except for the following: T6N, R11W, 12W, 13W; T5N, R12W, 13W; T4N, R12W, 14W, 15W; T3N, R10W, 11W; and T2N, R11W.
   d. Zone "D" -- Pima County; the following portions of Pinal County: T10S, R10E, sections 34-36; T10S, R11E, section 31; T7S, R16E; T6S, R16E; T5S, R15E; T5S, R16E and T4S, R14E; and the following portions of the Aguila area: T6N, R8W; T7N, R8W, 9W, 10W; T7N, R11W, other than sections 24, 25 and 36; and T8N, R9W, sections 31-36.
   e. Zone "E" -- All portions of the state not included in zones "A", "B", "C", and "D."
2. No stub or volunteer cotton shall be grown in or allowed to grow in the state. The landowner or grower shall be responsible for eliminating stub or volunteer cotton.
3. Tillage deadline. Except as provided in subsection (C)(4), a grower shall ensure that a crop remnant of a host plant remaining in the field after harvest is shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil before the following dates or before planting another crop, whichever occurs earlier: Zone "A", January 15; Zone "B", March 1; Zone "C", February 15; Zone "D", March 1; Zone "E", February 15.
4. Rotational crop following cotton harvest.
   a. If a grower elects to plant a small-grain crop following a cotton harvest, the grower may, after the host plant is shredded, irrigate and plant with wheat, barley, or oats (or other similar small-grain crops approved in writing by the Associate Director before planting) instead of tilling as prescribed in subsection (C)(3). The small-grain crop shall be planted before the tillage deadline for the zone.
   b. The Associate Director shall approve small-grain crops other than wheat, barley, and oats, if the planting, growth, and harvest cycles of the small-grain crop prevents the maturation of stub or volunteer cotton. A grower shall submit a written request for approval of a small-grain crop, other than wheat, barley, or oats, at least 15 days before the tillage deadline for the zone. The written request shall include the scientific and common name of the proposed small-grain crop and the estimated date of harvest.
   c. If a grower elects to plant a crop other than an approved small-grain crop following a cotton harvest, the requirements specified in subsection (C)(3) apply.
5. Planting dates.
   a. A grower who meets the tillage deadline specified in subsection (C)(3) for the preceding cotton crop year shall not plant cotton earlier than 15 days after the tillage deadline for the zone.
   b. A grower who does not meet the tillage deadline specified in subsection (C)(3) for the preceding cotton crop year shall not plant cotton on a farm until 15 days after the grower ensures that all crop remnants of a host plant remaining in the fields after harvest are shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil.
6. Dry planting. Any grower who meets the tillage deadline for the zone may dry plant cotton five days after the tillage deadline for that zone, but shall not water until 15 days after the tillage deadline for that zone.
7. An inspector shall give written notice to any owner or person in charge or control of the nuisance found in violation of subsection (C). The processes established in subsections (C)(3) and (C)(4) shall be repeated, as necessary, to destroy the pests.

Historical Note

Former Rule, Quarantine Regulation 5. Amended effective January 24, 1978 (Supp. 78-1). Former Section R3-4-53 repealed, new Section R3-4-53 adopted effective December 2, 1982. See also R3-4-53.01 through R3-4-53.07 (Supp. 82-6). Section R3-1-53 renumbered to R3-4-204 (Supp. 91-4). Section repealed, new Section adopted effective May 7, 1993 (Supp. 93-2). Amended effective September 22, 1994 (Supp. 94-3). Amended effective July 10, 1995 (Supp. 95-3). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-205. Renumbered

Historical Note

Adopted effective December 2, 1982. See also R3-4-53 and R3-4-53.02 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.01 renumbered to R3-4-205 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2). New Section adopted effective December 20, 1994 (Supp. 94-4). Section R3-4-205 renumbered to R3-4-501 and amended, effective April 9, 1998 (Supp. 98-2).

R3-4-206. Repealed

Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 and R3-4-53.03 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.02 renumbered to R3-4-206 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-207. Repealed

Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01, R3-4-53.02 and R3-4-53.04 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.03 renumbered to R3-4-207 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-208. Repealed

Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.03 and R3-4-53.05 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.04 renumbered to R3-4-208 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-209. Repealed

Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.04, R3-4-53.06, and R3-4-53.07 (Supp. 82-6). Amended effective October 21, 1983 (Supp. 83-5). Amended effective July 24, 1985 (Supp. 85-4). Amended effective May 5, 1986 (Supp. 86-3). Amended effective May 10, 1988 (Supp. 88-2). Amended subsection (B) effective December 27, 1988 (Supp. 88-4). Amended effective December 22, 1989 (Supp. 89-4). Section R3-1-53.06 renumbered to R3-4-209 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-210. Repealed

Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.05 and R3-4-53.07 (Supp. 82-6). Section R3-1-53.06 renumbered to R3-4-210 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-211. Repealed

Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.06 (Supp. 82-6). Section R3-1-53.07 renumbered to R3-4-211 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-212. Repealed

Historical Note

Former Rule, Quarantine Regulation 6. Amended effective July 1, 1975 (Supp. 75-1). Amended effective April 26, 1976 (Supp. 76-2). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54 adopted as an emergency now adopted without change effective May 15, 1984. See also R3-4-54.01 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54 renumbered to R3-4-212 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-213. Repealed

Historical Note

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.01 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.02 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54.01 renumbered to R3-4-213 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-214. Repealed

Historical Note

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.02 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01, R3-4-54.03 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54.02 renumbered to R3-4-214 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-215. Repealed

Historical Note
Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.03 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01, R3-4-54.02, R3-4-54.04 and R3-4-54.05 (Supp. 84-3). Section R3-1-54.03 renumbered to R3-4-215 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-216. Repealed

Historical Note
Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.04 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01 thru R3-4-54.03, and R3-4-54.05 (Supp. 84-3). Section R3-1-54.04 renumbered to R3-4-216 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2)

R3-4-217. Repealed

Historical Note
Adopted effective May 15, 1984. See also R3-4-54, R3-4-54.01 thru R3-4-54.04 (Supp. 84-3). Section R3-1-54.05 renumbered to R3-4-217 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-218. Boll Weevil Pest: Exterior Quarantine

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following terms apply to this Section:
1. "Cotton appliance" means a container used in handling cotton, including sacks, bags, tarps, boxes, crates, and machinery used in planting, harvesting and transporting cotton.
2. "Cotton lint" means the remnant produced when cottonseed is processed in a gin.
3. "Cottonseed" means a seed derived from cotton plants which is destined for propagation or other use.
4. "Fumigation certificate" means a quarantine compliance certificate that specifies the fumigation chemical used, the treatment schedule, and the commodity treated.
5. "Hibiscus" means all parts of *Hibiscus* spp.
6. "Pest" means the following, notwithstanding the definition in A.R.S. § 3-201: Boll weevil, *Anthonomus grandis* (Boheman).
7. "Spanish moss" means all parts of *Tillandsia usneoides*.

B. Area under quarantine. In the state of Texas, the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Brooks, Burleson, Burnett, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Cooke, Coryell, Dallas, Delta, Denton, De Witt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kinney, Kleberg, Lamar, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Llano, Madison, Marion, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Shelby, Smith, Somervell, Starr, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wise, Wood, Zapata, and Zavala.

C. Regulated commodities.
1. Gin trash,
2. Cotton lint,
3. Cottonseed,
4. Used cotton appliances or equipment that have any cotton plants attached or contained therein,
5. Cotton plants,
6. Spanish moss, and
7. Hibiscus plants.

D. Restrictions. A person shall not ship or transport into Arizona from an area under quarantine:
1. Gin trash, cotton lint, cottonseed, or used cotton appliances or equipment that have any cotton plants attached or contained therein unless the commodity or appliance is accompanied by an original fumigation certificate attesting the commodity or appliance has been fumigated as prescribed in the Treatment Manual.
2. Cotton plants or hibiscus plants unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated with a chemical to kill the pest and was visually inspected and found free of all live life stages of the pest within five days of shipment.
3. Spanish moss, unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated by one of the following methods:
   a. Commercial drying; or
   b. Chemical treatment using a pesticide registered and labeled for use on the commodity to kill all live life stages of the pest.

Historical Note
Former Rule, Quarantine Regulation 7. Section R3-4-55 repealed, new Section adopted effective August 16, 1990 (Supp. 90-3). Section R3-1-55 renumbered to R3-4-218 (Supp. 91-4). Appendix to R3-4-218 removed; R3-4-218 amended by final rulemaking effective January 4, 2014 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-219. Repealed

Historical Note
Former Rule, Quarantine Regulation 8. Repealed effective December 19, 1980 (Supp. 80-6). Adopted as an emergency effective April 11, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency adoption expired. Permanent rule adopted effective November 15, 1984 (Supp. 84-6). Former Section R3-4-56 repealed, former Sections R3-4-56.01 through R3-4-56.04 renumbered and amended as Section R3-4-56 effective June 20, 1986 (Supp. 86-3). Repealed June 29, 1990 (Supp. 90-2). New Section adopted effective April 11, 1991 (Supp. 91-2). Section R3-1-56 renumbered to R3-4-219 (Supp. 91-4). Amended by final rulemaking at

10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-220. Citrus Nursery Stock Pests

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following terms apply to this Section:

1. "Diseases" means any of the following diseases, notwithstanding the definition in A.R.S. § 3-201:
   a. Citrus Cachexia (CCaVd),
   b. Citrus Exocortis Virus (CEVd),
   c. Citrus Psorosis Virus (CPsV),
   d. Citrus Tristeza Virus (CTV), or
   e. Citrus greening disease (HLB), Candidatus *Liberibacter asiaticus*.
2. "Shoot-tip-grafting" means a treatment method that employs micro-grafting to eliminate the chances of transmitting a disease.
3. "Thermotherapy" means a treatment method for propagative material that employs high temperatures to eliminate the presence of a disease.

B. Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.

C. Regulated commodities. Citrus nursery stock. All plants or plant parts, except seed or attached green fruit, of all species, varieties, or hybrids of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Poncirus*, and *Microcitrus*.

D. Restrictions.

1. The commodity listed in subsection (C) is prohibited from entry into the state from the area under quarantine unless one of the following conditions are met prior to shipment:
   a. The regulated commodity is permitted under a USDA-APHIS approved program for the interstate movement of citrus nursery stock;
   b. A regulated commodity that is not subject to the restrictions for the interstate movement of citrus nursery stock may be certified under an origin state department of agriculture authorized program or National Clean Plant Network program that ensures the regulated commodity is foundation or source material, or has been propagated from a foundation or source tree that has been:
      i. Tested and found free of the diseases listed in subsections (A)(1)(a),(b),(c), and (d) within the previous 36 months;
      ii. Tested and found free of the disease listed in subsection (A)(1)(e) within the previous 12 months;
      iii. Treated by thermotherapy or shoot-tip-grafting;
      iv. Assigned and tagged with an index number; and
      v. Released from the origin state or federal quarantine.
   c. The regulated commodity is safeguarded and certified by an alternative method approved by the Associate Director.
2. A person shipping a regulated commodity into Arizona shall attach a single tag or label to each plant or plant part, or to each individual container containing a plant or plant part, that is intended for resale by an Arizona receiver. The tag or label shall contain the following information separately provided for each scion variety grafted to a single rootstock:
   a. Name and address of the nursery that propagated the plant,
   b. Scion variety name,
   c. Scion variety registration number, and
   d. Rootstock variety name.

E. Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state (A.R.S. § 3-210).

Historical Note

Former Rule, Quarantine Regulation 9. Amended effective July 1, 1975 (Supp. 75-1). Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Section repealed, new Section adopted effective June 14, 1990 (Supp. 90-2). Section R3-1-57 renumbered to R3-4-220 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-221. Repealed

Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.01 renumbered to R3-4-221 (Supp. 91-4).

R3-4-222. Repealed

Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.02 renumbered to R3-4-222 (Supp. 91-4).

R3-4-223. Repealed

Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.03 renumbered to R3-4-223 (Supp. 91-4).

R3-4-224. Repealed

Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.04 renumbered to R3-4-224 (Supp. 91-4).

R3-4-225. Repealed

Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.05 renumbered to R3-4-225 (Supp. 91-4).

R3-4-226. Repealed

Historical Note

Former Rule, Quarantine Regulation 10; Amended effective August 31, 1981 (Supp. 81-4). Former Section R3-4-58 repealed, new Section R3-4-58 adopted effective July 13, 1989 (Supp. 89-3). Section R3-1-58 renumbered to R3-4-226 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-227. Repealed

Historical Note

Former Rule, Quarantine Regulation 11. Section R3-1-59 renumbered to R3-4-227 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-228. Repealed

Historical Note

Former Rule, Quarantine Regulation 12. Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 19, 1978 (Supp. 78-3). Amended subsection (C) effective January 21, 1981 (Supp. 81-1). Amended effective August 11, 1987 (Supp. 87-3). Section R3-1-60 renumbered to R3-4-228 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3374, effective October 2, 2004 (Supp. 04-3). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-229. Nut Tree Pests

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following terms apply to this Section:
1. "Brooming" means a phytoplasma disease that drastically reduces nut production and sometimes causes death of the host tree.
2. "Pest" means any of the following, notwithstanding the definition in A.R.S. § 3-201:
   a. Pecan leaf casebearer, *Acrobasis juglandis*;
   b. Pecan nut casebearer, *Acrobasis nuxvorella*;
   c. Pecan phylloxera, *Phylloxera notabilis*; and
   d. The phytoplasma disease that causes brooming disease of walnut.

B. Area under quarantine: All states, districts, and territories of the United States except California.

C. Infested area.
1. For the pests in subsections (A)(2)(a) and (b): All states and districts east of and including the states of Montana, Wyoming, Colorado, and New Mexico.
2. For the pest in subsection (A)(2)(c): Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, and Texas.
3. For the pest in subsection (A)(2)(d): All states and districts east of and including Montana, Wyoming, Colorado, and New Mexico.

D. Commodities covered:
1. All species and varieties of the following trees and all plant parts capable of propagation, except the nuts. Plant parts include buds, scions, and rootstocks:
   a. Hickory and pecan (*Carya* spp.);
   b. Walnut and butternut (*Juglans* spp.);
2. All by-products of pruning, harvesting and/or processing, including firewood of a commodity listed in subsection (D)(1).
3. Any used equipment used during the growing, harvesting, care, or maintenance of a commodity listed in subsection (D)(1);
4. Any used container, used in the handling, storage, or transport of a commodity listed in subsection (D)(1).

E. Restrictions:
1. The commodities listed in subsection (D)(1), that are potted in any growing media shall be prohibited from the area under quarantine, unless otherwise exempted by the Associate Director.
2. The commodities listed in subsection (D)(1), that are not potted in any growing media, shall be admitted into Arizona:
   a. From the infested area prescribed in subsections (C)(1) and (C)(2) if treated at origin and each lot or shipment is accompanied by a certificate issued by a plant regulatory official affirming the commodity has been treated in accordance with a selected method prescribed in subsections (F)(1), (2), or (5);
   b. From an area under quarantine outside the infested area, if each lot or shipment is accompanied by a certificate issued by a plant regulatory official affirming that the commodities originated in a county not known to be infested with the pests listed in subsections (A)(2)(a), (b), and (c).
3. The commodities listed in subsection (D)(1)(b) shall be:
   a. Prohibited from entering Arizona from the infested area prescribed in subsection (C)(3);
   b. Admitted into Arizona from an area under quarantine outside the infested area prescribed in subsection (C)(3), if each lot or shipment is accompanied by a certificate issued by a plant regulatory official affirming the pest listed in subsection (A)(2)(d) is unknown in the origin county.
4. The commodities listed in subsection (D)(2) are prohibited from entering the state unless treated by a method prescribed in subsections (F)(1), (3), or (5).
5. The commodities listed in subsections (D)(3) and (4) are prohibited from entering the state unless treated by a method indicated in subsections (F)(1),(4) or (5).

F. Treatments:
1. Methyl bromide fumigation at manufacturers recommended rates.
2. A hot-water dip at 140° F or more for a minimum of 30 continuous seconds.
3. Heat treated to an internal temperature of 160º F at the center of the commodity for at least 75 minutes.
4. Used equipment and containers.
   a. Steam-cleaned, inspected, and certified free from debris by the origin state, or
   b. Cold treatment in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours).
5. Any other treatment approved by the Associate Director.

Historical Note

Former Rule, Quarantine Regulation 13. Amended subsections (C), (E) and (G) effective May 5, 1986 (Supp. 86-3). Section R3-1-61 renumbered to R3-4-229 (Supp. 91-4). Amended effective January 16, 1996 (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4). Subsection citation in subsection (E)(1)(b) amended to correct manifest typographical error (Supp. 03-2). Amended by final rulemak-

ing at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-230. Repealed

Historical Note

Former Rule, Quarantine Regulation 14. Section R3-1-62 renumbered to R3-4-230 (Supp. 91-4). Section repealed by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3).

R3-4-231. Nut Pests

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201 and R3-4-101 and R3-4-201, the following terms apply to this Section:

"Pest" means any of the following, notwithstanding the definition in A.R.S. § 3-201:

1. Pecan weevil, *Curculio caryae*;
2. Butternut curculio, *Conotrachelus juglandis*;
3. Black walnut curculio, *Conotrachelus retentus*;
4. Hickory shuckworm, *Cydia caryana.*

"Sticktights" means the remnant husks and/or debris that remain on an in-shell nut after the cleaning process.

B. Area under quarantine:

1. For the pest under subsection (A)(1): The New Mexico counties of Chaves, Curry, Eddy, and Lea and all other states and districts of the United States except California.
2. For the pest under subsection (A)(2): The New Mexico counties of Lea, Eddy, and Dona Ana, and all other states and districts of the United States except California.
3. For the pests under subsections (A)(3) and (4): All states and districts of the United States except California.

C. Commodities covered:

1. Nuts of all species and varieties of hickory, pecan *(Carya spp.),* walnut and butternut *(Juglans spp.),* except extracted nut meats.
2. Any used equipment used during growing, harvesting, care, or maintenance of a commodity listed in subsection (C)(1).
3. Any used container, used in the handling, storage, or transport of a commodity listed in subsection (C)(1).

D. Restrictions:

1. A commodity listed in subsection (C)(1), originating in or shipped from the area under quarantine, shall be admitted into Arizona if the commodity has been cleaned of husks, hulls, debris, and sticktights and each lot or shipment is accompanied by a certificate issued by a plant regulatory official affirming the commodity has been treated by a method prescribed in subsections (E)(1), (2), (3), or (5).
2. A commodity listed in subsections (C)(2) and (3) shall be admitted into Arizona if the commodity has been treated by a method prescribed in subsections (E)(3), (4), or (5).

E. Treatment:

1. Cold treatment: The commodities shall be held in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours). The treatment shall not start until the entire content of the lot of nuts has reached 0° F.
2. A hot-water bath treatment at 140° F for a minimum of five continuous minutes. Water temperature shall be maintained at or above 140° F during the entire treatment period.
3. Methyl bromide fumigation at manufacturers recommended rates.
4. Used equipment and containers.
   a. Steam-cleaned, inspected, and certified free from debris by the origin state,
   b. Cold treatment in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours).
5. Any other treatment approved by the Associate Director.

Historical Note

Former Rule, Quarantine Regulation 15. Amended effective July 13, 1989 (Supp. 89-3). Section R3-1-63 renumbered to R3-4-231 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-232. Repealed

Historical Note

Former Rule, Quarantine Regulation 16. Repealed effective February 16, 1979 (Supp. 79-1). Section R3-1-64, "Repealed" renumbered to R3-4-232, "Repealed" (Supp. 91-4).

R3-4-233. Lettuce Mosaic Virus

A. Definitions. In addition to the definitions provided in R3-4-101, the following terms apply to this Section:

1. "Breeder seed" means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
2. "Breeder trial" means breeder seed grown to develop a new variety of lettuce.
3. "Mosaic-indexed" means that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus.
4. "Pest" means lettuce mosaic virus.
5. "Unindexed lettuce seed" means lettuce seed that is not mosaic-indexed.

B. Area Under Quarantine: All states, districts, and territories of the United States.

C. Regulated Commodities: Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.

D. Restrictions.

1. A person shall not import into, transport within, plant, or sell in Arizona unindexed lettuce seed unless the unindexed lettuce seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (G).
2. Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)" as well as the name of the certified or accredited laboratory that tested the seed under subsection (D)(5).
3. A person shall not import into, transport within, plant, or sell in Arizona lettuce transplants unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state, accompanies the shipment. The certificate shall declare:
   a. The name of the exporter,
   b. The variety name and lot number of the seed from which the transplants were grown, and
   c. Verification that the seeds from which the transplants were grown were mosaic-indexed.
4. A grower shall disk or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather

conditions or circumstances beyond the control of the grower.

5. Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall provide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.

E. Exemptions. The requirements of subsection (D) do not apply to:

1. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting,
2. Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,
3. Breeder trials for a plot of 1/20 of an acre or less, or
4. Breeder trials for a plot of greater than 1/20 of an acre but no more than 1.25 acres provided the breeder or researcher:
   a. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot;
   b. Provides the following written information to the Department within 10 business days of planting breeder seed:
      i. GPS coordinates for each breeder trial plot using NAD 83 decimal degrees;
      ii. A detailed map showing the location of each breeder trial plot;
      iii. An identification number for each breeder trial plot; and
      iv. The name, address, telephone number, and e-mail address for the breeder or researcher;
   c. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms;
   d. Removes and destroys all plants exhibiting pest symptoms from the breeder trial plot and places them in a sealed container for disposal in a landfill;
   e. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRIALS ONLY"; and
   f. Destroys lettuce plants remaining in a breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.

F. A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E)(3) and (4).

G. Permits.

1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
   a. Maintains the identity of the seed while in Arizona;
   b. Does not sell or distribute the seed for use in the state;
   c. Does not transfer the seed to any other facility in the state; and
   d. Reships the seed from the state within seven days or the period of time specified on the permit, whichever is longer.
2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.

H. Disposition of Violation.

1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
2. Any shipment of unindexed lettuce seed or transplants arriving in or found within the state in violation of this Section shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
4. Violation of any provision of a permit issued under subsection (G) may result in suspension or revocation of the permit.

Historical Note

Former Rule, Quarantine Regulation 17. Amended effective July 1, 1975 (Supp. 75-1). Section R3-1-65 renumbered to R3-4-233 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4). Amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 14 A.A.R. 4091, effective December 6, 2008 (Supp. 08-4).

R3-4-234. Repealed

Historical Note

Former Rule, Quarantine Regulation 18. Amended effective April 26, 1976 (Supp. 76-2). Repealed effective December 19, 1980 (Supp. 80-6). Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66 renumbered to R3-4-234 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-235. Repealed

Historical Note

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.01 renumbered to R3-4-235 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-236. Repealed

Historical Note

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.02 renumbered to R3-4-236 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-237. Repealed

Historical Note

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.03 renumbered to R3-4-237 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-238. Repealed

Historical Note

Former Rule, Quarantine Regulation 19. Amended effective April 26, 1976 (Supp. 76-2). Amended effective August 15, 1989 (Supp. 89-3). Section R3-1-67 renumbered to R3-4-238 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-239. Imported Fire Ants

A. Definitions. "Pest" means any species of imported fire ants, including *Solenopsis invicta* and *Solenopsis richteri*, notwithstanding the definition in A.R.S. § 3-201.

B. Area under quarantine. A state or portion of a state listed in 7 CFR 301.81-3, 57 FR 57327, December 4, 1992, Federal Domestic Order DA-2018-11, April 17, 2018, and any area a state declares infested. This material is incorporated by reference, on file with the Department and the Office of the Secretary State, and does not include any later amendments or editions.

C. Regulated commodities.

1. Soil, separately or with other articles, except potting soil shipped in an original container in which the potting soil is packaged after commercial preparation; and
2. All plants associated with soil, except:
   a. Plants that are maintained indoors year-round, and are not for sale; and
   b. Plants shipped bare-root and free of soil.

D. Restrictions.

1. An Arizona receiver of a regulated commodity shall establish a Department-approved quarantine holding area that meets the following specifications:
   a. The floor is of a permeable surface, such as sand or soil, and free from debris, grass, or weeds;
   b. The area is isolated from public access, surrounded by a fence or other barrier;
   c. The integrity and security of the area is maintained at all times; and
   d. If outdoors, the area is at least 15 feet from any masonry wall, property boundary, or non-quarantine plant.
2. A shipper or receiver shall unload a regulated commodity at destination into an approved quarantine holding area as prescribed in subsection (D)(1). The Department may inspect the regulated commodity as follows:
   a. A regulated commodity from an area under quarantine in subsection (B) shall be held at least three consecutive days, unless otherwise released by an inspector.
   b. A regulated commodity may be inspected to determine compliance with this Section.
   c. A disposition shall be provided by an inspector upon completion of an inspection.
   d. If an inspection to determine compliance with this Section is not conducted, an inspector shall release the regulated commodity.
3. A receiver shall only apply a pesticide or other chemical to a regulated commodity located in a quarantine holding area as authorized by the Associate Director.

E. Exemptions. Soil samples of no more than 15 pounds that comply with the interstate movement requirements of 7 CFR §§ 301.81 et seq., 75 FR 4240, January 26, 2010, Federal Domestic Order DA-2018-11, April 17, 2018, are exempt from the requirements of this Section.

F. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section may be treated, destroyed, or transported out-of-state by the owner and at the owner's expense as authorized by the Associate Director.

Historical Note

Former Rule, Quarantine Regulation 20. Amended effective July 1, 1975 (Supp. 75-1). Amended effective April 26, 1976 (Supp. 76-2). Correction amendment effective April 26, 1976 included deletion of Arkansas (see subsection (C)) (Supp. 77-1). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). New Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-1-68 renumbered to R3-4-239 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 2095, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-240. Repealed

Historical Note

Former Rule, Quarantine Regulation 21. Amended effective December 5, 1974 (Supp. 75-1). Amended effective June 16, 1977 (Supp. 77-3). Section repealed, new Section adopted effective June 14, 1990 (Supp. 90-2). Section R3-1-69 renumbered to R3-4-240 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 1046, effective May 5, 2003 (Supp. 03-1). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-241. Palm Pests

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-01, the following term applies to this Section:

"Pest" means, notwithstanding the definition in A.R.S. § 3-201:

1. *Candidatus* Phytoplasma palmae subgroup 16SrIV, strain A (Lethal yellowing);
2. *Candidatus* Phytoplasma 16SrIV-D (Texas Phoenix palm decline);
3. *Fusarium oxysporum* f. sp. *palmarum* (Fusarium wilt of queen and Mexican fan palm); or
4. *Myndus crudus*, a planthopper that vectors the pest defined in subsections (A)(1) and (2).

B. Area under quarantine. For the pest in subsection (A)(1):

1. In the state of Florida, the following counties: Broward, Collier, Hendry, Lee, Martin, Miami-Dade, Monroe, and Palm Beach.
2. In the state of Texas, the following counties: Cameron, Hidalgo, and Willacy.
3. For the pest in subsection (A)(2):
   a. In the state of Florida, the following counties: Alachua, Desoto, Duval, Hardee, Highlands, Hillsborough, Indian River, Lake, Manatee, Miami-Dade, Orange, Polk, Sarasota, and Volusia.
   b. In the state of Louisiana, the following parish: Orleans.
   c. In the state of Texas, the following counties: Bexar, Cameron, Hidalgo, Klebrg, Nueces, Tarrant, and Willacy.

4. For the pest in subsection (A)(3):
   a. The state of Florida.
   b. In Texas, the following county: Houston.
5. For the pest in subsection (A)(4):
   a. The state of Florida.
   b. In Texas, the following counties: Houston.

C. Regulated commodities. All propagative parts of the following plants, except seed:
1. *Aiphanes lindeniana*,
2. *Allagoptera arendria*,
3. *Andropogon virginicus* (Broomsedge),
4. *Arenga engleri*,
5. *Borassus flabellifer* (Palmyra Palm),
6. *Caryota mitis* (Cluster Fishtail Palm),
7. *Caryota rumphiana* (Giant Fishtail Palm),
8. *Chelyocarpus chuco*,
9. *Chrysalidocarpus cabadae*, syn. *Dypsis cabadae* (Cabada Palm),
10. *Cocos nucifera* (Coconut Palm),
11. *Corypha elata* (Buri Palm),
12. *Cynodon dactylon* (Bermuda Grass),
13. *Cyperus* spp. (Sedges),
14. *Dictyosperma album* (Princess Palm),
15. *Eremochloa ophiuroides* (Centipede Grass),
16. *Gaussia attenuata* (Puerto Rican Palm),
17. *Howea belmoreana* (Belmore Sentry Palm),
18. *Latania* spp. (Latan Palm),
19. *Livistona chinensis* (Chinese Fan Palm),
20. *Livistona rotundifolia* (Javanese Fan Palm),
21. *Mascarena verschaffeltii* (Spindle Palm),
22. *Nannorrhops ritchiana* (Mazari Palm),
23. *Neodypsis decaryi*, syn. *Dypsis decaryi* (Triangle Palm),
24. *Pandanus utilis* (Screw Pine),
25. *Panicum purpurascens* (Para Grass),
26. *Panicum bartowense*,
27. *Paspalum notatum* (Bahia Grass),
28. *Phoenix canariensis* (Canary Island Date Palm),
29. *Phoenix dactylifera* (Date Palm),
30. *Phoenix reclinata* (Sengal Date Palm),
31. *Phoenix roebelenii* (Pigmy Date Palm),
32. *Phoenix rupicola* (Cliff Date Palm),
33. *Phoenix sylvestris* (Wild Date Palm),
34. *Phoenix zeylanica* (Ceylon Date Palm),
35. *Polyandrococos caudescons*,
36. *Pritchardia* spp.,
37. *Pseudopheoenix sargentii* (Florida Cherry Palm),
38. *Ravenea hildebrandtii*,
39. *Sabal mexicana* (Rio Grande Palmetto),
40. *Sabal palmetto* (Cabbage Palmetto),
41. *Stenotapphrum secundatum* (St. Augustine Grass),
42. *Sygarus romanzoffiana* (Queen palm),
43. *Syagrus schizophylla*
44. *Thrinax radiate* (Florida Thatch Palm),
45. *Trachycarpus fortunei* (Windmill Palm),
46. *Veitchia* spp.,
47. *Washingtonia robusta* (Mexican Fan Palm), and
48. *Zoysia* spp. (Zoysia Grass).

D. Restrictions. The commodities in subsection (C) are prohibited from the area under quarantine unless the following conditions are met prior to shipment:
1. The plant regulatory official issues a certificate or certifies an ongoing Pest Management Program attesting that the conditions in subsections (D)(2), (3), (4), and (5) were met prior to shipment;
2. No field grown plants are included in the shipment;
3. The commodity was inspected prior to shipment and no symptoms of any pest in subsections (A)(1), (2), or (3) were observed;
4. The commodity was treated with a labeled product to eliminate all live life stages of the pest (A)(4); and
5. The commodity originates from an outdoor facility no closer than one-half mile from a known infested area of a pest indicated in subsections (A)(1), (2), or (3).

E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

Historical Note
Former Rule, Quarantine Regulation 22. Repealed effective April 25, 1977 (Supp. 77-2). New Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-1-70 renumbered to R3-4-241 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 1046, effective May 5, 2003 (Supp. 03-1). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-242. Repealed

Historical Note
Former Rule, Quarantine Regulation 23. Amended effective July 1, 1975 (Supp. 75-1). Correction (Supp. 76-5). Repealed effective April 25, 1977 (Supp. 77-2). Section R3-1-71 renumbered to R3-4-242 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-243. Repealed

Historical Note
Former Rule, Quarantine Regulation 24. Repealed effective April 25, 1977 (Supp. 77-2). Section R3-1-72 renumbered to R3-4-243 (Supp. 91-4).

R3-4-244. Repealed

Historical Note
Former Rule, Quarantine Regulation 25. Repealed effective June 19, 1978 (Supp. 78-3). Section R3-1-73 renumbered to R3-4-244 (Supp. 91-4). New Section adopted effective July 10, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5315, effective February 4, 2006 (Supp. 05-4). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-245. Noxious Weeds

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following apply to this Section:
1. "Class A Noxious Weed" is categorized as a species of plant that is not known to exist or of limited distribution in the state and is a high priority pest for quarantine, control, or mitigation, Class A noxious weeds are listed in Table 4, Class A Noxious Weeds.
2. "Class B Noxious Weed" is categorized as a species of plant that is known to occur, but of limited distribution in

the state and may be a high priority pest for quarantine, control or mitigation if a significant threat to a crop, commodity, or habitat is known to exist. Class B noxious weeds are listed in Table 5, Class B Noxious Weeds.

3. "Class C Noxious Weed" is categorized as a species of plant that is widespread but may be recommended for active control based on risk assessment. Class C noxious weeds are listed in Table 6, Class C Noxious Weeds.

B. Restrictions:

1. No Class A, B, or C Noxious Weed, or commodity infested or contaminated with a Class A, B, or C Noxious Weed, shall be admitted into the state unless otherwise authorized by the Associate Director.
2. The Department may quarantine and abate an area infested or contaminated with a Class A or Class B Noxious Weed if it has been determined by the Associate Director that an imminent threat to agriculture or horticulture exists.

Historical Note

Former Rule, Quarantine Regulation 26. Amended effective June 19, 1978 (Supp. 78-3). Amended subsection (B) effective May 2, 1986 (Supp. 86-3). Section R3-1-74 renumbered to R3-4-245 (Supp. 91-4). Section repealed, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5315, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-246. Repealed

Historical Note

Adopted effective July 1, 1975 (Supp. 75-1). Correction (Supp. 76-1). Amended effective May 10, 1988 (Supp. 88-2). Section R3-1-75 renumbered to R3-4-246 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 2098, effective August 2, 2003 (Supp. 03-2). Repealed by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

R3-4-247. Repealed

Historical Note

Amended effective April 26, 1976 (Supp. 76-2). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). Section R3-1-76 renumbered to R3-4-247 (Supp. 91-4).

R3-4-248. Japanese beetle

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, R3-4-101 and R3-4-201, the following apply to this Section:

1. "Host commodities" means the commodities listed in the JBHP, Appendix 6.
2. "JBHP" means the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised June 20, 2016.
3. "Pest" means the Japanese beetle, *Popillia japonica*, notwithstanding the definition in A.R.S. § 3-201.

B. Area under quarantine: All Category 2 and 3 areas listed in the JBHP, which is incorporated by reference, does not include any later amendments or editions, and is on file with the Department, the Office of the Secretary of State, and the National Plant Board at http://nationalplantboard.org/japanese-beetle-harmonization-plan/.

C. Host commodities covered. All commodities, except grass sod, listed in the JBHP, Appendix 12.

D. An out-of-state grower who imports a host commodity into Arizona shall comply with the JBHP, except as provided under subsection (E).

E. Restrictions on importation.

1. An out-of-state grower shall not import into Arizona a host commodity under subsection (C) from an area under quarantine unless the commodity is accompanied by a certificate issued by a plant regulatory official of the origin state ensuring compliance with the requirements of the JBHP, Appendix 1.
2. Notwithstanding the requirements of the JBHP, Appendix 1, the Associate Director may admit grass sod from an out-of-state grower for shipment to Arizona if:
   a. The out-of-state grower requests an exception agreement from the Department;
   b. The out-of-state grower, the State Plant Regulatory Official of the origin state, and the Associate Director sign an agreement that includes the following terms:
      i. The out-of-state grower shall ship sod grown only in a Japanese beetle-free county;
      ii. The State Plant Regulatory Official or designee shall place and monitor Japanese beetle traps on the grass sod farm during the agreement period. At least one trap shall be placed on each 10 acres of land. A buffer zone of a one-mile radius shall be established around the grass sod farm, and two traps per square mile shall be placed in the buffer zone. The Department shall revoke the agreement if the origin state documents that one or more Japanese beetles are detected in any trap;
      iii. The State Plant Regulatory Official or designee shall inspect sod before shipment to ensure it is free of the pest; and
      iv. The out-of-state grower shall notify the Associate Director or their designee of sod shipments destined to Arizona prior to shipment.
   c. Both the out-of-state grower and the State Plant Regulatory Official shall perform any other requirement established by the Associate Director to ensure the grass sod is free from all life stages of Japanese beetle.
3. An out-of-state grower shall not import into Arizona a host commodity from a Category 4 state unless certified by the State Plant Regulatory Official or designee attesting that the host commodity is apparently free of Japanese beetle and has been treated by an approved method to eliminate all live life stages of the pest.
4. Exemptions from importation ban:
   a. Privately-owned houseplants grown indoors; and
   b. Commodities that have been treated by an alternate method approved by the Associate Director and certified by a plant regulatory official of the state of origin.

Historical Note

Adopted effective June 16, 1977 (Supp. 77-3). Section R3-1-77 renumbered to R3-4-248 (Supp. 91-4). Amended by final rulemaking at 7 A.A.R. 5345, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking

at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

Table 2. Actionable Arthropod Pests

Common Name	Scientific Name
Alfalfa plant bug	*Adelphocoris lineolatus*
Allium (Onion) Leafminer	*Phytomyza gymnostoma*
American palm cixid	*Myndus crudus*
Apple maggot	*Rhagoletis pomonella*
Apple mealybug	*Phenacoccus aceris*
Apple skinworm	*Tortrix franciscana*
Asian Longhorned beetle	*Anoplophora glabripennis*
Asiatic garden beetle	*Maladera castanea*
Asparagus beetle	*Crioceris asparagi*
Avocado whitefly	*Trialeurodes floridensis*
Bagworm	*Thyridopteryx ephemeraeformis*
Bean leaf beetle	*Cerotoma trifurcata*
Bifasciculate scale	*Chrysomphalus bifasciculatus*
Black cherry fruit fly	*Rhagoletis fausta*
Black orangeworm	*Holcocera iceryaeella*
Black thread scale	*Ischnaspis longirostris*
Black walnut curculio	*Conotrachelus retentus*
Blueberry maggot	*Rhagoletis mendax*
Boxwood leafminer	*Monarthropalpus buxi*
Brown citrus aphid	*Toxoptera citricida*
Brown Marmorated Stink Bug	*Halyomorpha halys*
Browntail moth	*Nygmia phaeorrhoea*
Butternut curculio	*Conotrachelus juglandis*
Cactus moth	*Cactoblastis cactorum*
Cactus weevil	*Gerstaeckeria nobilis*
California red scale	*Aonidiella aurantii*
Camphor scale	*Pseudaonidia duplex*
Caribbean fruit fly	*Anastrepha suspensa*
Carob moth	*Ectomyelois ceratoniae*
Cereal leaf beetle	*Oulema melanopus*
Chaff scale	*Parlatoria pergandii*
Chestnut moth	*Cydia splendana*
Chilli thrips	*Scirtothrips dorsalis*
Chinch bug	*Blissus leucopterus*
Citrus blackfly	*Aleurocanthus woglumi*
Citrus snow scale	*Unaspis citri*
Citrus whitefly	*Dialeurodes citri*
Cloudy-winged whitefly	*Singhiella citrifolii*
Clover root borer	*Hylastinus obscurus*
Coconut scale	*Aspidiotus destructor*
Coffee bean weevil	*Araecerus fasciculatus*
Comstock mealybug	*Pseudococcus comstocki*
Conifer Auger Beetle	*Sinoxylon unidentatum*
Corn stem weevil	*Hyperodes humilis*
Cottony grape scale	*Pulvinaria vitis*
Cowpea curculio	*Chalcodermus aeneus*
Croton soft scale	*Phalacrococcus howertoni*
Cycad aulacaspis scale	*Aulacaspis yasumatsui*
Date palm mite	*Oligonychus afrasiaticus*
Dogwood borer	*Synanthedon scitula*
Eggplant pinworm	*Keiferia peniculo*
Emerald ash borer	*Agrilus plannipennis*
Euonymus scale	*Unaspis euonymi*
European chafer	*Amphimallon majalis*
European corn borer	*Ostrinia nubilalis*
European cranefly	*Tipula paludosa*
European peach scale	*Parthenolecanium persicae*
European pine shoot moth	*Rhyacionia bouliana*
Eyespotted bud moth	*Spilonota ocellana*
False parlatoria scale	*Pseudoparlatoria parlatorioides*
Florida carpenter ant	*Camponotus floridanus*
Florida red scale	*Chrysomphalus aonidum*
Florida wax scale	*Ceroplastes floridensis*
Glacial whitefly	*Trialeurodes glacialis*
Glover scale	*Lepidosaphes gloverii*
Grape thrips	*Drepanothrips reuteri*
Gray sugarcane mealybug	*Dysmicoccus boninsis*
Green cloverworm	*Plathypena scabra*
Ground mealybug	*Ripersiella hibisci*
Hessian fly	*Mayetiola destructor*
Holly leafminer	*Phytomyza ilicis*
Indian wax scale	*Ceroplastes ceriferus*
Jack Beardsley mealybug	*Pseudococcus jackbeardsleyi*
Juniper scale	*Carulaspis juniperi*
Kirkaldy whitefly	*Dialeurodes kirkaldyi*
Kondo ground mealybug	*Ripersiella kondonis*
Lantana mealybug	*Phenacoccus parvus*
Lesser clover leaf weevil	*Hypera nigrirostris*
Lesser snow scale	*Pinnaspis strachani*
Light brown apple moth	*Epiphyas postvittana*
Little fire ant	*Wasmannia auropunctata*
Lobate lac scale	*Paratachardina pseudolobata*
Maskell scale	*Lepidosaphes pallida*
Mealybug	*Delottococcus confusus*
Mealybug	*Hypogeococcus pungens*
Melon worm	*Diaphania hyalinata*
Mimosa webworm	*Homadaula anisocentra*
Mining scale	*Howardia biclavis*
Minute cypress scale	*Carulaspis minima*
Myrmicine ant	*Monomorium destructor*
Myrmicine ant	*Monomorium floricola*
Northern citrus root weevil	*Pachnaeus opalus*
Obscure scale	*Melanaspis obscura*
Old house borer	*Hylotrupes bajulus*
Oleander pit scale	*Russellaspis pustulans*

Oriental fruit moth	*Grapholita molesta*
Oriental scale	*Aonidiella orientalis*
Palm fiorinia scale	*Fiorinia fioriniae*
Palm thrips	*Thrips palmi*
Papaya fruit fly	*Toxotrypana curvicauda*
Pepper flower bud moth	*Gnorimoschema gudmannella*
Pepper maggot	*Zonosemata electa*
Pepper tree psyllid	*Calophya schini*
Persimmon borer	*Sannina uroceriformis*
Pickleworm	*Diaphania nitidalis*
Pink hybiscus mealybug	*Maconellicoccus hirsutus*
Pitmaking pittosporum scale	*Planchonia arabidis*
Plum curculio	*Conotrachelus nenuphar*
Plum fruit moth	*Cydia funebrana*
Plumeria whitefly	*Paraleyrodes perseae*
Potato stalk borer	*Trichobaris trinotata*
Proteus scale	*Parlatoria proteus*
Purple scale	*Lepidosaphes beckii*
Pyriform scale	*Protopulvinaria pyriformis*
Red palm mite	*Raoiella indica*
Red-banded thrips	*Selenothrips rubrocinctus*
Rednecked cane borer	*Agrilus ruficollis*
Rose chafer	*Macrodactylus subspinosus*
Royal palm bug	*Xylastodoris luteolus*
Rufous scale	*Selenaspidus articulatus*
Saddleback caterpillar	*Acharia stimulea*
Satin moth	*Leucoma salicis*
Sirex woodboring wasp	*Sirex noctilo*
South African pit scale	*Planchonia stentae*
South American fruit fly	*Anastrepha fraterculus*
South American palm weevil	*Rhynchophorus palmarum*
Southeastern Boll Weevil Biotype	*Anthonomus grandis*
Southern chinch bug	*Blissus insularis*
Southern citrus root weevil	*Pachnaeus litus*
Southern green stink bug	*Nezara viridula*
Spotted Lanternfly	*Lycorma delicatula*
Stalk borer	*Papaipema nebris*
Strawberry root weevil	*Otiorhynchus ovatus*
Subtropical pine tip moth	*Rhyacionia subtropica*
Sugarcane root borer	*Diaprepes abbreviatus*
Sweetpotato weevil	*Cylas formicarius*
Tawny mole cricket	*Neoscapteriscus vicinus*
Tea parlatoria scale	*Parlatoria theae*
Tea scale	*Fiorinia theae*
Tropical fire ant	*Solenopsis geminata*
Tropical palm scale	*Hemiberlesia palmae*
Weevil	*Artipus floridanus*
West Indian Sweet potato weevil	*Euscepes postfaciatus*
Wheat strawworm	*Harmolita grandis*
White peach scale	*Pseudaulacaspis pentagona*
White waxy scale	*Ceroplastes destructor*
White-footed ant	*Technomyrmex difficilis*
Yellow scale	*Aonidiella citrina*
Yellow margined leaf beetle	*Microtheca ochroloma*

Historical Note
New Table 2, Actionable Arthropod Pests made by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

Table 3. Actionable Nematode Pests

Common Name	Scientific Name
Burrowing nematode	*Radopholus similis*
Golden nematode	*Globodera rostochiensis*
Oat cyst nematode	*Heterodera avenae*
Reniform nematode	*Rotylenchulus reniformis*
Sheath nematode	*Hemicycliophora arenaria*
Soybean cyst nematode	*Heterodera glycines*
Sting nematode	*Belonolaimus longicaudatus*
White cyst potato nematode	*Globodera pallida*

Historical Note
New Table 3, Actionable Nematode Pests made by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

Table 4. Class A Noxious Weeds

Common name	Scientific name
African rue	*Peganum harmala*
Canada thistle	*Cirsium arvense*
Dudaim melon	*Cucumis melo v. Dudaim Naudin*
Dyer's woad	*Isatis tinctoria*
Floating water hyacinth	*Eichhornia crassipes*
Giant salvinia	*Salvinia molesta*
Globe-podded hoary cress	*Cardaria draba*
Hydrilla	*Hydrilla verticillata*
Leafy spurge	*Euphorbia esula*
Plumeless thistle	*Carduus acanthoides*
Purple loosestrife	*Lythrum salicaria*
Purple starthistle	*Centaurea calcitrapa*
Quackgrass	*Elymus repens (Elytrigia repens)*
Rush skeletonweed	*Chondrilla juncea*
Southern sandbur	*Cenchrus echinatus*
Spotted knapweed	*Centaurea stoebe ssp. micranthos*
Sweet resinbush	*Euryops subcarnosus*
Ward's weed	*Carrichtera annua*
Wild mustard	*Sinapis arvensis*

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.

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.

11. "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones.
12. "Mixture", "mix", or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
13. "Mulch" means a protective covering of any suitable substance placed with seed that acts to retain sufficient moisture to support seed germination, sustain early seedling growth and aid in preventing soil moisture evaporation, control of weeds, and erosion prevention.
14. "Origin" means the state where the seed was grown, or if not grown in the United States, the country where the seed was grown.
15. "Other crop seed" means seeds of plants grown as crops other than the kind or variety included in the pure seed, as determined by methods defined in this Article.
16. "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by 100. The result is expressed as a whole number.
17. "Pure seed" means a kind of seed excluding inert matter and all other seed not of the kind being considered.
18. "Replacement date sticker" means a sticker on a label that displays a new test date.
19. "Retail" means sales that are not intended for agricultural use and are prepared for use by a consumer in home gardens or household plantings only.
20. "Seed count" means the number of seeds per unit weight in a container.
21. "Seizure" means taking possession of seed pursuant to a court order.
22. "Wholesale" means sales of seeds that are intended for agricultural use normally in quantities for resale, as by an agricultural retail merchant and are not prepared for use in home gardening or household plantings.
23. "Working sample" means the number of seeds required under §§ 402 and 403 of the Federal Seed Act.

Historical Note

Former Rule, Arizona Seed Regulation 1. Amended effective August 31, 1981 (Supp. 81-4). Former Section R3-4-110 renumbered without change as Section R3-4-401 (Supp. 89-1). Section R3-4-401 renumbered from R3-1-401 (Supp. 91-4). Section repealed, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-402. Labeling

A. General requirements:
1. Blank spaces or the words "free or none" mean "0" and "0.00%" for the purpose of applying the tolerances prescribed in this Article.
2. Labeling for purity and germination shall not show higher results than actually found by test.
3. The terms "foundation seed," "registered seed," and "certified seed" are authorized for use on seed certified by a seed certifying agency under the laws of Arizona as delineated in R3-4-405.
4. Relabeling. Any person relabeling seed in its original container shall include the following information on a label or a replacement date sticker:
   a. The calendar month and year the germination test was completed to determine the germination percentage and the sell-by date as required by subsection (C)(3)(i)(iv) or (C)(5)(c)(i),
   b. The same lot designation as on the original labels, and
   c. The identity of the person relabeling the seed if different from the original labeler.
5. Labeling of seed distributed to wholesalers. After seed has been conditioned, a labeler shall ensure the seed is labeled as follows:
   a. When supplied to a retailer or consumer, each bag or bulk lot must be completely labeled.
   b. When supplied to a wholesaler, if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk, the labeling of seed may be by invoice.
   c. When supplied to a wholesaler, if each bag or container is not identified by a lot number, it must carry complete labeling.
6. Seeds for sprouting. All labels of seeds sold for sprouting for salad or culinary purposes shall indicate the following information:
   a. Commonly accepted name of kind or kinds;
   b. Lot number;
   c. Percentage by weight of each pure seed component in excess of 5 percent of the whole, other crop seeds, inert matter, and weed seeds, if occurring;
   d. Percentage of germination of each pure seed component;
   e. Percentage of hard seed, if present; and
   f. The calendar month and year the germination test was completed to determine the percentages in subsections (c), (d) and (e).

B. Kind, variety, or type.
1. All agricultural seeds sold in this state, except as stated in subsection (B)(2), shall be labeled to include the recognized variety name or type or the words "Variety not stated." A brand is not a kind and variety designation and shall not be used instead of a variety name.
2. All cotton planting seed sold, offered for sale, exposed for sale, or transported for planting purposes in this state, shall have a label that includes both kind and variety.

C. Agricultural, vegetable, or flower seeds that is sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. No misleading information shall appear on the label. The label shall include the following information:
1. For agricultural, vegetable, and flower seeds that have been treated, the following is required and may appear on a separate label:
   a. Language indicating that the seed has been treated;
   b. The commonly-accepted chemical name of the applied substance or a description of the process used;
   c. If a substance that is harmful to human or animals is present with the seed, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for highly toxic substances shall be a poison statement and symbol; and
   d. If the seed is treated with an inoculant, the date of expiration, which is the date beyond which the inoculant is not to be considered effective.

2. For agricultural seeds, except for lawn and turf grass seed and mixtures of lawn and turf grass seed as provided in subsection (C)(3); for seed sold on a pure live seed basis as provided in subsection (C)(7); and for hybrids that contain less than 95 percent hybrid seed as provided in subsection (C)(8):
   a. The name of the kind and variety for each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. If the variety of the kinds generally labeled as a variety designated in this Article is not stated, the label shall show the name of the kind and the words, "variety not stated." Hybrid seed shall be labeled as hybrid;
   b. Lot number or other lot identification;
   c. Origin of alfalfa, red clover, and field corn (except hybrid corn) or if the origin is unknown, a statement that the origin is unknown;
   d. Percentage by weight of all weed seeds;
   e. The name and rate of occurrence per pound of each kind of restricted noxious weed seed present;
   f. Percentage by weight of agricultural seeds other than those required to be named on the label. Agricultural seeds may be designated as "crop seeds;"
   g. Percentage by weight of inert matter;
   h. The sum total of weight identified in subsections (a), (d), (f), and (g) shall equal 100 percent;
   i. For each named agricultural seed:
      i. Percentage germination, excluding hard seed;
      ii. Percentage of hard seeds, if present; and
      iii. The calendar month and year the test was completed to determine the percentages. The statement "total germination and hard seed" may be included following the percentages required under subsections (i) and (ii).
   j. Net weight of seed in the container or seed count per unit weight; and
   k. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.
3. For lawn and turf grass seed and lawn and turf grass seed mixtures:
   a. For single kinds, the name of the kind or kind and variety and the percentage by weight.
   b. For mixtures, the word "mix, "mixed", or "mixture" or "blend" shall be stated with the name of the mixture, along with the commonly accepted name of each kind or kind and variety of each agricultural seed component in excess of five percent of the whole and the percentages by weight.
   c. The percentage by weight of each kind of pure seed shall be listed in order of its predominance and in columnar form. The heading "pure seed" and "germination" or "germ" shall be placed consistent with generally accepted industry practices.
   d. Percentage by weight of agricultural seed other than those required to be named on the label which shall be designated as "crop seed."
   e. The percentage by weight of inert matter for lawn and turf grass shall not exceed ten percent, except that 15 percent inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material that is not common to grass seed shall not be added, other than material used for coating, as in subsection (C)(4), or combination products, as in subsection (C)(9).
   f. Percentage by weight of all weed seeds. Weed seed content shall not exceed one-half of one percent by weight.
   g. The sum total for subsections (a), (b), (c), (d), (e) and (f) shall equal 100 percent.
   h. Noxious weeds that are required by this Article to be labeled shall be listed under the heading "noxious weed seeds."
   i. For each lawn and turf seed named under subsection (a) or (b):
      i. Percentage of germination, excluding hard seed;
      ii. Percentage of hard seed, if present;
      iii. Calendar month and year the germination test was completed to determine percentages in subsections (i) and (ii); and
      iv. For seed sold for retail non-farm usage the statement "sell by (month/year)" which shall be no more than 15 months from the date of the germination test excluding the month of the test.
   j. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state.
4. For coated agricultural, vegetable, flower, or lawn and turf seeds that are sold by weight:
   a. Percentage by weight of pure seeds with coating material removed;
   b. Percentage by weight of coating material;
   c. Percentage by weight of inert material not including coating material;
   d. Percentage of germination determined on 400 pellets with or without seeds;
   e. All other applicable requirements in subsections (C)(1), (2), and (3).
5. For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices:
   a. Name of kind and variety of seed;
   b. Lot identification, such as by lot number or other means;
   c. One of the following:
      i. The calendar month and year the germination test was completed and the statement "Sell by (month/year)." The date indicated shall be no more than 12 months from the date of the test, excluding the month of the test;
      ii. The calendar year for which the seed was packaged for sale as "packed for (year)" and the statement "sell by (year)"; or
      iii. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within 12 months, excluding the month of the test;
   d. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state;
   e. For seeds that germinate less than the standard established under R3-4-404(A), (B) and (C)(i): percentage of germination, excluding hard seed; per-

centage of hard seed, if present; and the words "Below Standard" in not less than 8-point type;

f. For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

6. For vegetable seeds in containers other than packets prepared for use in home gardens, household plantings, preplanted containers, mats, tapes, or other planting devices:
   a. The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
   b. Lot number or other lot identification;
   c. For each named vegetable seed:
      i. Percentage germination, excluding hard seed;
      ii. Percentage of hard seed, if present; and
      iii. The calendar month and year the test was completed to determine the percentages; The statement "Total germination and hard seed" may be included following the percentages required under subsections (C)(6)(c)(i) and (C)(6)(c)(ii);
   d. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state; and
   e. The labeling requirements for vegetable seeds in containers of more than one pound are met if the seed is weighed from a properly labeled container in the presence of the purchaser.
7. For agricultural seeds sold on a pure live seed basis, each container shall bear a label containing the information required by subsection (C)(2), except:
   a. The label need not show:
      i. The percentage by weight of each agricultural seed component as required by subsection (C)(2)(a); or
      ii. The percentage by weight of inert matter as required by subsection (C)(2)(g); and
   b. For each named agricultural seed, the label must show instead of the information required by subsection (C)(2)(h):
      i. The percentage of pure live seed; and
      ii. The calendar month and year in which the test determining the percentage of live seed was completed.
8. For agricultural and vegetable hybrid seeds that contain less than 95 percent hybrid seed:
   a. Kind or variety shall be labeled as "hybrid,"
   b. The percentage that is hybrid shall be labeled parenthetically in direct association following the named variety; for example – comet (85% hybrid), and
   c. Varieties in which the pure seed contains less than 75 percent hybrid seed shall not be labeled hybrids.
9. For combination mulch, seed, and fertilizer products:
   a. The word "combination" followed by the words "mulch – seed – fertilizer", as appropriate, shall appear on the upper 30 percent of the principal display panel. The word "combination" shall be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch – seed – fertilizer", as appropriate, shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination."
   b. The products shall not contain less than 70 percent mulch.
   c. Agricultural, flower, vegetable, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch shall be labeled as follows:
      i. Product name;
      ii. Lot number;
      iii. Percentage by weight of pure seed of each kind and variety named. The kind and variety named may be less than 5 percent of the whole;
      iv. Percentage by weight of other crop seeds;
      v. Percentage by weight of inert matter, which shall not be less than 70 percent;
      vi. Percentage by weight of weed seeds;
      vii. The total of subsections (iii), (iv), (v), and (vi) shall equal 100 percent;
      viii. Name and number of noxious weed seeds per pound, if present;
      ix. Hard seed percentage, if present, and percentage of germination of each kind or kind and variety named and the month and year the test was completed; and
      x. Name and address of the labeler or the person who sells, offers or exposes the product for sale within this state.

D. Labeling requirements: flowers.

1. For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices:
   a. For all kinds of flower seeds:
      i. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3); and
      ii. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state, and one of the following subsections (D)(1)(a)(iii) through (v);
      iii. The calendar month and year the germination test was completed and the statement "Sell by (month/year)." The date indicated shall be no more than 12 months from the date of the test excluding the month of the test; or
      iv. The calendar year for which the seed was packaged for sale as "packed for (year)" and the statement "sell by (year)"; or
      v. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within 12 months, excluding the month of the test.
   b. For kinds of flower seeds for which standard testing procedures are prescribed by the Association of Official Seed Analysts and that germinate less than the germination standards prescribed under the provisions of R3-4-404(B):
      i. Percentage of germination, excluding hard seeds;
      ii. Percentage hard seed, if present; and
      iii. The words "Below Standard" in not less than eight-point type.

c. For flower seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

2. For flower seeds in containers other than packets and other than pre-planted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:
   a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3), and for wildflowers, the genus and species and subspecies, if appropriate;
   b. The lot number or other lot identification;
   c. For wildflower seed with a pure seed percentage of less than 90 percent:
      i. The percentage, by weight, of each component listed in order of the component's predominance;
      ii. The percentage by weight of weed seed, if present; and
      iii. The percentage by weight of inert matter;
   d. For kinds of seed for which standard testing procedures are prescribed by the Association of Official Seed Analysts:
      i. Percentage of germination, excluding hard or dormant seed;
      ii. Percentage of hard or dormant seed, if present; and
      iii. The calendar month and year that the test was completed to determine the percentages in subsections (D)(2)(d)(i) and (ii);
   e. For those kinds of flower seed for which standard testing procedures are not prescribed by the Association of Official Seed Analysts, the year of production or collection; and
   f. Name and address of the labeler, or the person who sells, offers, or exposes the flower seed for sale within this state.
3. Requirements to label flower seeds with kind and variety, or type and performance characteristics as prescribed in subsection (D)(1)(a)(i) and (D)(2)(a) shall be met as follows:
   a. For seeds of plants grown primarily for their blooms:
      i. If the seeds are of a single named variety, the kind and variety shall be stated, for example, "Marigold, Butterball";
      ii. If the seeds are of a single type and color for which there is no specific variety name, the type of plant, if significant, and the type and color of bloom shall be indicated, for example, "Scabiosa, Tall, Large Flowered, Double, Pink";
      iii. If the seeds consist of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, if significant, and the type or types of bloom shall be indicated. It shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is "Marigold, Dwarf Double French, Mixed Colors";
      iv. If the seeds consist of an assortment or mixture of kinds or kinds and varieties, it shall clearly indicate that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated, for example, "Cut Flower Mixture", or "Rock Garden Mixture". Statements such as "General Purpose Mixture", "Wonder Mixture", or any other statement that fails to indicate the specific use of the seed shall not be considered as meeting the requirements of this subsection unless the specific use of the mixture is also stated. Containers with over three grams of seed shall list the kind or kind and variety names of each component present in excess of five percent of the whole in the order of their predominance, giving the percentage by weight of each. Components equal to or less than five percent shall be listed, but need not be listed in order of predominance. A single percentage by weight shall be given for these components that are less than five percent of the whole. If no component of a mixture exceeds five percent of the whole, the statement, "No component in excess of 5%" may be used. Containers with three grams of seed or less shall list the components without giving percentage by weight and need not be in order of predominance.
   b. For seeds of plants grown for ornamental purposes other than their blooms, the kind and variety shall be stated, or the kind shall be stated together with a descriptive statement concerning the ornamental part of the plant, for example, "Ornamental Gourds, Small Fruited, Mixed."

E. Label requirement for tree and shrub seeds. Tree or shrub seeds that is sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. Labeling of seed supplied under a contractual agreement meets this requirement if the shipment is accompanied by an invoice or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk. Each bag or container not clearly identified by a lot number must carry complete labeling. The label shall include the following information:

1. For tree and shrub seeds that have been treated, the following may appear on a separate label:
   a. Language indicating that the seed has been treated;
   b. The commonly accepted chemical name of the applied substance or description of the process used;
   c. If the substance is harmful to human or animals, a caution statement such as "do not use for food or feed or oil purposes". The caution for highly toxic substances shall be a poison statement and symbol; and
   d. If the seed has been treated with an inoculant, the date of expiration, which is the date the inoculant is no longer considered effective;
2. For all tree and shrub seeds subject to this Article:
   a. Common name of the species of seed and if appropriate, the subspecies;

b. The scientific name of the genus and species and if appropriate, the subspecies;
c. Lot number or other lot identification;
d. Origin.
   i. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, a geographic description, or identification of a political subdivision, such as a state or county; or
   ii. For seed collected from other than a predominantly indigenous stand, identification of the area of collection and the origin of the stand, or the statement "origin not indigenous";
e. The elevation or the upper and lower limits of elevations within which the seed was collected;
f. Purity as a percentage of pure seed by weight;
g. For those species listed under R3-4-404(C), the following apply except as provided in subsection (E)(2)(h):
   i. Percentage germination excluding hard seed;
   ii. Percentage of hard seed, if present;
   iii. The calendar month and year the test was completed to determine the percentages in subsection (a) and (b);
h. Instead of complying with subsections (E)(2)(g)(i), (ii), and (iii), the seed may be labeled, "Test is in process, results will be supplied upon request";
i. For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected; and
j. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.

F. Hermetically sealed seed shall meet the following requirements
1. The seed shall have been packaged within nine months of harvest;
2. The container used shall not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100°F with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured in accordance with the U.S. Bureau of Standards as: gm H20/24 hr/100 sq in/ 100°F /90% RHV 0% RH;
3. The seed in the container shall not exceed the percentage of moisture, on a wet weight basis, as listed below:
   a. Agricultural Seeds,
      i. Beet, Field: 7.5;
      ii. Beet, Sugar: 7.5;
      iii. Bluegrass, Kentucky: 6.0;
      iv. Clover, Crimson: 8.0;
      v. Fescue, Red: 8.0;
      vi. Ryegrass, Annual: 8.0;
      vii. Ryegrass, Perennial: 8.0;
      viii. All Others: 6.0; and
      ix. Mixture of Above: 8.0;
   b. Vegetable Seeds,
      i. Bean, Garden: 7.0;
      ii. Bean, Lima: 7.0;
      iii. Beet: 7.5;
      iv. Broccoli: 5.0;
      v. Brussels Sprouts: 5.0;
      vi. Cabbage: 5.0;
      vii. Carrot: 7.0;
      viii. Cauliflower: 5.0;
      ix. Celeriac: 7.0;
      x. Celery: 7.0;
      xi. Chard, Swiss: 7.5;
      xii. Chinese Cabbage: 5.0;
      xiii. Chives: 6.5;
      xiv. Collards: 5.0;
      xv. Corn, Sweet: 8.0;
      xvi. Cucumber: 6.0;
      xvii. Eggplant: 6.0;
      xviii. Kale: 5.0;
      xix. Kohlrabi: 5.0;
      xx. Leek: 6.5;
      xxi. Lettuce: 5.5;
      xxii. Muskmelon: 6.0;
      xxiii. Mustard, India: 5.0;
      xxiv. Onion: 6.5;
      xxv. Onion, Welsh: 6.5;
      xxvi. Parsley: 6.5;
      xxvii. Parsnip: 6.0;
      xxviii. Pea: 7.0;
      xxix. Pepper: 4.5;
      xxx. Pumpkin: 6.0;
      xxxi. Radish: 5.0;
      xxxii. Rutabaga: 5.0;
      xxxiii. Spinach: 8.0;
      xxxiv. Squash: 6.0;
      xxxv. Tomato: 5.5;
      xxxvi. Turnip: 5.0;
      xxxvii. Watermelon: 6.5; and
      xxxviii. All others: 6.0.
4. The container shall be conspicuously labeled in not less than 8-point type to indicate:
   a. That the container is hermetically sealed,
   b. That the seed has been preconditioned as to moisture content, and
   c. The calendar month and year in which the germination test was completed; and
5. The germination percentage of the seed at the time of packaging shall have been equal to or higher than the standards specified elsewhere in subsection R3-4-404.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-111 renumbered without change as Section R3-4-402 (Supp. 89-1). Section R3-4-402 renumbered from R3-1-402 (Supp. 91-4). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-403. Noxious Weed Seeds

A. A person shall not allow the following prohibited noxious weed seeds in seed regulated under this Article:
1. *Acroptilon repens* (L.) DC. – Russian knapweed;
2. *Aegilops cylindrica* Host. – Jointed goatgrass;
3. *Alhagi maurorum* – Camelthorn;
4. *Alternanthera philoxeroides* (Mart.) Griseb. – Alligator weed;
5. *Cardaria pubescens* (C.A. Mey) Jarmolenko – Hairy whitetop;
6. *Cardaria chalepensis* (L.) Hand-Maz – Lens podded hoary cress;

7. *Cardaria draba* (L.) Desv. – Globed-podded hoary cress (Whitetop);
8. *Carduus acanthoides* L. – Plumeless thistle;
9. *Cenchrus echinatus* L. – Southern sandbur;
10. *Cenchrus incertus* M.A. Curtis – Field sandbur;
11. *Centaurea calcitrapa* L. – Purple starthistle;
12. *Centaurea iberica Trev. ex Spreng.* – Iberian starthistle;
13. *Centaurea squarrosa Willd.* – Squarrose knapweed;
14. *Centaurea sulphurea* L. – Sicilian starthistle;
15. *Centaurea solstitialis* L. – Yellow starthistle (St. Barnaby's thistle);
16. *Centaurea diffusa* L. – Diffuse knapweed;
17. *Centaurea maculosa* L. – Spotted knapweed;
18. *Chondrilla juncea* L. – Rush skeletonweed;
19. *Cirsium arvense* L. Scop. – Canada thistle;
20. *Convolvulus arvensis* L. – Field bindweed;
21. *Coronopus squamatus* (Forskal) Ascherson – Creeping wartcress (Coronopus);
22. *Cucumis melo* L. var. Dudaim Naudin – Dudaim melon (Queen Anne's melon);
23. *Cuscuta* spp. – Dodder;
24. *Cyperus rotundus* – Purple Nutgrass or Nutsedge;
25. *Cyperus esculentus* – Yellow Nutgrass or Nutsedge;
26. *Drymaria arenarioides* H.B.K. – Alfombrilla (Lightningweed);
27. *Eichhornia azurea* (SW) Kunth. – Anchored Waterhyacinth;
28. *Elymus repens* – Quackgrass;
29. *Euphorbia esula* L. – Leafy spurge;
30. *Halogeton glomeratus* (M. Bieb.) C.A. Mey – Halogeton;
31. *Helianthus ciliaris* DC. – Texas Blueweed;
32. *Hydrilla verticillata* (L.f.) Royle – Hydrilla (Florida-elodea);
33. *Ipomoea* spp. – Morning glory. All species except I*pomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); *Ipomoea aborescens*, morning glory tree; *Ipomea batatas* – sweetpotato; *Ipomoea quamoclit,* Cypress Vine; *Ipomoea noctiflora*, Moonflower – Morning Glories, Cardinal Climber, Hearts and Honey Vine;
34. *Isatis tinctoria* L. – Dyers woad;
35. *Linaria genistifolia* var. dalmatica – Dalmation toadflax;
36. *Lythrum salicaria* L. – Purple loosestrife;
37. *Medicago polymorpha* L. – Burclover;
38. *Nassella trichotoma* (Nees.) Hack. – Serrated tussock;
39. *Onopordum acanthium* L. – Scotch thistle;
40. *Orobanche ramosa* L. – Branched broomrape;
41. *Panicum repens* L. – Torpedo grass;
42. *Peganum harmala* L. – African rue (Syrian rue);
43. *Portulaca oleracea* L. – Common purslane;
44. *Rorippa austriaca* (Crantz.) Bess. – Austrian fieldcress;
45. *Salvinia molesta* – Giant Salvinia;
46. *Senecio jacobaea* L. – Tansy ragwort;
47. *Solanum carolinense* – Carolina horsenettle;
48. *Solanum elaegnifolium* – Silverleaf Nightshade;
49. *Sonchus arvensis* L. – Perennial sowthistle;
50. *Solanum viarum* Dunal – Tropical Soda Apple;
51. Sorghum species, perennial (*Sorghum halepense, Johnson grass, Sorghum almum*, and perennial sweet sudangrass);
52. *Stipa brachychaeta Godr.* – Puna grass;
53. *Striga* spp. – Witchweed;
54. *Trapa natans* L. – Water-chestnut;
55. *Tribulus terrestris* L. – Puncturevine.

B. A person shall not allow more than the number shown of the following restricted noxious weed seeds in a working sample of seed regulated by this Article; or, any more than 50 of any combination of the following restricted noxious weed seeds per working sample.

1. *Avena fatua* – Wild oat: 5;
2. *Brassica campestris* – Bird rape: 30;
3. *Brassica juncea* – Indian mustard: 30;
4. *Brassica niger* – Black mustard: 30;
5. *Brassica rapa* – Field mustard: 30;
6. *Cenchrus pauciflorus* – Sandbur: 10;
7. *Eichhornia crassipes (Mart.) Solms* – Floating waterhyacinth: 10;
8. *Euryops sunbcarnosus subsp. vulgaris* – Sweet resinbush: 10;
9. *Ipomoea triloba* L. – Three-lobed morning glory: 10;
10. *Rumex crispus* – Curly dock: 30;
11. *Salsola kali var. tenuifolia* – Russian thistle: 30;
12. *Sinapis arvensis* – Charlock or Wild mustard: 30; and
13. *Sida hederacea* – Alkali mallow: 30.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-112 renumbered without change as Section R3-4-403 (Supp. 89-1). Section R3-4-403 renumbered from R3-1-403 (Supp. 91-4). Section R3-4-403 repealed, new Section R3-4-403 renumbered from R3-4-405 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-404. Germination Standards

A. Vegetable seed shall have the following minimum percent germination or the minimum percent germination as found in the Federal Seed Act, 20 CFR 201.31 (as amended January 1, 2002), which is incorporated by reference, not including future editions or amendments. The material is on file with the Department and available for purchase from the U. S. Government Bookstore (http://bookstore.gpo.gov/) or at the U.S. Government Printing Office, 732 N. Capitol St., NW, Washington, DC 20401 or it can be found online at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=42bcf6d966081e2f2cf9d03315fb999f&rgn=div8&view=text&node=7:3.1.1.7.28.0.317.38&idno=7.

1. Artichoke: 60;
2. Asparagus: 70;
3. Asparagusbean: 75;
4. Bean, garden: 70;
5. Bean, Lima: 70;
6. Bean, runner: 75;
7. Beet: 65;
8. Broadbean: 75;
9. Broccoli: 75;
10. Brussels sprouts: 70;
11. Burdock, great: 60;
12. Cabbage: 75;
13. Cabbage, tronchuda: 70;
14. Cardoon: 60;
15. Carrot: 55;
16. Cauliflower: 75;
17. Celeriac: 55;
18. Celery: 55;
19. Chard, Swiss: 65;
20. Chicory: 65;
21. Chinese cabbage: 75;

22. Chives: 50;
23. Citron: 65;
24. Collards: 80;
25. Corn, sweet: 75;
26. Cornsalad: 70;
27. Cowpea: 75;
28. Cress, garden: 75;
29. Cress, upland: 60;
30. Cress, water: 40;
31. Cucumber: 80;
32. Dandelion: 60;
33. Dill: 60;
34. Eggplant: 60;
35. Endive: 70;
36. Kale: 75;
37. Kale, Chinese: 75;
38. Kale, Siberian: 75;
39. Kohlrabi: 75;
40. Leek: 60;
41. Lettuce: 80;
42. Melon: 75;
43. Mustard, India:75;
44. Mustard, spinach: 75;
45. Okra: 50;
46. Onion: 70;
47. Onion, Welsh: 70;
48. Pak-choi: 75;
49. Parsley: 60;
50. Parsnip: 60;
51. Pea: 80;
52. Pepper: 55;
53. Pumpkin: 75;
54. Radish: 75;
55. Rhubarb: 60;
56. Rutabaga: 75;
57. Sage: 60;
58. Salsify: 75;
59. Savory, summer: 55;
60. Sorrel: 65;
61. Soybean: 75;
62. Spinach: 60;
63. Spinach, New Zealand: 40;
64. Squash: 75;
65. Tomato: 75;
66. Tomato, husk: 50;
67. Turnip: 80;
68. Watermelon: 70; and
69. All Others: The germination standard for all other vegetable and herb seed for which a standard has not been established shall be 50 percent.

B. Flower seed shall meet the following minimum percent germination standards. For the kinds marked with an asterisk, the percentage listed is the sum total of the percentage germination and percentage of hard seed. A mixture of kinds does not meet the germination standard if the germination of any kind or combination of kinds constituting 25 percent or more of the mixture by number of seed is below the germination standard for the kind or kinds involved.

1. Archillea (The Pearl) – *Achillea ptarmica*: 50;
2. African Daisy – *Dimorphotheca aurantiaca*: 55;
3. African Violet – *Saintpaulia* spp: 30;
4. Ageratum – *Ageratum mexicanum*: 60;
5. Agrostemma (rose campion) – *Agrostemma coronaria*: 65;
6. Alyssum – *Alyssum compactum, A. maritimum, A. procumbens, A. saxatile*: 60;
7. Amaranthus – *Amaranthus* spp: 65;
8. Anagalis (primpernel) – *Anagalis arvensis, Anagalis coerulia, Anagalis grandiflora*: 60;
9. Anemone – *Anemone coronaria, A. pulsatilla*: 55;
10. Angel's Trumpet – *Datura arborea*: 60;
11. Arabis – *Arabis alpine*: 60;
12. Arctotis (African lilac daisy) – *Arctotis grandis*: 45;
13. Armeria – *Armeria formosa*: 55;
14. Asparagus, fern – *Asparagus plumosus*: 50;
15. Asparagus, sprenger, *Asparagus sprenger*: 55;
16. Aster, China – *Callistephus chinensis*; except Pompon, Powderpuff, and Princess types: 55;
17. Aster, China – *Callistephus chinensis*; Pompon, Powderpuff, and Princess types: 50;
18. Aubretia – *Aubretia deltoids*: 45;
19. Baby Smilax – *Aparagus asparagoides*: 25;
20. Balsam – *Impatiens balsamina*: 70;
21. Begonia – (*Begonia fibrous rooted*): 60;
22. Begonia – (*Begonia tuberous rooted*): 50;
23. Bells of Ireland – *Molucella laevis*: 60;
24. Brachycome (swan river daisy) – *Brachycome iberidifolia*: 60;
25. Browallia – *Browallia elata and B. speciosa*: 65;
26. Bupthalum (sunwheel) – *Buphthalum salicifolium*: 60;
27. Calceolaria – *Calceolaria* spp: 60;
28. Calendula – *Calendula officinalis*: 65;
29. California Poppy – *Eschscholtzia californica*: 60;
30. Calliopsis – *Coreopsis bicolor*, *C. drummondi, C. elegans*: 65;
31. Campanula:
    a. Canterbury Bells – *Campanula medium*: 60;
    b. Cup and Saucer Bellflower – *Campanula medium calycanthema*: 60;
    c. Carpathian Bellflower – *Campanula carpatica*: 50;
    d. Peach Bellflower – *Campanula persicifolia*: 50;
32. Candytuft, Annual – *Iberis amara, I. umbellate*: 65;
33. Candytuft, Perennial – *Iberis gibraltarica, I. sempervirens*: 55;
34. Castor Bean – *Ricinus communis*: 60;
35. Cathedral Bells – *Cobaea scandens*: 65;
36. *Celosia argentea*: 65;
37. Centaurea: Basket Flower – *Centaurea americana*, Cornflower – *C. cyanus*, Dusty Miller – *C. candidissima*, Royal Centaurea – *C. imperialis*, Sweet Sultan – *C. moschata*, Velvet Cantaurea – *C. gymnocarpa*: 60;
38. Snow-in-Summer *Cerastium biebersteini and C. tomentosum*: 65;
39. Chinese Forget-me-not – *Cynoglossum amabile*: 55;
40. Chrysanthemum, Annual – *Chrysanthemum carinatum, C. coronarium, C. Cineraria – Senecio cruentus*: 60;
41. Clarkia – *Clarkia elegans*: 65;
42. Cleome – *Cleome gigantea*: 65;
43. Coleus – *Coleus blumei*: 65;
44. Columbine – *Aquilegia* spp.: 50;
45. Coral Bells – *Heuchera sanguinea*: 55;
46. Coreopsis, Perennial – *Coreopsis lanceolata*: 40;
47. Corn, ornamental – *Zea mays*: 75;
48. Cosmos: Sensation, Mammoth and Crested types – *Cosmos bipinnatus*; Klondyke type – *C. sulphureau*: 65;
49. Crossandra – (*Crossandra infundibuliformis*): 50;
50. Dahlia – *Dahlia* spp: 55;
51. Daylily – *Hemerocallis* spp: 45;

52. Delphinium, Perennial – *Belladonna* and *Bellamosum* types; Cardinal Larkspur – *Delphinium cardinale*; *Chinensis types;* Pacific Giant, Gold Medal and other hybrids of *D. elatum*: 55;
53. Dianthus:
    a. Carnation – *Dianthus caryophyllus*: 60;
    b. China Pinks – *Dianthus chinensis, heddewigi, heddensis*: 70;
    c. Grass Pinks – *Dianthus plumarius*: 60;
    d. Maiden Pinks – *Dianthus deltoids*: 60;
    e. Sweet William – *Dianthus barbatus*: 70;
    f. Sweet Wivelsfield – *Dianthus allwoodi*: 60;
54. Didiscus – (blue lace flower) – *Didiscus coerulea*: 65;
55. Doronicum (leopard's bane) – *Doronicum caucasicum*: 60;
56. Dracaena – *Dracaena indivisa*: 55;
57. Dragon Tree – *Dracaena draco*: 40;
58. English Daisy – *Bellis perennis*: 55;
59. Flax – Golden flax *(Linum flavum);* Flowering flax L. *randiflorum;* Perennial flax, L. *perenne*: 60;
60. Flowering Maple – *Abutilon* spp: 35;
61. Foxglove – *Digitalis* spp: 60;
62. Gaillardia, Annual – *Gaillardia pulchella; G. picta*; Perennial – G. *grandiflora*: 45;
63. Gerbera (transvaal daisy) – *Gerbera jamesoni*: 60;
64. Geum – *Geum* spp: 55;
65. Gilia – *Gilia* spp: 65;
66. Glosiosa daisy (*rudbeckia*) – *Echinacea purpurea and Rudbeckia Hirta*: 60;
67. Gloxinia – (*Sinningia speciosa*): 40;
68. Godetia – *Godetia amoena, G. grandiflora*: 65;
69. Gourds: Yellow Flowered – *Cucurbita pepo*; White Flowered – *Lagenaria sisceraria*; Dishcloth – *Luffa cilíndrica*: 70;
70. Gypsophila: Annual Baby's Breath – Gypsophlla elegans; Perennial Baby's Breath – *G. paniculata, G. pacifica G. repens*: 70;
71. Helenium – *Helenium autumnale*: 40;
72. Helichrysum – *Helichrysum monstrosum*: 60;
73. Heliopsis – *Heliopsis scabra*: 55;
74. Heliotrope – *Heliotropium* spp: 35;
75. Helipterum (Acroclinium) – *Helipterum roseum*: 60;
76. Hesperis (sweet rocket) – *Hesperis matronalis*: 65;
77. *Hollyhock – *Althea rosea*: 65;
78. Hunnemania (mexican tulip poppy) – *Hunnemania fumariaefolia*: 60;
79. Hyacinh bean – *Dolichos lablab*: 70;
80. Impatiens – *Impatiens hostii*, *I. sultani*: 55;
81. **Ipomoea* – Cypress Vine – *Ipomoea quamoclit*; Moonflower – I. *noctiflora*; Morning Glories, Cardinal Climber, Hearts and Honey Vine – *Ipomoea* spp: 75;
82. Jerusulem cross (maltese cross) – *Lychnis chalcedonica*: 70;
83. Job's Tears – *Coix lacrymajobi*: 70;
84. Kochia – *Kochia childsi*: 55;
85. Larkspur, Annual – *Delphinium ajacis*: 60;
86. Lantana – *Lantana camara, L. hybrida*: 35;
87. Lilium (regal lily) – *Lilium regale*: 50;
88. Linaria – *Linaria* spp: 65, exception: *Linaria genistifolia* var. dalmatica – Dalmation toadflax which is a prohibited noxious weed;
89. Lobelia, Annual – *Lobelia erinus*: 65;
90. Lunaria, Annual – *Lunaria annua*: 65;
91. *Lupine – *Lupinus* spp: 65;
92. Marigold – *Tagetes* spp: 65;
93. Marvel of Peru – *Mirabilis jalapa*: 60;
94. Matricaria (feverfew) – *Matricaria* spp: 60;
95. Mignonette – *Reseda odorata*: 55;
96. Myosotis – *Myosotis alpestris, M. oblongata, M. palustres*: 50;
97. Nasturtium – *Tropaeolum* spp: 60;
98. Nemesia – *Nemesia* spp: 65;
99. Nemophila – *Nemophila insignis*: 70;
100. Nemophila, spotted – *Nemophila maculate*: 60;
101. Nicotiana – *Nicotiana affinis, N. sanderae, N. sylvestris*: 65;
102. Nierembergia – *Nierembergia* spp: 55;
103. Nigella – *Nigella damascena*: 55;
104. Pansy – *Viola tricolor*: 60;
105. Penstemon – *Penstemon barbatus, P. grandflorus, P. laevigatus, P. pubescens*: 60;
106. Petunia – *Petunia* spp: 45;
107. Phacelia – *Phacelia campanularia, P. minor, P. tanacetifolia*: 65;
108. Phox, Annual – *Phlox drummondi* all types and varieties: 55;
109. Physalis – *Physalis* spp: 60;
110. Platycodon (balloon flower) – *Platycodon grandiflorum*: 60;
111. Plumbago, cape – *Plumbago capensis*: 50;
112. Ponytail – *Beaucarnea recurvata*: 40;
113. Poppy: Shirley Poppy – *Papaver rhoeas;* Iceland Poppy – *P. nudicaule*; Oriental Poppy – *P. orientale*; Tulip Poppy – *P. glaucum*: 60;
114. Portulace – *Portulaca grandiflora*: 55;
115. Primula (primrose) – *Primula* spp: 50;
116. Pyrethrum (painted daisy) – *Pyrethrum coccineum*: 60;
117. Salpiglossis – *Salpiglossis gloxinaeflora, S. sinuata*: 60;
118. Salvia – Scarlet Sage – *Salvia splendens;* Mealycup Sage (Blue bedder) – *Salvia farinacea*: 50;
119. Saponaria – *Saponaria ocymoides, S. vaccaria*: 60;
120. Scabiosa, Annual – *Scabiosa atropurpurea*: 50;
121. Scabiosa, Perennial – *Scabiosa caucasica*: 40;
122. Schizanthus – *Schizanthus* spp: 60;
123. *Sensitive plant (mimosa) – *Mimosa pudica*: 65;
124. Shasta Daisy – *Chrysanthemum maximum C. leucanthemum*: 65;
125. Silk Oak – *Grevillea robusta*: 25;
126. Snapdragon – *Antirrhinum* spp: 55;
127. Solanum – *Solanum* spp: 60, exceptions; *Solanum carolinense* – Carolina horsenettle and *Solanum elaegnifolium* – Silverleaf Nightshade which are prohibited noxious weeds;
128. Statice – *Statice sinuata, S. suworonii* (flower heads): 50;
129. Stocks: Common – *Mathiola incana;* Evening Scented – *Mathiola bicornis*: 65;
130. Sunflower – *Helianthus* spp: 70, exception; *Helianthus ciliaris* DC. – Texas blueweed which is a prohibited noxious weed;
131. Sunrose – *Helianthemum* spp: 30;
132. *Sweet Pea, Annual and Perennial other than dwarf bush – *Lathyrus odoratus,* L. *latifolius*: 75;
133. *Sweet Pea, Dwarf Bush – *Lathyrus odoratus*: 65;
134. Tahoka Daisy – *Machaeanthera tanacetifolia*: 60;
135. Thunbergia – *Thunbergia alata*: 60;
136. Torcn Flower – *Tithonia speciosa*: 70;
137. Torenia (Wishbone Flower) – *Torenia fournieri*: 70;
138. *Tritoma kniphofia* Spp: 65;

139. Verbena, Annual – *Verbena hybrida*: 35;
140. Vinca – *Vinca rosea*: 60;
141. Viola – *Viola cornuta*: 55;
142. Virginian Stocks – *Malcolmia maritima*: 65;
143. Wallflower – *Cheiranthus allioni*: 65;
144. Yucca (Adam's Needle) – *Yucca filamentosa*: 50;
145. Zinnia (Except Linearis and Creeping) – *Zinnia angustifolia, Z. elegans, Z.grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, Z. pumila*: 65;
146. Zinnia, Linearis and Creeping – *Zinnia linearis, Sanvitalia procumbens*: 50;
147. All Other Kinds: 50.

C. The germination labeling provisions of R3-4-402(E) apply to the following tree and shrub species:

1. *Abies amabilis* (Dougl.) Forbes – Pacific Silver Fir;
2. *Abies balsamea* (L.) Mill. – Balsam Fir;
3. *Abies concolor* (Gord. Glend.) Lindl. – White Fir;
4. *Abies fraseri* (Pursh.) Poir – Fraser Fir;
5. *Abies grandis* (Dougl.) Lindl. – Grand Fir;
6. *Abies homolepis* Sieb Zucc. – Nikko Fir;
7. *Abies lasiocarpa* (Hook) Nutt. – Subalpine Fir;
8. *Abies magnifica* A. Murr. – California Red Fir;
9. *Abies magnifica* var. *shastensis* Lemm. – Shasta Red Fir;
10. *Abies procera* Rehd. – Nobel Fir;
11. *Abies veitchii* (Lindl.) – Veitch Fir;
12. *Acer ginnala* Maxim. – Amur Maple;
13. *Acer macrophyllum* Pursh. – Bigleaf Maple;
14. *Acer negundo* L. – Boxelder;
15. *Acer pensylvanicum* L. – Striped Maple;
16. *Acer platanoides* L. – Norway Maple;
17. *Acer pseudoplatanus* L. – Sycamore Maple;
18. *Acer rubrum* L. – Red Maple;
19. *Acer saccharinum* L. – Silver Maple;
20. *Acer saccharum Marsh*, – Sugar Maple;
21. *Acer spicatum* Lam. – Mountain Maple;
22. *Aesculus pavia* L. – Red Buckeye;
23. *Ailanthus altissima* (Mill.) *Swingle* – Tree of Heaven, Ailanthus;
24. *Berberis thunbergil* DC. – Japanese Barberry;
25. *Berberis vulgaris* L. European Barberry;
26. *Betula lenta* L. – Sweet Birch;
27. *Betula alleghaniensis* Britton – Yellow Birch;
28. *Betula nigra* L. – River Birch;
29. *Betula papyrifera* Marsh. – Paper Birch;
30. *Betula pendula* Roth. – European White Birch;
31. *Betula populifolian* Marsh. – Gray Birch;
32. *Carya illinoensis* (Wang.) K. Koch – Pecan;
33. *Carya ovata* (Mill) K. Koch – Shagbark Hickory;
34. *Casuarina* spp. – Beefwood;
35. *Catalpa bignonioides* Walt. – Southern Catalpa;
36. *Catalpa speciosa* Warder. – Northern Caralpa;
37. *Cedrus atlantica* Manetti – Atlas Cedar;
38. *Cedrus deodara* (Roxb.) Loud. – Deodar Cedar;
39. *Cedrus libani* (Loud.) – Cedar of Lebanon;
40. *Clastrus scandens* L. – American Bittersweet;
41. *Celastrus orbiculata* Thunb. – Oriental Bittersweet;
42. *Chamaecyparis lawsoniana* (A. Murr.) Parl – Port Oxford Cedar;
43. C*hamaecyparis nootkatensis* (D. Don.) Spach. – Alaska Cedar;
44. *Cornus florida* L. – Flowering Dogwood;
45. *Cornus stolonifera* Michx. – Red-osier Dogwood;
46. *Crataegus mollis* – Downy Hawthorn;
47. *Cupressus arizonica* Greene – Arizona Cypress;
48. *Eucalyptus deglupta*;
49. *Eucalyptus gradis*;
50. *Fraxinus americana* L. – White Ash;
51. *Fraxinus excelsior* L. – European Ash;
52. *Fraxinus latifolia* Benth. – Oregon Ash;
53. *Fraxinus nigra* Marsh. – Black Ash;
54. *Fraxinus pensylvanica* Marsh. – Green Ash;
55. *Fraxinus pensylvanica* var. *lanceolata* (Borkh.) Sarg. – Green Ash;
56. *Gleditsia triacanthos* L. – Honey Locust;
57. *Grevillea robusta* – Silk-oak;
58. *Larix decidua* Mill, – European Larch;
59. *Larix eurolepis* Henry – Dunkfeld Larch;
60. *Larix leptolepis* (Sieb. Zucc.) Gord. – Japanese Larch;
61. *Larix occidentalis* Nutt. – Western Larch;
62. *Larix sibirica* Ledeb. – Siberian Larch;
63. *Libocedrus decurrens* – Incense-Cedar;
64. *Liquidambar styraciflua* L. – Sweetgum;
65. *Liriodendron tulipifera* L. – Yellow-Poplar;
66. *Magnolia grandiflora* – Southern Magnolia;
67. *Malus* spp. – Apple;
68. *Malus* spp. – Crabapple;
69. *Nyssa aquatica* L. – Water Tupelo;
70. *Nyssa sylvatica* var. sylvatica – Black Tupelo;
71. *Picea abies* (L.) Karst. – Norway Spruce;
72. *Picea engelmanni* Parry – Engelmann Spruce;
73. *Picea glauca* (Moench.) Voss – White Spruce;
74. *Picea glauca* var. albertiana (S. Brown) Sarg. – Western White Spruce, Alberta White Spruce;
75. *Picea glehnii* (Fr. Schmidt) Mast. – Sakhalin Spruce;
76. *Picea jezoensis* (Sieb. Zucc.) Carr – Yeddo Spruce;
77. *Picea koyamai* Shiras. – Koyama Spruce;
78. *Picea mariana* (Mill.) B.S.P. – Black Spruce;
79. *Picea omorika* (Pancic.) Purkyne – Serbian Spruce;
80. *Picea orientalis* (L.) Link. – Oriental Spruce;
81. *Picea polita* (Sieb. Zucc.) Carr – Tigertail Spruce;
82. *Picea pungens* Engelm. – Blue Spruce, Colorado Spruce;
83. *Picea pungens* var. *glauca* Reg. – Colorado Blue Spruce;
84. *Picea rubens* Sarg. – Red Spruce;
85. *Picea sitchensis* (Bong.) Carr – Sitka Spruce;
86. *Pinus albicaulis* Engelm. – Whitebark Pine;
87. *Pinus aristata* Engelm. – Bristlecone Pine;
88. *Pinus banksiana* Lamb. – Jack Pine;
89. *Pinus canariensis* C. Smith – Canary Pine;
90. *Pinus caribaea* – Caribbean Pine;
91. *Pinus cembroides* Zucc. – Mexican Pinyon Pine;
92. *Pinus clausa* – Sand Pine;
93. *Pinus conorta* Dougl. – Lodgepole Pine;
94. *Pinus contorta* var. *latifolia* Engelm. – Lodgepole Pine;
95. *Pinus coulteri* D. Don. – Coulter Pine, Bigcone Pine;
96. *Pinus densiflora* Sieb. Zucc. – Japanese Red Pine;
97. *Pinus echinata* Mill. – Shortleaf Pine;
98. *Pinus elliottii* Engelm. – Slash Pine;
99. *Pinus flexilis* James – Limber Pine;
100. *Pinus glabra* Walt. – Spruce Pine;
101. *Pinus griffithi* McClelland – Himalayan Pine;
102. *Pinus halepensis* Mill. – Aleppo Pine;
103. *Pinus jeffreyi* Grev. Balf. – Jeffrey Pine;
104. *Pinus khasya* Royle – Khasia Pine;
105. *Pinus lambertiana* Dougl. – Sugar Pine;
106. *Pinus heldreichii* var. *leucodermis* (Ant.) Markgraf ex Fitschen – Balkan Pine, Bosnian Pine;
107. *Pinus markusii* DeVriese – Markus Pine;
108. *Pinus monticola* Dougl. – Western White Pine;

109. *Pinus mugo* Turra. – Mountain Pine;
110. *Pinus mugo* var. *mughus* (Scop.) Zenari – Mugo Swiss Mountain Pine;
111. *Pinus muricata* D. Don. – Bishop pine;
112. *Pinus nigra* Arnold – Austrian Pine;
113. *Pinus nigra* poiretiana (Ant.) Aschers Graebn. – Corsican Pine;
114. *Pinus palustris* Mill. – Longleaf Pine;
115. *Pinus parviflora* Sieb. Zucc. – Japanese White Pine;
116. *Pinus patula* Schl. Cham. – Jelecote Pine;
117. *Pinus pinaster* Sol. – Cluster Pine;
118. *Pinus* pinea L. – Italian Stone Pine;
119. *Pinus ponderosa* Laws. – Ponderosa Plne, Western Yellow Pine;
120. *Pinus radiata* D. Don. – Monterey Pine;
121. *Pinus resinosa* Ait. – Red Pine, Norway Pine;
122. *Pinus rigida* Mill. – Pitch Pine;
123. *Pinus serotina* Michx. – Pond Pine;
124. *Pinus strobus* L. – Eastern White Pine;
125. *Pinus sylvestris* L. – Scots Pine;
126. *Pinus taeda* L. – Loblolly Pine;
127. *Pinus taiwanensis* Hayata – Formosa Pine;
128. *Pinus thunbergii* Parl. – Japanese Black Pine;
129. *Pinus virginiana* Mill. – Virginia Pine, Scrub Pine;
130. *Platanus occidentalis* L. – American Sycamore;
131. *Populus* spp. – Poplars;
132. *Prunus armeriaca* L. – Apricot;
133. *Prunus avium* L. – Cherry;
134. *Prunus domestica* L. – Plum, Prune;
135. *Prunus persica* Batsch. – Peach;
136. *Pseudotsuga menziesii* var. *glauca* (Beissn.) Franco – Blue Douglas Fir;
137. *Pseudotsuga menziesii* var. *caesia* (Beissn.) Franco – Gray Douglas Fir;
138. *Pseudotsuga menziesii* var. *viridis* – Green Douglas Fir;
139. *Pyrus communis* L. – Pear;
140. *Quercus* spp. – (Red or Black Oak group);
141. *Quercus alba* L. – White Oak;
142. *Quercus muehlenbergii* Engelm. – Chinkapin Oak;
143. *Quercus virginiana* Mill. – Live Oak;
144. *Rhododendron* spp. – Rhododendron;
145. *Robinia pseudoacacia* L. – Black Locust;
146. *Rosa multiflora* Thunb. – Japanese Rose;
147. *Sequoia gigantea* (Lindl.) Decne. – Giant Sequoia;
148. *Sequoia sempervirens* (D. Don.) Engl. – Redwood;
149. *Syringa vulgaris* L. – Common Lilac;
150. *Thuja occidentalis* L. – Northern White Cedar, Eastern Arborvitae;
151. *Thuja orientalis* L. – Oriental Arborvitae, Chinese Arborvitae;
152. *Thuja plicata* Donn. – Western Red Cedar – Giant Arborvitae;
153. *Tsuga canadensis* (L.) Carr. – Eastern Hemlock, Canada Hemlock;
154. *Tsuga heterophylla* (Raf.) Sarg. – Western Hemlock, Pacific Hemlock;
155. *Ulmus americana* L. – American Elm;
156. *Ulmus parvifolia* Jacq. – Chinese Elm;
157. *Ulmus pumila* L. – Siberian Elm; and
158. *Vitis vulpina* L. – Riverbank Grape.

D. A person shall not indicate a quality of seed higher than the actual quality as found through germination test.

E. The labeler or the person who sells, offers, or exposes for sale within this state seeds in hermetically-sealed containers more than 36 months after the last day of the month in which the seeds were tested prior to packaging, shall retest the seeds within nine months, excluding of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

Historical Note
Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-113 renumbered without change as Section R3-4-404 (Supp. 89-1). Section R3-4-404 renumbered from R3-1-404 (Supp. 91-4). Section repealed, new Section R3-4-404 renumbered from R3-4-406 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-405. Seed-certifying Agencies

A. Any agency seeking to obtain designation as a seed-certifying agency in Arizona shall meet the following requirements.
1. The agency shall be qualified by USDA to certify agricultural or vegetable planting seed as to variety, strain, and genetic purity.
2. The agency shall have a written seed certification protocol which includes standards, rules, and procedures for the certification of planting seed.
3. The agency shall have procedures for accepting crops and varieties into a certification program.
4. The agency shall be a member in good standing of a USDA-recognized association of official seed-certifying agencies such as the Association of Official Seed Certifying Agencies.

B. The Director or the Director's designee shall meet each calendar year with the director of the seed-certifying agency to review the agency's standards, rules, and procedures.

C. The Director may, after consulting with the Director of the Arizona Agricultural Experiment Station, revoke the agency's designation as the state seed-certifying agency after written 30 days' notice if the organization:
1. Fails to maintain qualifications, protocols, procedures, and membership as set forth in subsection (A); or
2. Fails to follow federal and state standards, rules, and procedures.

Historical Note
Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-114 renumbered without change as Section R3-4-405 (Supp. 89-1). Section R3-4-405 renumbered from R3-1-405 (Supp. 91-4). Section R3-4-405 renumbered to R3-4-403, new Section R3-4-405 renumbered from R3-4-407 and amended effective July 10, 1995 (Supp. 95-3).

R3-4-406. Sampling and Analyzing Seed

A. A person shall follow the methods of taking, handling, analyzing, and testing samples of seed and the tolerances and methods of determination as prescribed in the Federal Seed Act Regulations, 7 CFR 201.39 through 201.65, amended January 1, 2002, and in the Rules for Testing Seeds, 2006, published by the Association of Official Seed Analysts. This material is incorporated by reference and is on file with the Department. The materials incorporated by reference do not include any later amendments or editions. The Rules for Testing Seeds are also available through the web site: http://www.aosaseed.com. The CFR may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250-7954 and the Rules for Testing Seeds may be ordered from the AOSA Man-

agement Office, Mail Boxes Etc. #285, 601 S. Washington, Stillwater, OK 74074-4539. If there is a conflict between the two documents, the requirements in CFR will prevail.

B. A labeler offering a seed for sale shall pay the cost of original germination and purity tests on each lot of seed offered for sale, and a dealer or labeler shall pay the cost of any subsequent germination test required by A.R.S. § 3-237. The Department shall pay the cost of testing seed samples drawn by a seed inspector from lots bearing valid labels. The dealer or labeler shall reimburse the Department for the cost of the test if the dealer or labeler chooses to use the Department's germination and purity results in subsequent re-labeling.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-115 renumbered without change as Section R3-4-406 (Supp. 89-1). Section R3-4-406 renumbered from R3-1-406 (Supp. 91-4). Section R3-4-406 renumbered to R3-4-404, new Section R3-4-406 renumbered from R3-4-408 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1286, effective May 31, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-407. Phytosanitary Field Inspection; Fee

A. Applicants seeking phytosanitary certification for interstate and international exportation of agriculture, vegetable, and ornamental planting seed shall submit a $20.00 inspection fee and provide the following information on a form furnished by the Department:

1. The company name and address of the applicant;
2. The kind, variety, and lot number of the seed;
3. The number of acres on which the seed will be grown;
4. The name of the grower;
5. The county and field location;
6. The date of the application;
7. The countries of export;
8. The seed treatment, if applicable;
9. The amount of treatment, if applicable;
10. The approximate planting date;
11. The approximate harvest date; and
12. The export requirements.

B. The Department may contract with the state-certifying agency for field inspection at 20¢ per acre for any first or single required inspection and 10¢ per acre for each subsequent required inspection which shall be performed in conjunction with the seed certification program.

C. Field inspections conducted by the Department shall be based upon the following fee schedule and shall not exceed the maximum fee prescribed by A.R.S. § 3-233(A)(7):

1. Cotton: 80¢ per acre;
2. Small grain: 20¢ per acre for the first inspection and 80¢ for the second inspection;
3. Vegetable and all other crops: 20¢ for the first inspection and 80¢ for the second inspection.

D. If both the field inspection fee and the application fee exceeds the maximum fee per acre prescribed by A.R.S. § 3-233(A)(7), the application fee shall be voided and the maximum cost per acre shall be assessed.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-116 renumbered without change as Section R3-4-407 (Supp. 89-1). Section R3-4-407 renumbered from R3-1-407 (Supp. 91-4). Section R3-4-407 renumbered to R3-4-405, new Section adopted effective July 10, 1995 (Supp. 95-3).

R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees

A. An applicant for a seed dealer or seed labeler license shall provide the following to the Department:

1. The year for which the applicant wishes to be licensed;
2. The applicant's name, company name, telephone number, fax number and e-mail address, as applicable;
3. Verification of previous seed dealer or labeler license, if applicable;
4. The mailing and physical address of each business location being licensed;
5. Company Tax ID number or if not a legally-recognized business entity, the applicant's Social Security number;
6. The date of the application; and
7. The signature of the applicant.

B. Seed dealer and seed labeler licenses are not transferable, expire on June 30, and are valid for no more than one year, or period thereof, unless otherwise revoked, suspended, denied or otherwise acted upon by the Department as provided in A.R.S. § 3-233(A)(6).

C. An applicant shall submit a completed application to the Department accompanied by the following fee, which is nonrefundable unless A.R.S. § 41-1077 applies.

1. Seed dealers, $50.00 per location; and
2. Seed labelers, $100.00.

D. During fiscal year 2011 and fiscal year 2012, notwithstanding subsection (C), there is no fee to obtain a seed dealer or seed labeler license.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-117 renumbered without change as Section R3-4-408 (Supp. 89-1). Section R3-4-408 renumbered from R3-1-408 (Supp. 91-4). Section R3-4-408 renumbered to R3-4-406, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 2029, effective September 21, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1763, effective July 20, 2011 (Supp. 11-3).

R3-4-409. Violations and Penalties

A. The Department may assess the following penalties against a dealer or labeler for each customer affected by a violation listed below: $50 for the first offense, $150 for the second offense, and $300 for each subsequent offense within a three-year period:

1. Failure to complete the germination requirements on agricultural, vegetable, or flower seed intended for wholesale or commercial use within nine months prior to sale, exposing for sale, or offering for sale within the state, excluding the month in which the test was completed. This penalty does not apply to a violation under subsections (A)(2), or (3);
2. Failure to complete the germination requirements for agricultural, ornamental, or vegetable seed intended for retail purchase within the 15 months prior to the sale, exposing for sale, or offering for sale within the state, excluding the month in which the test was completed; and
3. Failure to obtain any license required by this Article;

B. The Department may assess the following penalties against any person committing the following acts: up to $500 for the

first offense, up to $1250 for the second offense, and up to $2500 for each subsequent offense within a three-year period.

1. To label, advertise, or represent seed subject to this Article to be certified seed or any class of certified seed unless:
   a. It has been determined by a certifying agency that the seed conforms to standards of purity and identification as to kind, species and subspecies, if appropriate, or variety; and
   b. The seed bears an official label issued for the seed by a certifying agency certifying that the seed is of a specified class and a specified kind, species and subspecies, if appropriate, and variety;
2. To disseminate in any manner or by any means, any false or misleading advertisements concerning seeds subject to this Article;
3. To hinder or obstruct in any way, any authorized agent of the Department in the performance of the person's duties under this Article;
4. To fail to comply with a cease and desist order or to move or otherwise handle or dispose of any lot of seed held under a cease and desist order or tags attached to the order, except with express permission of the enforcing officer, and for a purpose specified by the officer;
5. To label or sell seed that has been treated without proper labeling;
6. To provide false information to any authorized person in the performance of the person's duties under this Article; or
7. To label or sell seed that has false or misleading labeling, including:
   a. Labeling or selling seed with a label containing the word "trace" or the phrase "contains 01%" as a substitute for any statement that is required by this Article;
   b. Altering or falsifying any seed label, seed test, laboratory report, record, or other document to create a misleading impression as to kind, variety, history, quality or origin of seed;
   c. Labeling as hermetically sealed containers of agricultural or vegetable seeds that have not had completed the germination requirements with 36 months prior to sale, excluding the month in which the test was completed;
   d. Failure to label in accordance with the provisions of this Article;
   e. If applicable, failing to label as containing prohibited noxious weed seeds, subject to recognized tolerances;
   f. If applicable, failing to label as containing restricted noxious weed seeds in excess of the number prescribed in R3-4-403 on the label attached to the container of the seed or associated with seed;
   g. If applicable, failing to label as containing more than two and one-half percent by weight of all weed seeds;
   h. Detaching, altering, defacing, or destroying any label provided for in this Article, or altering or substituting seed in a manner that may defeat the purpose of this Article;
   i. Using relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date if appropriate, and the lot number that matches the existing, original lot number; and
   j. Selling, exposing for sale, or offering for sale within the state vegetable seed intended for retail purchase that has labeling containing germination information that has not been completed within the 12 months prior to selling, exposing for sale, or offering for sale.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

ARTICLE 5. COLORED COTTON

R3-4-501. Colored Cotton Production and Processing

A. Definitions. In addition to the definitions provided in A.R.S. § 3-101 and R3-4-101 and R3-4-201, the following terms apply to this Section:

1. "Certified" means having been inspected with a written certificate of inspection issued by an inspector of the Department.
2. "Colored cotton" means any variety of cotton plants of the Genus *Gossypium* that produces fiber that is naturally any color other than white.
3. "Cottonseed" means processed seed cotton used for propagation, animal feed, crushed or composted fertilizer, or oil.
4. "Composting" means a process that creates conditions that facilitate the controlled decomposition of organic matter into a more stable and easily handled soil amendment or fertilizer, usually by piling, aerating and moistening; or the product of such a process.
5. "Delinting" means the process of using acid, flame, or mechanical means to remove fiber that remains on cottonseed after ginning.
6. "Planting seed" means seed of a known variety produced for planting subsequent generations.
7. "Seed cotton" means raw cotton containing seed and lint that has been harvested from a field, but has not been ginned.
8. "White cotton" means any variety of the Genus *Gossypium* that produces white fiber as established in 7 C.F.R. §§ 28.401 through 28.407; and the U.S. Department of Agriculture, Agriculture Marketing Service: Cotton Classification, revised April, 2005. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

B. Production requirements.

1. A producer who intends to grow colored cotton shall register in writing with the Department. The registration form shall be received at least 30 days before the cotton planting date for the applicable cultural cotton zone established in R3-4-204(E). Any colored cotton not registered with the Department shall be abated as established in A.R.S. §§ 3-204 and 3-205, and the producer may be assessed a civil penalty as established in A.R.S. § 3-205.02. The registration shall include:
   a. The name, address, telephone number, and signature of the producer;
   b. The name, address, telephone number, and signature of the property owner;
   c. The name, address, and telephone number of the organization or company contracting for the produc-

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.

3-208. Hearing on plant menace; evidence; quarantine zones; violation

A. Any interested party may be heard at the hearing, either in person or by attorney. The department shall preserve a written record of all evidence introduced at the hearing.

B. If the director finds that a menace exists, he may make and enforce rules and orders and establish quarantine zones or districts to eradicate, suppress or control the menace.

C. When the director finds the danger which caused the establishment of a prohibited zone is no longer present, he shall revoke the order establishing the zone, and may by order change or modify the order establishing a zone or applicable rules without notice or hearing, but no additional territory shall by subsequent order be added to or included within the boundaries of the zone except by notice and hearing as required for establishing the zone.

D. After the date on which the director enters the order establishing a zone, it shall be unlawful to plant, grow or cultivate, or have in, or to transport from or into the district any plant of the kind specified in the order except in accordance with the order or subsequent orders.

3-232. Enforcement of article

A. The director shall enforce the provisions of this article. The director shall:

1. Sample, inspect, analyze and test agricultural, vegetable and ornamental plant seed transported, sold or offered or exposed for sale for sowing purposes, as provided by section 3-233 and to the extent he deems necessary to determine whether the agricultural, vegetable and ornamental plant seeds are in compliance with the provisions of this article, and he shall notify promptly the person who transported, sold, offered or exposed the seed for sale of any violation.

2. Prescribe and, after public hearing following due public notice, adopt rules governing:

(a) The methods of sampling, inspecting, analyzing, testing and examining agricultural, vegetable and ornamental plant seed and the tolerances to be followed in the administration of this article that comply with the federal seed act (7 United States Code sections 1551 through 1611; 53 Stat. 1275) and the rules and regulations promulgated under that act.

(b) A prohibited and restricted noxious weed list and subsequent revisions to the list.

(c) Reasonable standards of germination for vegetable seeds.

(d) Such other rules as are necessary to secure the efficient enforcement of this article.

3. Designate seed-certifying agencies which he finds qualified to certify agricultural or vegetable seeds as to variety, purity, quality or other related designations. The director shall consult with the director of the university of Arizona agricultural experiment station before approving the qualifications of any agency to certify as to variety, strain or other genetic character of agricultural or vegetable seeds.

B. The director may assign personnel from the office of inspections to perform any of the inspection-related activities prescribed by this article.

C-2.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 15

Amend: R9-15-101, R9-15-201, R9-15-202, R9-15-203, R9-15-204, R9-15-205, R9-15-206, R9-15-207, R9-15-208, R9-15-209

Repeal: R9-15-201, R9-15-211, R9-15-212, R9-15-213, R9-15-214, R9-15-215

Renumber: R9-15-201, R9-15-202, R9-15-203, R9-15-205, R9-15-206, R9-15-207, R9-15-208, R9-15-209, R9-15-210,

New Article: Article 3

New Section: R9-15-102, R9-15-103, R9-15-104, R9-15-105, R9-15-106, R9-15-107, R9-15-108, R9-15-109, R9-15-110, R9-15-301, R9-15-302, R9-15-303, R9-15-304, R9-15-305, R9-15-306, R9-15-307

New Table: Table 3.1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 9, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 15

Amend: R9-15-101, R9-15-201, R9-15-202, R9-15-203, R9-15-204, R9-15-205, R9-15-206, R9-15-207, R9-15-208, R9-15-209

Repeal: R9-15-201, R9-15-211, R9-15-212, R9-15-213, R9-15-214, R9-15-215

Renumber: R9-15-201, R9-15-202, R9-15-203, R9-15-205, R9-15-206, R9-15-207, R9-15-208, R9-15-209, R9-15-210,

New Article: Article 3

New Section: R9-15-102, R9-15-103, R9-15-104, R9-15-105, R9-15-106, R9-15-107, R9-15-108, R9-15-109, R9-15-1010, R9-15-301, R9-15-302, R9-15-303, R9-15-304, R9-15-305, R9-15-306, R9-15-307

New Table: Table 3.1

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend ten (10) rules, repeal (6) rules, renumber nine (9) rules, create one (1) new article, create sixteen (16) new sections, and create one (1) new table in Title 9, Chapter 15 related to Loan Repayment. The Department is authorized to establish a loan repayment program to pay portions of qualifying educational loans taken out by physicians, dentists, and mid-level providers who

agree to provide primary care services to patients in Health Professional Shortage Areas (HPSAs) or Arizona medically underserved areas (AzMUAs) in an out-patient treatment setting. A Behavioral Health Loan Repayment Program is also established and allows the Department to pay portions of qualifying educational loans taken out by an individual who serves in a behavioral health hospital, including the Arizona State Hospital, in a behavioral health residential facility, or in a secure behavioral health residential facility as a behavioral health care provider, behavioral health technician, behavioral health nurse practitioner, psychiatric nurse practitioner, registered nurse, practical nurse, physician, psychiatrist, or psychologist.

The new rules streamline the loan repayment process by consolidating common loan requirements and repealing redundant requirements. In addition, the rules establish criteria and requirements for the new Behavioral Health Care Provider Loan Repayment Program.

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

The Department cites both general and specific statutory authority for these rules.

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

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

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

The Department states no study was reviewed or relied upon during the course of this rulemaking.

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

The Department of Health Services (Department) is adopting rules to implement the Behavioral Health Care Provider Loan Repayment Program (Program). The Department anticipates that the new rules may substantially ($10,000 or greater) benefit individuals who qualify to participate in the Program and receive education loan repayments. Because the Department staff will need to review and process these applications, the Department may incur minimal (less than $1,000) costs for this review, which are the result of statutory changes rather than the rules themselves.

The Program is intended to help retain and attract people to Arizona's behavioral health workforce. Not sustaining a sufficient workforce in healthcare is a significant cost to the State, as clients seeking behavioral health services increasingly go unserved and are far less likely to become safe and self-sufficient. Therefore, the Department believes that the general public may receive a significant benefit from 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 has determined that the potential benefits to regulated persons outweigh the probable costs of the rulemaking and the rules impose the least burden and costs to regulated persons.

6. What are the economic impacts on stakeholders?

Stakeholders include the Department, applicants and awardees of the Program, service sites, and the General Public.

The Department received a $2 million allocation to fund the Program in fiscal year 2023. The Department expects to incur a minimal cost to draft and promulgate the new rules but believes the benefit of having new rules over time will exceed any cost incurred. The Program may require staff to spend, at a minimum, an additional amount of time reviewing verification documentation and applications for a change of information. In addition to adopting new rules, the Department is amending existing rules and anticipates that consolidating, restructuring, and deleting antiquated sections and requirements will provide a significant benefit to the Department for having rules that are clearer, more concise, and more effective, no longer having obsolete requirements.

The Department believes that by offering a loan repayment program as a benefit of employment, it will incentivize employees to work in the behavioral health care field as well as incentivize employees to remain employed. Qualifying individuals for the program include behavioral health care providers, behavioral health technicians, registered nurses, practical nurses, and physicians who serve in a behavioral health facility or the Arizona State Hospital. The Department anticipates that the new rules may provide a significant benefit to individuals who qualify to participate in the Program and are awarded educational loan repayments.

The Department estimates that the general public will receive a significant benefit from having rules that provide increased access to health care and likely increase the quality of care if staff retention is to increase, specifically for behavioral health care providers.

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

No changes were made between the proposed rulemaking and the final rulemaking.

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

No comments were received about this rulemaking.

9. 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 permit or 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 Department states that there are no corresponding federal laws.

11. Conclusion

This regular rulemaking from the Department of Health Services seeks to amend ten rules, repeal rules, renumber nine rules, create one new article, create sixteen new sections, and create one new table in Title 9, Chapter 15 related to Loan Repayment. Specifically, the Department is seeking to streamline the loan repayment process by consolidating common loan requirements and repealing redundant requirements. In addition, the new rules will establish criteria and requirements for the new Behavioral Health Care Provider Loan Repayment Program.

The Department is requesting an immediate effective date under A.R.S. § 41-1032(A)(1), to preserve the public peace, health or safety; (A)(2), to avoid a violation of federal law or regulation or state law; and (A)(4), to provide a benefit to the public and a penalty is not associated with a violation of the rule, as this program will attract more medical professional to DHS and this rulemaking is occurring to comply with statute.

Council staff recommends approval.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 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: Department of Health Services, 9 A.A.C. 15, Regular Rulemaking

Dear Ms. Sornsin:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council).

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

1. The close of record date: October 16, 2023

2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:
   The rulemaking for 9 A.A.C. 5 does not relate to a five-year-review report.

3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:
   The rulemaking does not establish a new fee.

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 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 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 following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
3. General and specific statutes authorizing the rules, including relevant statutory definitions.

The Department's point of contact for questions about the rulemaking documents is Lucinda Feeley at Lucinda.Feeley@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 15. DEPARTMENT OF HEALTH SERVICES –

LOAN REPAYMENT

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-15-101	Amend
	R9-15-102	New Section
	R9-15-103	New Section
	R9-15-104	New Section
	R9-15-105	New Section
	R9-15-106	New Section
	R9-15-107	New Section
	R9-15-108	New Section
	R9-15-109	New Section
	R9-15-110	New Section
	R9-15-201	Repeal
	R9-15-201	Renumber
	R9-15-201	Amend
	R9-15-202	Renumber
	R9-15-202	Amend
	R9-15-203	Renumber
	R9-15-203	Amend
	R9-15-204	Amend
	R9-15-205	Renumber
	R9-15-205	Amend
	R9-15-206	Renumber
	R9-15-206	Amend
	R9-15-207	Renumber
	R9-15-207	Amend
	R9-15-208	Renumber
	R9-15-208	Amend
	R9-15-209	Renumber

R9-15-209	Amend
R9-15-210	Renumber
R9-15-211	Repeal
R9-15-212	Repeal
R9-15-213	Repeal
R9-15-214	Repeal
R9-15-215	Repeal
Article 3	New Article
R9-15-301	New Section
R9-15-302	New Section
R9-15-303	New Section
R9-15-304	New Section
R9-15-305	New Section
Table 3.1	New Table
R9-15-306	New Section
R9-15-307	New Section

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

Authorizing Statutes: A.R.S. §§ 36-136(G) and 36-2175

Implementing Statutes: A.R.S. §§ 36-2172, 36-2174, and 36-2175

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an immediate effective date, under A.R.S. § 41-1032(A)(1), (2), and (4). This rulemaking will help provide additional incentives for behavioral health providers, behavioral health technicians, behavioral health nurse practitioners, psychiatric nurse practitioners, registered nurses, practical nurses, physicians, psychiatrists, or psychologists to work at the specific types of facilities included in the rulemaking and should improve and preserve the health, safety, and well-being of those receiving services (or who could potentially receive services) in those facilities, which addresses subsections (A)(1) and (4). In addition, state law requires the Department to make rules for and administer this new program, so the Department would be in violation of A.R.S. § 36-2175 without these rules. Without the immediate effective date, the Department would not be able to expend funds appropriated by the Legislature to fund the program by the end of the fiscal year, creating government waste, addressing subsection (A)(2). Since the new rules reflect how the Department was enforcing the emergency rules, which expired on November 11, 2023, having an immediate

effective date will enable the Department to continue to implement the new rules, without prolonged interruption, and allow stakeholders to take advantage of the benefits as quickly as possible.

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. 2025, September 15, 2023

Notice of Rulemaking Docket Opening: 29 A.A.R. 2001, September 8, 2023

Notice of Renewal of Emergency Rulemaking 29 A.A.R. 1274, June 2, 2023

Notice of Proposed Rulemaking 29 A.A.R. 667, March 10, 2023

Notice of Emergency Rulemaking: 28 A.A.R. 3684, December 2, 2022

Notice of Rulemaking Docket Opening: 28 A.A.R. 3238, October 7, 2022

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

Name: Sheila Sjolander, Assistant Director
Address: Arizona Department of Health Services
Public Health Prevention Services, Public Health Prevention
150 N. 18th Ave, Suite 520
Phoenix, AZ 85007
Telephone: (602) 542-2818
Fax: (602) 364-4808
E-mail: sheila.sjolander@azdhs.gov

or

Name: Stacie Gravito, Interim Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007-3232
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.) §§ 36-2172 and 36-2174 provide authorization to the Arizona Department of Health Services (Department) to establish a loan repayment program to pay portions of qualifying educational loans taken out by physicians, dentists, and mid-level providers

who agree to provide primary care services to patients in Health Professional Shortage Areas (HPSAs) or Arizona medically underserved areas (AzMUAs) in an out-patient treatment setting. As an extension of these programs, Laws 2022, Ch. 314 adopts A.R.S. § 36-2175, establishing a Behavioral Health Loan Repayment Program in the Department to pay portions of qualifying educational loans taken out by an individual who serves, according to A.R.S. § 36-2175(B)(2), in a behavioral health hospital, including the Arizona State Hospital, in a behavioral health residential facility, or in a secure behavioral health residential facility as a behavioral health care provider, behavioral health technician, behavioral health nurse practitioner, psychiatric nurse practitioner, registered nurse, practical nurse, physician, psychiatrist, or psychologist. Laws 2022, Ch. 314 also requires the Department to promulgate new rules to prescribe Program application and eligibility requirements. The Department has already received the designated appropriations for loan repayment funds, and has received and processed applications under the emergency rules. After receiving an exception from the Governor's rulemaking moratorium, established by Executive Order 2022-01, and rulemaking approval pursuant to A.R.S. § 41-1039, the Department is revising the rules in 9 A.A.C. 15 to implement Laws 2021, Ch. 77 and Laws 2022, Ch. 314.

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 related to this rulemaking package.

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:

Arizona Revised Statutes (A.R.S.) §§ 36-2172 and 36-2174 provide authorization to the Department to establish a Loan Repayment Program to pay portions of qualifying educational loans taken out by physicians, dentists, pharmacists, advance practice providers, and behavioral health providers who agree to provide primary care services to patients in HPSAs or AzMUAs. The rules for the Primary Care Provider Loan Repayment Program and the Rural Private Primary Care Provider Loan Repayment Program were made in 9 A.A.C. 15, Articles 1 and 2. With the enactment of A.R.S. § 36-2175, the Department is adopting rules to implement the Behavioral Health Care Provider Loan Repayment Program in a new Article 3 in the Chapter. The

Department anticipates that persons affected by the rulemaking will include the Department, applicants and awardees, service sites, and the general public. Annual cost/revenue changes are designated 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.

The new rules streamline the loan repayment process by consolidating in Article 1 requirements that are common to the three loan repayment programs and repealing redundant requirements in the Article 2 rules. In both Articles 1 and 2, the Department amended antiquated terms and citations, removed terms and requirements no longer used, and drafted the new rules to conform to statutory authority and current rulemaking format and style requirements. Additional amendments in Article 2 included implementing Laws 2022, Ch. 77, which exclude an Indian Health Service or tribal facility from certain requirements. The terms, "licensee, tribal authority, or employer" were replaced with the defined term, "governing authority." Also, throughout Article 2, many subsections were rearranged and reworded to remove duplicative language and make the rules clearer. The Department expects to receive a significant benefit from having rules that are more clear, concise, and understandable – especially by potentially reducing the number of questions that may be asked and the amount of technical assistance provided by the Department. Applicants and awardees may also receive a significant benefit from these changes.

The new Article 3 establishes criteria and requirements in seven new Sections and one new Table for the new Behavioral Health Care Provider Loan Repayment Program. The new Article 3 rules expand the types of behavioral health care providers who may request to participate in a loan repayment program to include behavioral health technicians, behavioral health nurse practitioners, psychiatric nurse practitioners, practical nurses, physicians, psychiatrists, and psychologists. Requirements in R9-15-301 outline the criteria for an individual who wishes to participate in the Behavioral Health Care Provider Loan Repayment Program. Initial application requirements are outlined in the new R9-15-302, and renewal application requirements are outlined in the new R9-15-303 for an individual who wishes to continue participation after two years. R9-15-304 outlines the requirements for a supplemental application, if the Department has sufficient funds for another application cycle, to include individuals who wish to reapply to participate or apply to renew participation. Time-frames for the Department to review and process applications are outlined in the new R9-15-305 and Table 3.1. The new R9-15-306 specifies the criteria for establishing priority for awarding loan repayment contracts to applicants. Lastly, the new R9-15-307 establishes the criteria for the allocation of the Behavioral Health Care Provider Loan Repayment funds. The Department anticipates that the new rules may

substantially benefit individuals who qualify to participate in the Behavioral Health Care Loan Repayment Program and receive education loan repayments. Because Department staff will need to review and process these applications, the Department may incur minimal costs for this review, which are the result of statutory changes rather than the rules themselves.

The Behavioral Health Care Provider Loan Repayment Program is intended to help retain and attract people to Arizona's behavioral health workforce. Moreover, not sustaining a sufficient workforce in healthcare is a significant cost to the State, as clients seeking behavioral health services increasingly go unserved and are far less likely to become safe and self-sufficient. Therefore, the Department believes that the general public may receive a significant benefit from this rulemaking.

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

Between the proposed rulemaking and the final rulemaking, the Department did not make any changes.

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

No comments were received about this rulemaking. The Department held an oral proceeding for the proposed rules on October 16, 2023, which no stakeholder/member of the public attended.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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

Not applicable.

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

Federal laws do not apply to the rules in 9 A.A.C. 15.

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 submitted to 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:

None

14. Whether the rule was previously made, amended, or repealed as an 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 rule was previously made as an emergency rule at 28 A.A.R. 3684, December 2, 2022. A renewal of the emergency rules was approved by the Office of the Attorney General and published at 29 A.A.R. 1274, June 2, 2023. Between the renewal of emergency rulemaking and the final rulemaking packages, the following changes were made:

- R9-15-105(A)(2), R9-15-202(B)(1)(c) and (e), R9-15-202(B)(7), R9-15-306(A)(2)(a)– Revised the rule by making minor grammatical corrections;
- R9-15-106(D)(1)(a) – Revised the rule by removing duplicative language and making the context consistent with other sections throughout the Chapter;
- R9-15-202(C) – Corrected the cross reference from (B)(10) to (B)(11);
- R9-15-204(D) – Revised the rule by removing the cross-reference to subsection (B) because there is no deadline date in subsection (B);
- R9-15-301(A)(1)(e) – Revised the rule by replacing "Arizona Health Care Cost Containment System" with "AHCCCS" for consistency throughout the Chapter and the defined term in R9-15-101;
- R9-15-302(A) – Changed the date an individual must submit an initial application to March 1 of each year;
- R9-15-302(B)(6) – Revised the rule by removing "if applicable";
- R9-15-302(B)(12)(f) – Removed subsections (B)(12)(f)(i) and (ii) since they are unnecessary and will likely cause confusion on the part of the reader;
- R9-15-303(A) – Revised the date from December 15 to January 15 of each year;
- R9-15-305(G)(1)(a) – Revised the rule by adding the term "applicable" since not all the requirements in Title 36, Chapter 21 apply to every applicant;

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 15. DEPARTMENT OF HEALTH SERVICES – LOAN REPAYMENT

ARTICLE 1. GENERAL

ARTICLE 2. PRIMARY CARE PROVIDER LOAN REPAYMENT PROGRAM

ARTICLE 3. BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM

ARTICLE 1. GENERAL

R9-15-101. Definitions

In addition to the definitions in A.R.S. §§ 36-401 and 36-2171, the following definitions apply in this Chapter unless otherwise stated:

1. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
2. "AHCCCS" means the Arizona Health Care Cost Containment System, an Arizona state agency established by A.R.S. Title 36, Chapter 29, to administer 42 U.S.C. 1396-1, Title XIX or XXI health care programs.
3. "Applicant" means an individual who submits to the Department an application for approval to participate in a loan repayment program.
2.4. "Application" means the information and documents submitted to the Department by ~~a primary care provider~~ an individual requesting to participate in ~~the Loan Repayment Program~~ a loan repayment program.
3. ~~"Arizona Health Care Cost Containment System" or "AHCCCS" means the Arizona state agency established by A.R.S. Title 36, Chapter 29 to administer 42 U.S.C. 1396-1, Title XIX health care programs.~~
4. ~~"Arizona medically underserved area" or "AzMUA" means a primary care area where access to primary care service is limited as designated according to A.R.S. § 36-2352.~~
5. "Arizona State Hospital" has the same meaning as in A.R.S. § 36-202.
6. "Awardee" means an individual who has been approved by the Department to participate in a loan repayment program.
7. "AzMUA" means an Arizona medically underserved area, a primary care area where access to primary care service is limited, as designated according to A.R.S. § 36-2352.
8. "Behavioral health care provider" has the same meaning as "behavioral health provider" in A.R.S. § 36-2171.
9. "Behavioral health residential facility" has the same meaning as in A.A.C. R9-10-101.
10. "Behavioral health hospital" means:
    a. A special hospital, as defined in A.A.C. R9-10-101, that is only licensed to provide behavioral health services; or
    b. A facility, operated as a hospital in this state by the United States federal government or by a sovereign tribal nation, that only provides behavioral health services.

~~5.~~11. "Calendar day" means each day, not excluding the day of the act, event, or default from which a designated period of time begins to run and 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.

~~6.~~12. "Calendar year" means the period of 365 days starting from the first day of January.

~~7.~~13. "Cancellation" means the discharge of ~~a primary care provider~~ an awardee's loan repayment contract based on one of the ~~following:~~ criteria in R9-15-108.

~~a. A primary care provider requests a discharge of the primary care provider's loan repayment contract as allowed by this Chapter; or~~

~~b. The Department determines:~~

~~i. There are no loan repayment funds available;~~

~~ii. A primary care provider is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter;~~

~~iii. A primary care provider's service site is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter; or~~

~~iv. A primary care provider fails to meet the terms of the primary care provider's loan repayment contract with the Department.~~

~~8. "Certified nurse midwife" means a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period.~~

~~9. "Clinical social worker" means an individual licensed under A.R.S. § 32-3293.~~

~~10.~~14. "Critical access hospital" means a facility certified by the Centers for Medicare & Medicaid Services under Section 1820 of the Social Security Act.

~~11. "Denial" means the Department's determination that a primary care provider is not approved to:~~

~~a. Participate in the LRP,~~

~~b. Renew a loan repayment contract,~~

~~c. Suspend or cancel a loan repayment contract, or~~

~~d. Waive liquidated damages owed by the primary care provider for failure to comply with A.R.S. Title 36, Chapter 21 and this Chapter.~~

~~12.~~15. "Dental services" means the same as "dentistry" in A.R.S. § 32-1201.

~~13.~~16. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.

~~14.~~17. "Direct patient care" means medical services, dental services, pharmaceutical services, or behavioral health services provided to a specific individual by a primary care provider or behavioral health care provider and for services provided by the primary care provider or behavioral health care provider to or for the specific individual including:

a. Documenting the services in the specific individual's medical records,

b. Consulting with other health care professionals about the specific individual's need for services, and

c. Researching information specific to the individual's need for services.

~~15.~~18. "Educational expenses" has the same meaning as in 42 C.F.R. § 62.22.

~~16.~~19. "Encounter" means a face-to-face visit, which may include a visit using telemedicine, between a patient and ~~a primary care provider~~ an awardee during which primary care services or behavioral health services, as applicable, are provided.

~~17.~~20. "Family unit" means a group of individuals residing together who are related by birth, marriage, or adoption or an individual who does not reside with another individual to whom the individual is related by birth, marriage, or adoption.

~~18.~~21. "Federal prison" means a secure facility, managed and run by or on behalf of the Federal Bureau of Prisons, that confines an individual convicted of a crime.

~~19.~~22. "Full-time" means working at least: ~~40 hours per week for at least 45 weeks per service year.~~

a. 40 hours per week for at least 45 weeks per service year, for a loan repayment program under Article 2 or

b. An average of 36 hours per week for at least 45 weeks per service year, for a loan repayment program under Article 3.

~~20.~~23. "Free-clinic" means a facility that provides primary care services, on an outpatient basis, to individuals at no charge.

24. "Governing authority" has the same meaning as in A.R.S. § 36-401.

~~21. "Government student loan" means an advance of money made by a federal, state, county, or city agency that is authorized by law to make the advance of money.~~

~~22.~~25. "Half-time" means working at least 20 hours per week, but not more than 39 hours per week, for at least 45 weeks per service year.

~~23.~~26. "Health professional school" has the same meaning as "school" in 42 C.F.R. § 62.2.

~~24.~~27. "Health professional service obligation" means a legal commitment in which ~~a primary care provider~~ an individual agrees to provide primary care services or behavioral health

services for a specified period of time in a designated area or through a designated service site.

~~25. "Health professional shortage area" or "HPSA" means a geographic region, population group, or public or non-profit private medical facility or other public facility determined by the U.S. Department of Health and Human Services to have an inadequate number of primary care providers under 42 U.S.C. § 254e.~~

~~26.~~28. "Health service experience to a medically underserved population" means at least 500 clock hours of medical services, dental services, pharmaceutical services, or behavioral health services provided by ~~a primary care provider~~ an individual, including clock hours completed during the ~~primary care provider's~~ individual's residency or graduate education:

a. Under the direction of a governmental agency, an accredited educational institution, or a non-profit organization; and

b. At a service site located in:

i. A medically underserved area designated by ~~a federal or state agency~~ the U.S. Department of Health and Human Services according to 42 CFR § 51c.102, ~~or~~

ii. A medically underserved population,

iii. An AzMUA, or

~~ii.~~iv. A HPSA designated by a federal agency.

~~27.~~29. "Health service priority" means the number assigned by the Department to an ~~initial application or renewal~~ application and used to determine whether loan repayment funds are allocated to ~~a primary care provider~~ an applicant requesting approval to participate in ~~the LRP~~ a loan repayment program.

30. "HPSA" means a health professional shortage area, a geographic region, population group, or public or non-profit private medical facility or other public facility determined by the U.S. Department of Health and Human Services under 42 U.S.C. § 254e to have an inadequate number of providers of medical services, dental services, or behavioral health services.

~~28.~~31. "Immediate family" means an individual in any of the following relationships to ~~a primary care provider~~ an awardee:

a. Spouse;

b. Natural, adopted, foster, or stepchild;

c. Natural, adoptive, or stepparent;

d. Brother or sister;

e. Stepbrother or stepsister;

f. Grandparent or spouse of a grandparent;

g. Grandchild or spouse of a grandchild;

h. Father-in-law or mother-in-law;

i. Brother-in-law or sister-in-law; or

j. Son-in-law or daughter-in-law.

~~29. "Licensee" means:~~

~~a. An owner approved by the Department to operate a health care institution, or~~

~~b. An individual licensed under A.R.S. Title 32.~~

~~30.~~32. "Living expenses" has the same meaning as in 42 C.F.R. § 62.22.

~~31.~~33. "Loan repayment funds" means:

a. ~~State loan repayment funds,~~ Monies provided to the Department from the U.S. Department of Health and Human Services, Health Resources and Services Administration, for use in a loan repayment program;

b. ~~State-appropriated funds,~~ Monies specified by the Arizona State Legislature and provided to the Department for use in a loan repayment program; or

c. Monies donated to the Department and designated for use ~~by the LRP~~ as part of a loan repayment program.

~~32. "Loan Repayment Program" or "LRP" means the unit in the Department that implements the Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172, and the Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174.~~

34. "Loan repayment program" means one of the following, according to this Chapter:

a. The Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172;

b. The Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174; or

c. The Behavioral Health Care Provider Loan Repayment Program, established according to A.R.S. § 36-2175.

~~33. "Marriage and family therapist" means an individual licensed under A.R.S. § 32-3311.~~

35. "Medically underserved population" means a group of individuals who have limited access to health services, as designated by the U.S. Department of Health and Human Services under 42 CFR § 51c.102.

~~34.~~36. "Newly employed" means ~~when~~ that a primary care provider's first-time employee start date with a service site or employer identified in an initial application occurred within 12 months before the primary care provider's initial application submission date.

~~35. "Non-government student loan" means an advance of money made by a bank, credit union, savings and loan association, insurance company, school, or other financial or credit institution that is subject to examination and supervision in its capacity as a lender by an agency of the federal government or of the state in which the lender has its principle place of business.~~

~~36.~~37. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.

~~37.~~38. "Pharmaceutical services" ~~means~~ has the same meaning as "practice of pharmacy" in A.R.S. § 32-1901.

~~38.~~39. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.

~~39.~~40. "Physician" has the same meaning as in A.R.S. § 36-2351.

~~40.~~41. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.

~~41.~~42. "Population" means the total number of permanent residents according to the most recent decennial census published by the U.S. Census Bureau or according to the most recent Population Estimates for Arizona's Counties and Incorporated Places published by the Arizona Department of Economic Security.

~~42.~~43. "Poverty level" means a measure of income, issued annually by the U.S. Department of Health and Human Services and published in the Federal Register.

~~43.~~44. "Primary care area" has the same meaning as in A.A.C. R9-24-201.

~~44. "Primary care loan" means a long-term, low-interest-rate financial contract between the U.S. Department of Health and Human Services, Health Resources and Services Administration and a full-time student pursuing a degree in allopathic or osteopathic medicine~~.

~~47.~~45. "Primary care provider" means one of the following providing direct patient care:

a. A physician practicing:
   i. Family medicine,
   ii. Internal medicine,
   iii. Pediatrics,
   iv. Geriatrics,
   v. Obstetrics-gynecology, or
   vi. Psychiatry;

b. A physician assistant practicing:

i. Adult medicine,

ii. Family medicine,

iii. Pediatrics,

iv. Geriatrics,

v. Women's health, or

vi. Behavioral health;

c. A registered nurse practitioner practicing:

i. Adult medicine,

ii. Family medicine,

iii. Pediatrics,

iv. Geriatrics,

v. Women's health, or

vi. Behavioral health;

d. A certified nurse midwife, a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;

e. A dentist practicing:

i. General dentistry,

ii. Geriatric dentistry, or

iii. Pediatric dentistry;

f. A pharmacist; or

g. A behavioral health care provider ~~practicing as:~~

~~i. A psychologist,~~

~~ii. A clinical social worker,~~

~~iii. A marriage and family therapist, or~~

~~iv. A professional counselor~~.

~~48.~~46. "Primary care ~~service~~ services" means medical services, dental services, pharmaceutical services, or behavioral health services provided on an outpatient basis by a primary care provider.

~~49.~~47. "Private practice" means an individual or entity in which:

a. One or more primary care providers provide primary care services; and

b. Each primary care provider is an owner who can be held personally responsible for the primary care services provided by any of the primary care providers.

~~48. "Professional counselor" means an individual licensed under A.R.S. § 32-3301.~~

~~49. "Psychiatrist" means a physician who is board certified or board eligible to provide behavioral health services.~~

~~50. "Psychologist" has the same meaning as in A.R.S. § 32-2061.~~

~~51. "Public" means any:~~

~~a. State or local government; or~~

~~b. Department, agency, special purpose district, or other unit of a state or local government, including the legislature.~~

~~52.~~48. "Qualifying educational loan" means ~~a government or a non-government student loan~~ an advance of money:

a. Used for the actual costs paid for educational expenses and living expenses that occurred during the undergraduate or graduate education of ~~a primary care provider~~ an applicant, and

b. Obtained before the submission of an initial application.

~~53.~~49. "Qualifying health plan" means health insurance coverage provided to a consumer through the Arizona State Health Insurance Marketplace established by 42 U.S.C.A. § 18001 (2010).

~~54.~~50. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.

~~55.~~51. "Service site" means a health care institution that provides primary care services or behavioral health services, as applicable, at a specific location.

~~56. "Service verification form" means a document confirming a primary care provider's full-time or half-time continuous employment at the primary care provider's approved service site.~~

~~57.~~52. "Sliding-fee schedule" has the same meaning as in A.A.C. R9-1-501.

~~58. "State-appropriated funds" means monies provided to the Department for the Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172, and the Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174.~~

~~59. "State loan repayment funds" means monies provided to the Department from the U.S. Department of Health and Human Services, Health Resources and Services Administration.~~

~~60.~~53. "State prison" means a secure facility, managed and run by or on behalf of ~~a state~~ the Arizona Department of Corrections, in which an individual convicted of a crime is confined.

~~61. "Student" means an individual pursuing a course of study at a health professional school~~.

~~62.~~54. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.

~~63.~~55. "Suspend" means to temporarily interrupt a ~~primary care provider's~~ loan repayment contract for a specified period of time, based on a request submitted by the ~~primary care provider~~ awardee.

~~64.~~56. "Telemedicine" has the same meaning as:

a. ~~"Telemedicine"~~ "Telehealth" as defined in A.R.S. § 36-3601,

b. "Teledentistry" as defined in A.R.S. § 36-3611, or

c. "Telepractice" as defined in ~~A.R.S. §32-3251~~ A.R.S. § 32-2061.

~~65.~~57. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a federal and state holiday or a statewide furlough day.

R9-15-102. Qualifying Educational Loans and Restrictions

A. The Department shall use loan repayment funds to pay for principal, interest, and related expenses of:

1. A qualifying educational loan taken out by an awardee while obtaining a degree leading to eligibility for a health professional license; or
2. A qualifying educational loan resulting from the refinancing or consolidation of loans described in subsection (A)(1).

B. Obligations or debts incurred under the following are ineligible for loan repayment funds:

1. A loan for which an awardee incurred a health professional service obligation that will not be completed before the start of the awardee's program contract;
2. A primary care loan, intended as a long-term, low-interest-rate financial contract between the U.S. Department of Health and Human Services, Health Resources and Services Administration, and a full-time student pursuing a degree in allopathic or osteopathic medicine;
3. A loan subject to cancellation; or
4. A residency loan, intended to cover expenses not included in the cost of attendance at a health professional school, such as board examination fees, travel, and moving expenses for a residency program.

C. The following apply to an awardee's lenders and loans:

1. The Department shall accept assignment of loan repayment funds to a maximum of three lenders.
2. If more than one loan is eligible for loan repayment funds, an awardee shall advise the Department of the percentage of the loan repayment funds that each lender identified by the applicant is to receive.

3. An awardee is responsible for the timely repayment of a loan.

4. An awardee shall arrange with each lender to make necessary changes in the payment schedule for a loan so that quarterly loan repayment funds will not result in default.

5. An awardee is responsible for paying taxes that may result from receiving loan repayment funds to reduce a qualifying educational loan amount owed to a lender.

R9-15-103. Verification of Loan Repayment Application Information

An applicant shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided by the applicant.

R9-15-104. Donations to a Loan Repayment Program

A. A person may donate monies to the Department to be used in funding a loan repayment program.

B. A person donating monies to a loan repayment program shall designate whether the donation:

1. May be used by the Department for either loan repayment allocations or for administrative costs associated with a loan repayment program; or

2. Is to be used for loan repayment allocations for one or more of the following:

   a. The Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172;

   b. The Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174;

   c. The Behavioral Health Care Provider Loan Repayment Program, established according to A.R.S. § 36-2175;

   d. A specific type or types of primary care provider, behavioral health care provider, or other eligible individuals; or

   e. A specific county in Arizona.

C. The Department shall:

1. Use donated monies to supplement other loan repayment funds received by the Department according to A.R.S. Title 36, Chapter 21, based on the health service priority assigned to an applicant during an allocation process according to R9-15-208 or R9-15-307, as applicable, and, if applicable, any designation made for the donation according to subsection (B); and

2. Not allocate donated monies during an allocation process if the applicant with the next highest health service priority does not meet the criteria established for the donated monies according to subsection (B)(2).

R9-15-105. Verification of Services and Disbursement of Loan Repayment Funds

A. An awardee shall submit, within 10 business days after the last day of a completed calendar quarter, verification and documentation of service hours worked and, if applicable, encounters provided during the calendar quarter at the provider's approved service site, in a Department-provided format, containing:

1. The awardee's name;
2. The beginning and ending dates during which the services were provided;
3. Whether the awardee is providing services full-time or, if applicable, half-time;
4. If applicable, the number of total encounters the awardee provided during the time reported in subsection (A)(2);
5. If services are provided by means of telemedicine, the number of telemedicine hours worked;
6. The awardee's notarized signature and date of signature; and
7. The notarized signature and date of signature of the designee of the awardee's approved service site's governing authority.

B. Upon receipt of the verification and documentation in subsection (A), the Department shall disburse loan payment funds to the awardee's lender or lenders.

C. Services performed before the effective date of a loan repayment contract do not satisfy the contracted health professional service obligation and are not eligible for loan repayment funds.

D. The Department shall disburse loan repayment funds for services provided during a loan repayment contract period according to the allocations in R9-15-208 or R9-15-307, as applicable.

E. The Department may delay disbursing loan repayment funds to an awardee's lender or lenders if the awardee fails to submit service verification and documentation forms as specified in subsection (A).

F. The Department shall not disburse loan repayment funds to an awardee's lender or lenders if the awardee fails to submit complete and accurate information required in subsection (A).

R9-15-106. Request for Change

A. If an awardee's personal information changes, the awardee shall submit:

1. A written notice stating the information being changed and indicating the new information; and
2. If the change is in the awardee's legal name, a copy of one of the following with the awardee's new name:
   a. Marriage certificate,
   b. Divorce decree,
   c. Professional license, or

d. Other legal document establishing the awardee's legal name.

B. An awardee shall submit to the Department a request for a change:

1. At least 10 working days before the effective date of a change to a qualifying educational loan or lender; and
2. At least 30 calendar days before the effective date of a change to add or transfer to another service site or employer or, if applicable, to change service hours worked.

C. To request a change in subsection (B), an awardee shall submit the following information to the Department, in a Department-provided format:

1. The awardee's name, home address, telephone number, and e-mail address;
2. Whether the request is to:
   a. Add or change a qualifying educational loan or lender,
   b. Add or transfer to another service site or employer, or
   c. Change service hours from full-time to half-time or from half-time to full-time;
3. Whether the awardee agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-205 or R9-15-305, as applicable;
4. An attestation that:
   a. The awardee authorizes the Department to verify all the information provided, and
   b. The information submitted is true and accurate; and
5. The awardee's signature and date of signature.

D. In addition to the information required in subsection (C), an awardee shall submit to the Department:

1. If adding or changing a qualifying educational loan or lender, the following documentation about the new qualifying educational loan or lender:
   a. In a Department-provided format:
      i. An attestation signed and dated by an individual from the lending institution, certifying that the loan meets the requirements in R9-15-102 for a qualifying educational loan; and
      ii. The percentage of the loan repayment funds that the awardee is requesting that the lender receive;
   b. Documentation from the lender or the National Student Loan Data System, established by the U.S. Department of Education, verifying that the loan is a qualifying educational loan; and

c. For the qualifying educational loan, a copy of the most recent billing statement from the lender;

2. If adding or transferring to a new service site or beginning employment with a new employer, for each new service site or employer:

a. The following in a Department-provided format;

i. The information required in R9-15-202(B)(1)(c) or R9-15-302(B)(1)(b), as applicable, for the new service site;

ii. The attestation required in R9-15-202(B)(16) or R9-15-302(B)(1)(g), as applicable; and

iii. If applicable, the information required in R9-15-202(B)(20);

b. If applicable, a copy of the new service site's:

i. Sliding-fee schedule in R9-15-201(A)(2)(d)(i),

ii. Sliding-fee schedule policy in R9-15-201(A)(2)(d)(ii), and

iii. Sliding-fee schedule signage in R9-15-201(A)(2)(d)(iii) that is posted on the premises; and

c. If applicable, documentation that the new service site is in a HPSA or an AzMUA; and

3. The following information if changing service hours worked:

a. In a Department-provided format:

i. The name, title, e-mail address, and telephone number of a contact individual for each service site or employer; and

ii. The percentage of loan repayment funds each lender may receive if different from the initial application; and

b. A copy of an agreement or a letter verifying approval to change service hours, signed by the designee of the governing authority from the service site where the awardee provides service, including:

i. The name of each service site where the services are provided;

ii. The date the awardee is expected to begin revised services hours;

iii. The number of service hours per week the awardee is expected to work; and

iv. If an awardee will provide telemedicine, the number of telemedicine hours the awardee is expected to provide per week.

E. An awardee shall obtain the Department's approval for the following changes:

1. Except as provided in R9-15-301(C), before the awardee provides services at another service site; or

2. If awarded under Article 2 of this Chapter, before the awardee changes from full-time or half-time hours worked.

F. If applicable, if a change in service site, employer, or service hours worked affects an awardee's service site points or health service priority, the Department shall determine whether the awardee's loan repayment amount will increase or decrease, and:

1. If a loan repayment amount will increase, the awardee's loan repayment amount will not change until the awardee obtains approval to renew participation; and

2. If a loan repayment amount will decrease, the awardee's loan repayment amount will decrease according to amounts in R9-15-208 or R9-15-307, as applicable, effective on the date the Department approves the awardee's request to change service site or service hours.

G. If a change in service hours worked is from full-time to half-time, the awardee's amount of loan repayment funds allocated will decrease by half of the existing contracted loan repayment amount, effective on the date the Department approves the awardee's request to change the service hours worked.

H. If a change in service hours worked is from half-time to full-time:

1. The awardee's allocated loan repayment funds will not change until the awardee's renewal application is approved to continue participation; and

2. For an awardee who was initially allocated loan repayment funds based on providing services full-time but is currently providing services half-time, the awardee's loan repayment funds will revert to the loan repayment funds initially allocated after the Department approves the awardee's request to change back to full-time service hours.

I. For a request submitted according to subsection (C), the Department shall notify an awardee of the Department's decision according to R9-15-205 or R9-15-305, as applicable.

R9-15-107. Loan Repayment Contract Suspension

A. The Department may suspend a loan repayment contract based on unavailability of monies for the applicable loan repayment program.

B. An awardee may request an initial loan repayment contract suspension for up to six months:

1. For a condition involving the awardee or a member of the awardee's immediate family that restricts the awardee's ability to complete the terms of the loan repayment contract; or

2. To transfer to another service site or employer.

C. To request a loan repayment contract suspension, an awardee shall submit to the Department a written request, at least 30 calendar days before the proposed start date of the loan repayment contract suspension, that includes:

1. The awardee's name, home address, telephone number, and e-mail address;
2. The service site's name and street address;
3. The name, e-mail address, and telephone number of the individual authorized to act on behalf of the service site;
4. The reason for the awardee's request to suspend the loan repayment contract;
5. The beginning and ending dates of the requested loan repayment contract suspension;
6. Whether the awardee agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-205 or R9-15-305, as applicable;
7. A statement that the information included in the request for loan repayment contract suspension is true and accurate; and

8 The awardee's signature and date of signature.

D. Upon receiving a request for a loan repayment contract suspension, the Department may contact the individual in subsection (C)(3):

1. To verify the information in the request for the loan repayment contract suspension, and
2. To obtain additional information regarding the circumstances that caused the request for loan repayment contract suspension.

E. If the awardee is unable to resume providing services by the end of the initial six-month loan repayment contract suspension period, the awardee may request an additional six-months loan repayment contract suspension for a total maximum allowable loan repayment contract suspension of 12 months.

F. An awardee requesting an additional six-month loan repayment contract suspension shall submit a written request to the Department at least 30 calendar days before the expiration of the initial loan repayment contract suspension period that complies with the requirements in subsection (C).

G. During an awardee's loan repayment contract suspension period, an awardee who plans to continue to participate in a loan repayment program under this Chapter shall submit a renewal application according to R9-15-203 or R9-15-303, as applicable.

H. During an awardee's loan repayment contract suspension period, the Department shall not disburse loan repayment funds to an awardee's lender.

I. An awardee is responsible for making loan payments during the loan repayment contract suspension period.

J. If the Department approves an awardee's request for a loan repayment contract suspension due to transfer to another service site, the awardee shall report progress made in identifying another service site to the Department at least once every 30 calendar days.

K. If the awardee does not obtain employment at another service site or resume providing services by the end of the loan repayment contract suspension period, the Department shall consider that the awardee has failed to complete the terms of the loan repayment contract or does not intend to complete the terms of the loan repayment contract.

L. For a request submitted according to subsection (C) or (F), the Department shall notify an awardee of the Department's decision according to R9-15-205 or R9-15-305, as applicable.

R9-15-108. Loan Repayment Contract Cancellation

A. The Department may cancel an awardee's loan repayment contract, if the Department determines that:

1. There are insufficient funds;
2. The awardee:
   a. Except as allowed in subsection (C), has failed to complete the terms of the loan repayment contract; or
   b. Is not complying with A.R.S. Title 36, Chapter 21 and this Chapter; or
3. An awardee's service site is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter.

B. If the Department cancels an awardee's loan repayment contract according to subsection (A), the Department shall:

1. Provide written notice that includes the specific reason for the cancellation;
2. For a cancellation according to subsection (A)(2) or (3), notify the awardee of the Department's decision according to R9-15-205 or R9-15-305, as applicable; and
3. Specify whether the Department plans to impose liquidated damages according to R9-15-109.

C. An awardee may submit a written request to the Department requesting cancellation of a loan repayment contract within 60 calendar days after the start date of the loan repayment contract if:

1. No loan repayment funds have been disbursed to the awardee's lender;
2. The awardee is unable or does not intend to complete the terms of the loan repayment contract; and
3. The written request includes:
   a. The awardee's name, home address, telephone number, and e-mail address;

b. The service site's name and street address; and the name, e-mail address, and telephone number of the individual authorized to act on behalf of the service site;

c. Whether the awardee agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-205 or R9-15-305, as applicable; and

d. The awardee's signature and date of signature.

D. For a request submitted according to subsection (C), the Department shall notify an awardee of the Department's decision according to R9-15-205 or R9-15-305, as applicable.

R9-15-109. Liquidated Damages for Failure to Complete a Loan Repayment Contract

A. An awardee who fails to complete the terms of the loan repayment contract shall pay to the Department the liquidated damages owed under A.R.S. §§ 36-2172(J) or 36-2175(I), as applicable, unless the awardee receives a waiver of the liquidated damages under R9-15-110.

B. Upon receiving notification or upon the Department's determination that an awardee is unable or does not intend to complete the terms of the awardee's loan repayment contract, the Department shall:

1. Withhold loan repayment funds,
2. Determine liquidated damages owed, and
3. Notify the awardee of the amount of liquidated damages owed.

C. An awardee shall pay the liquidated damages to the Department within one year after the termination date of the awardee's loan repayment contract or within one year after the end of a loan repayment contract suspension approved according to R9-15-107, whichever is later.

R9-15-110. Waiver of Liquidated Damages

A. The Department shall waive liquidated damages owed under A.R.S. Title 36, Chapter 21 or this Chapter if the awardee is unable to complete the terms of the loan repayment contract due to the awardee's death.

B. The Department may waive liquidated damages owed under A.R.S. Title 36, Chapter 21, or this Chapter if the awardee is unable to complete the terms of the loan repayment contract because:

1. The awardee suffers from a physical or behavioral health condition, resulting in the awardee's temporary or permanent inability to perform the services required by the loan repayment contract; or
2. An individual in the awardee's immediate family has a chronic or terminal illness.

C. To request a waiver of liquidated damages, an awardee shall submit a written request to the Department containing:

1. The following information in a Department-provided format:

a. The awardee's name, home address, telephone number, and e-mail address;

b. For each service site where the awardee provided services:

i. Name and street address for the service site; and

ii. The name, title, e-mail address, and telephone number of a contact individual authorized to act on behalf of the service site;

c. A statement describing why the awardee cannot complete the loan repayment contract, including, if applicable, a description of the awardee's physical or behavioral health condition or the chronic or terminal illness of the awardee's immediate family member;

d. Whether the awardee agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-205 or R9-15-305, as applicable;

e. A statement that the information and documentation included in the request for waiver is true and accurate; and

f. The awardee's signature and date of signature; and

2. Documentation verifying the awardee's physical or behavioral health condition or the chronic or terminal illness of the awardee's immediate family member.

D. Upon receiving a request for waiver, the Department may contact the individual specified according to subsection (C)(1)(b)(ii) to verify the information in the request for waiver and to obtain any additional information regarding the request for waiver.

E. In determining whether to waive liquidated damages, the Department shall consider:

1. The physical or behavioral health condition of the awardee or the chronic or terminal illness of the awardee's immediate family member; and

2. Whether the documentation demonstrates that the awardee is permanently unable or temporarily unable to provide services during or beyond the expiration date of the loan repayment contract.

F. For a request submitted according to subsection (C), the Department shall notify an awardee of the Department's approval or disapproval according to R9-15-205 or R9-15-305, as applicable.

ARTICLE 2. PRIMARY CARE PROVIDER LOAN REPAYMENT PROGRAM

~~**R9-15-201. Qualifying Educational Loans and Restrictions**~~

~~**A.** The Department shall use loan repayment funds to pay for principal, interest, and related expenses of:~~

~~1. A qualifying educational loan taken out by a primary care provider while obtaining a degree leading to eligibility for a health professional license; or~~

~~2. A qualifying educational loan resulting from the refinancing or consolidation of loans described in subsection (A)(1).~~

~~**B.** Obligations or debts incurred under the following are ineligible for loan repayment funds:~~

~~1. A loan for which a primary care provider incurred a health professional service obligation that will not be completed before the start of the primary care provider's loan repayment program contract;~~

~~2. A loan for which the associated documentation does not identify that the loan was solely applicable to the undergraduate or graduate education of a primary care provider;~~

~~3. A primary care loan;~~

~~4. A loan subject to cancellation; or~~

~~5. A residency loan.~~

~~**C.** The following apply to a primary care provider's lenders and loans:~~

~~1. The Department shall accept loan repayment assignment to a maximum of three lenders.~~

~~2. If more than one loan is eligible for loan repayment funds, the primary care provider shall advise the Department of the percentage of the loan repayment funds that each lender identified by the primary care provider is to receive.~~

~~3. A primary care provider is responsible for the timely loan repayment of a loan.~~

~~4. A primary care provider shall arrange with each lender to make necessary changes in the payment schedule for a loan so that quarterly loan repayments will not result in default.~~

~~5. A primary care provider is responsible for paying taxes that may result from receiving loan repayment funds to reduce a qualifying educational loan amount owed to a primary care provider's lender.~~

~~**R9-15-202.**~~ **R9-15-201. Primary Care Provider and Service Site Requirements**

A. A primary care provider may request to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program:

1. If the primary care provider:

a. ~~Is a U.S. citizen~~ Meets the requirements in A.R.S. § 41-1080 or is a U.S. National according to U.S.C. Title 8, Chapter 12;

b. Has completed the final year of a course of study or program approved by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation for higher education in a health profession licensed under A.R.S. Title 32;

c. Holds a current Arizona license or certificate in a health profession licensed under A.R.S. Title 32;

d. If a physician, has completed a professional residency program and is board certified or board eligible in:

   i. Family medicine,

   ii. Internal medicine,

   iii. Pediatrics,

   iv. Geriatrics,

   v. Obstetrics-gynecology, or

   vi. Psychiatry;

e. Except for a pharmacist or a behavioral health care provider providing primary care services at a free-clinic, Indian Health Service or tribal facility, or a federal prison or state prison, agrees to comply with the requirements for a sliding-fee schedule according to 9 A.A.C. 1, Article 5;

f. Except for a primary care provider providing primary care services at a free-clinic, Indian Health Service or tribal facility, or a federal prison or state prison, agrees to charge for primary care services at the usual and customary fees prevailing in the primary care area, except that:

   i. A patient unable to pay the usual and customary fees is not charged or is charged a reduced fee, according to the service site's or employer's sliding-fee schedule required in subsection (A)(2)(d), or a fee less than the sliding-fee schedule~~, or not charged~~; and

   ii. A medically uninsured individual from a family unit with an annual income at or below 200% of the poverty level is charged according to a sliding-fee schedule required in subsection (A)(2)(d) or not charged;

g. Who provides ~~Provides~~ services at a critical access hospital with a separate qualifying service site, agrees to provide:

   i. At least 16 hours of service per week at the critical access hospital, and

   ii. At least 24 hours of primary care services per week at the qualifying service site;

h. Agrees not to discriminate on the basis of a patient's ability to pay or a payment source, including Medicare, AHCCCS, or a qualifying health plan;

i. Agrees to accept assignment for payment under: ~~Medicare if providing primary care services to adults, AHCCCS, and a qualifying health plan; and~~

i. Medicare, if providing primary care services to adults;

ii. Children's Health Insurance Program (KidsCare), established under A.R.S. § 36-2982, if providing primary care services to children;

iii. AHCCCS; and

iv. A qualifying health plan; and

j. Has satisfied any other health professional service obligation owed under a contract with a federal, state, or local government before beginning a period of service under the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, as applicable; and

2. If the primary care provider's service site:

a. ~~Provides primary care services in~~ Is either a:

i. ~~Public or non-profit service site as allowed in A.R.S. § 36-2172~~ Service site that meets the requirements in A.R.S. § 36-2172(B)(2), or

ii. Private practice service site as allowed in A.R.S. § 36-2174;

b. Except for a free-clinic or Indian Health Service or tribal facility, accepts assignment for payment under ~~Medicare if providing primary care services to adults, AHCCCS, and a qualifying health plan;~~:

i. Medicare, if providing primary care services to adults;

ii. Children's Health Insurance Program (KidsCare), established under A.R.S. § 36-2982, if providing primary care services to children;

iii. AHCCCS; and

iv. A qualifying health plan;

c. Except for a free-clinic or Indian Health Service or tribal facility, is an AHCCCS provider;

d. Except for a free-clinic, Indian Health Service or tribal facility, or a federal prison or state prison:

i. Submits a sliding-fee schedule according to 9 A.A.C. 1, Article 5, to the Department for approval;

ii. Develops and implements a policy for the service site's sliding-fee schedule; and

iii. Ensures that signage, informing individuals that the service site has a sliding-fee schedule, is conspicuously posted in the service site's reception area;

e. Except for a free-clinic, Indian Health Service or tribal facility, or a federal prison or state prison, charges for primary care services at the usual and customary fees prevailing in the primary care area, ~~shall have~~ and has a policy providing that:

i. A patient who is unable to pay the usual and customary fee is:

(1) Charged a reduced fee according to the service site's sliding-fee schedule in subsection (A)(2)(d),

(2) Charged a fee less than the sliding-fee schedule, or

(3) Not charged; and

ii. A medically uninsured individual from a family unit with an annual income at or below 200% of the poverty level is charged according to the service site's sliding-fee schedule in subsection (A)(2)(d) or not charged;

f. Is a free-clinic, ~~develop and implement~~ develops and implements a policy that the free-clinic provides primary care services to individuals at no charge;

g. Does not discriminate on the basis of a patient's ability to pay or a payment source, including Medicare, AHCCCS, or a qualifying health plan; and

h. Agrees to notify the Department when the employment status of the primary care provider changes.

B. A primary care provider may not participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, as applicable, if the primary care provider:

1. Has a judgment lien against the primary care provider's property for a debt owed to a federal agency;

2. Is applying to participate in the Primary Care Provider ~~LRP~~ Loan Repayment Program and:

a. Has defaulted on:

i. A Federal income tax liability,

ii. Any federally-guaranteed or insured student loan or home mortgage loan,

iii. A Federal Health Education Assistance Loan,

iv. A Federal Nursing Student Loan, or

v. A Federal Housing Authority Loan; or

b. Is delinquent on payment for:

i. Court-ordered child support, or

ii. State taxes; or

3. Is applying to participate in the Rural Private Primary Care Provider ~~LRP~~ Loan Repayment Program and is delinquent on payment for:

a. State taxes, or

b. Court-ordered child support.

~~R9-15-203.~~ R9-15-202. Initial Application

A. ~~To~~ Except as provided in R9-15-203(A), to apply to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, a primary care provider who has not previously participated in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program shall submit an initial application to the Department by June 1 of each year.

~~**B.** A primary care provider, who submitted an initial application to the Department according to subsection (A) but was not approved to participate in the LRP during the June allocation process according to subsection (H) or because loan repayment funds were not available, may reapply during the October allocation process of the same calendar year by submitting a supplemental initial application by October 1.~~

~~**C.**~~**B.** A primary care provider applying to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program shall submit to the Department an initial application containing:

1. The following information in a Department-provided format:

a. The primary care provider's:

i. Name, home address, telephone number, and e-mail address;

ii. Social Security number; and

iii. Date of birth;

b. The name, street address, e-mail address, and telephone number of the ~~prospective~~ employer or prospective employer where the primary care provider provides or will provide primary care services while participating in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, including the dates that the primary care provider is expected to start and end providing primary care services;

c. The name, street address, and telephone number for each place of employment with a health professional or a health care institution, including a name, title,

e-mail address, and telephone number of a contact individual for the place of employment;

d. Type of license and, if applicable, certification held by the primary care provider;

e. Type of medical, dental, or behavioral health specialty or subspecialty, if applicable;

f. If an advanced practice provider, a behavioral health care provider, or a pharmacist, whether the primary care provider holds national certification;

g. Whether the primary care provider will provide primary care services full-time or half-time;

h. Whether the primary care provider is an Arizona resident;

i. Whether the primary care provider has any health professional service obligation;

j. Whether the primary care provider has defaulted in a health professional service obligation and, if so, a description of the circumstances of the default;

k. Whether the primary care provider is subject to a judgment lien for a debt to a federal agency and, if so, a description of the circumstances of the default;

l. If applying to participate in the Primary Care Provider ~~LRP~~ Loan Repayment Program, whether the primary care provider:

   i. Has defaulted on:

      (1) A Federal income tax liability,

      (2) Any federally-guaranteed or insured student loan or home mortgage loan,

      (3) A Federal Health Education Assistance Loan,

      (4) A Federal Nursing Student Loan, or

      (5) A Federal Housing Authority Loan; or

   ii. Is delinquent on:

      (1) A payment for court-ordered child support, or

      (2) A payment for state taxes; or

m. If applying to participate in the Rural Private Primary Care Provider ~~LRP~~ Loan Repayment Program, whether the primary care provider is delinquent on payment for:

   i. State taxes, or

   ii. Court-ordered child support;

n. Whether the primary care provider has experience providing primary care services to a medically underserved population;

o. Whether the primary care provider is providing services at a critical access hospital and primary care services at a service site according to ~~R9-15-202(A)(1)(g)~~ R9-15-201(A)(1)(g);

p. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in ~~R9-15-206~~ R9-15-205;

q. An attestation that:

i. The Department is authorized to verify all information provided in the initial application;

ii. The primary care provider is applying to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable, for two years with the State of Arizona for loan repayment of all or part of qualifying educational loans identified in the initial application;

iii. The qualifying educational loans identified in the initial application were for the costs of health professional education, including reasonable educational expenses and reasonable living expenses, and do not reflect a loan for other purposes;

iv. The primary care provider will charge fees for primary care services according to the sliding-fee schedule in ~~R9-15-202(A)(1)(f)~~ R9-15-201(A)(1)(f); and

v. The information and documentation submitted as part of the initial application is true and accurate; and

r. The primary care provider's signature and date of signature.

2. ~~One of the following as proof of U.S. citizenship:~~ Documentation that meets the requirements in A.R.S. § 41-1080;

~~a. U.S. passport, current or expired;~~

~~b. Birth certificate;~~

~~c. Naturalization documents; or~~

~~d. Documentation as a U.S. National;~~

3. A copy of the primary care provider's Social Security card;

4. A copy of the primary care provider's current driver's license;

5. Documentation showing Arizona residency according to A.R.S. § 15-1802;

6. Documentation showing completion of graduate studies issued by an accredited educational agency;
7. A copy of the primary care provider's current Arizona licenses or, if applicable, certificates in a health profession licensed under A.R.S. Title 32;
8. If a physician, documentation showing the physician:
    a. Has completed:
        i. A professional residency program in family medicine, pediatrics, obstetrics-gynecology, internal medicine, or psychiatry; or
        ii. A fellowship, residency, or certification program in geriatrics; and
    b. Is either board certified or board eligible in:
        i. Family medicine,
        ii. Internal medicine,
        iii. Pediatrics,
        iv. Geriatrics,
        v. Obstetrics-gynecology, or
        vi. Psychiatry;
9. If the primary care provider is a physician assistant practicing as a behavioral health care provider, a copy of the primary care provider's national certificate issued by the National Commission on Certification of Physician Assistants in Psychiatry;
10. For a primary care provider who has completed health service experience to a medically underserved population, a written statement for each service site where the primary care provider provided primary care services that includes:
    a. The service site's name, street address, e-mail address, and telephone number;
    b. The number of clock hours completed;
    c. A description of the primary care services provided;
    d. The primary care service start and end dates;
    e. The service site's federal or state designation as medically underserved or as a HPSA ~~designated by a federal agency~~; and
    f. The name and signature of an individual authorized by the ~~government~~ governmental agency, the accredited educational institution, or the non-profit organization and the date signed;
11. If applicable, documentation showing that the primary care provider's health professional service obligation owed under contract with a federal, state, or local government or another entity will be completed before beginning a period of primary care services under

the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable;

12. For each qualifying educational loan:
    a. The following information provided in a Department-provided format:
        i. The lender's name, street address, e-mail address, and telephone number;
        ii. The street address where the loan repayment funds are sent;
        iii. The loan identification number;
        iv. The original date of the loan;
        v. The primary care provider's name as it appears on the loan contract;
        vi. The original loan amount;
        vii. The current balance of the loan, including the date provided;
        viii. The interest rate on the loan;
        ix. The purpose for the loan;
        x. The month and year of the start and the end of the academic period covered by the loan; and
        xi. The percentage of the loan repayment funds the primary care provider establishes for a lender if more than one lender is receiving loan repayment funds;
    b. A copy of the most recent billing statement from the lender; and
    c. Documentation from the lender or the National Student Loan Data System established by the U.S. Department of Education verifying that the loan is a qualifying educational loan;
13. For each service site where a primary care provider will provide primary care services, a copy of a contract, a letter verifying employment, or a letter of intent to hire signed by the primary care provider and the ~~licensee, licensee's designee, or a tribal~~ designee of the governing authority from the service site where the primary care provider will provide primary care services including:
    a. The name, street address, e-mail address, and telephone number of the service site;
    b. The name of a contact individual for the service site;
    c. Whether the primary care provider is providing primary care services full-time or half-time; and
    d. If currently employed, the employment start date;

14. If more than one service site ~~licensee or tribal~~ governing authority is identified in subsection ~~(C)(13)~~ (B)(1)(b), the signature and date of signature of ~~each service site licensee, licensee's designee, or tribal~~ the designee of the governing authority of each service site on the document provided according to subsection (C)(13);

15. For each service site where the primary care provider will provide primary care services, documentation, in a Department-provided format, that includes:

    a. Name, street address, telephone number, e-mail address, and fax number of the service site;

    b. Whether the primary care provider is providing primary care services full-time or half-time;

    c. The number of primary care service hours per week the primary care provider is expected to provide;

    d. The dates that the primary care provider is expected to start and end providing primary care services;

    e. If a primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide;

    f. Service site practice type;

    g. Whether the service site ~~is~~:

        i. ~~Public or non-profit service site as allowed in A.R.S. § 36-2172~~ Complies with the requirements in A.R.S. § 36-2172(B)(2), or

        ii. ~~Private~~ Is a private practice service site according to A.R.S. § 36-2174;

    h. Except for a free-clinic or Indian Health Service or tribal facility, whether the service site accepts Medicare, AHCCCS, and a qualifying health plan;

    i. Except for a free-clinic or Indian Health Service or tribal facility, if the service site accepts:

        i. Medicare, the service site's Medicare identification number;

        ii. AHCCCS, the service site's AHCCCS provider number; and

        iii. Qualifying health plan, the service site's qualifying health plan provider number;

    j. Distance from the nearest sliding-fee schedule clinic having the same practice type;

    k. Documentation of a service site's HPSA designation and HPSA score, dated within 30 calendar days before the initial application submission date;

l. Documentation of the primary care services provided by the service site during the past 24 months including the:

i. Number of encounters,

ii. Number of AHCCCS encounters,

iii. Number of Medicare encounters,

iv. Number of self-pay encounters on sliding-fee schedule, and

v. Number of encounters free-of-charge; and

m. The name, title, e-mail address, and telephone number of a contact individual for the service site;

16. An attestation, including ~~the service site licensee, licensee's designee, or tribal authority's signature~~ the signature of the designee of the governing authority of the service site and date of signature, that the service site shall comply with the requirements in ~~R9-15-202~~ R9-15-201, including agreeing to notify the Department when the employment status of the primary care provider changes;

17. If the primary care provider will provide services at a critical access hospital according to ~~R9-15-202(A)(1)(g)~~ R9-15-201(A)(1)(g), documentation in a Department-provided format that includes the:

a. Name, street address, telephone number, e-mail address, and fax number of the critical access hospital;

b. Number of service hours per week that the primary care provider is expected to provide at the critical access hospital;

c. Name, title, e-mail address, and telephone number of a contact individual for the critical access hospital;

18. Except for a free-clinic, Indian Health Service or tribal facility, or federal prison or state prison, a copy of the service site's:

a. Sliding-fee schedule in ~~R9-15-202(A)(2)(d)(i)~~ R9-15-201(A)(2)(d)(i),

b. Sliding-fee schedule policy in ~~R9-15-202(A)(2)(d)(ii)~~ R9-15-201(A)(2)(d)(ii),

c. Sliding-fee schedule signage in ~~R9-15-202(A)(2)(d)(iii)~~ R9-15-201(A)(2)(d)(iii) posted on the premises;

19. If the service site is a free-clinic, a copy of the policy in ~~R9-15-202(A)(2)(f)~~ R9-15-201(A)(2)(f) that the free-clinic provides primary care services to individuals at no charge; ~~and~~

20. If the primary care provider's employer is not the ~~licensee or tribal~~ governing authority of the service site identified in subsection ~~(C)(13)~~ (B)(13), documentation in a Department-provided format that includes:

a. An attestation that the employer will comply with the requirements required in ~~R9-15-202(A)(2)~~ R9-15-201(A)(2), including agreeing to notify the Department when the employment status of the primary care provider changes;

b. The name, title, e-mail address, and telephone number of a contact individual for the employer;

c. Whether the employer ~~is a~~:

i. ~~Public or non-profit service site as allowed in A.R.S. § 36-2172~~ Complies with the requirements in A.R.S. § 36-2172(B)(2), or

ii. ~~Private~~ Is a private practice service site in A.R.S. § 36-2174;

d. Whether the primary care provider is or will be providing primary care services full-time or half-time;

e. The dates that the primary care provider is expected to start and end providing primary care services; and

f. The employer's signature and date of signature; and

21. If more than one ~~service site licensee, tribal authority, or~~ employer is identified in subsection ~~(C)(20)~~ (B)(20), the signature and date of signature of ~~each service site licensee, tribal authority, or employer~~ the designee of the employer of each service site.

~~D.~~C. ~~If documentation of an existing health professional service obligation owed under contract, required in subsection (C)(11) was included in the initial application, after completing the obligation, a primary care provider shall submit before the start of the primary care provider's loan repayment contract with the Department documentation demonstrating that the obligation was completed.~~ If the primary care provider provided documentation of an existing health professional service obligation under subsection (B)(11), the applicant shall submit to the Department documentation demonstrating the completion of the health professional service obligation before the start of the primary care provider's loan repayment contract with the Department.

~~E.~~ ~~A primary care provider shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided by the primary care provider.~~

~~F.~~D. The Department shall accept an initial application no more than 45 calendar days before the initial application submission date required in subsection (A) ~~and (B)~~.

~~G.~~**E.** If the Department receives an initial application from a primary care provider at a time other than the time stated in subsection (A) ~~and (B)~~, the Department shall return the initial application to the primary care provider.

~~H.~~**F.** The Department shall not approve a primary care provider's initial application during a June allocation process if:

1. The primary care provider's service site employs two other primary care providers approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable, during the June allocation process, or
2. The primary care provider's employer employs four other primary care providers approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable, during the June allocation process.

~~I.~~**G.** The Department shall review a primary care provider's initial application according to ~~R9-15-206~~ R9-15-205.

~~**R9-15-205.**~~ **R9-15-203. Renewal Application**

A. A primary care provider who is expected to complete the initial two years of participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program in the 12 months after April 1, and whose service site has a HPSA score of 14 or more may request to continue participation by submitting a renewal application to the Department by April 1 of each year.

B. To continue or resume participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, the following primary care providers may submit to the Department by October 1 of each year:

1. A renewal application:
   a. A primary care provider who has a HPSA score of less than 14 and has completed or will complete the initial two years of participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program before the end of the calendar year; or
   b. A primary care provider who participated in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program during the current calendar year and who has completed or will complete three or more years of participation in the ~~LRP~~ Primary Care

Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program before the end of the calendar year; or

2. The initial application in ~~R9-15-203(C)~~ R9-15-202(C):
   a. A primary care provider who previously participated in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, completed the first two years of participation in the ~~LRP~~ loan repayment program, and is applying to resume participation; or
   b. A primary care provider who was previously denied approval to renew participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program because loan repayment funds were not available.

C. A primary care provider applying to continue participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable, for an additional year shall submit a renewal application in a Department-provided format to the Department containing:

1. The primary care provider's:
   a. Name, home address, telephone number, and e-mail address; and
   b. Existing loan repayment contract number;
2. The name of each service site where the primary care provider provides primary care services, including street address, telephone number, e-mail address, and fax number;
3. Except for a request for change according to ~~R9-15-211~~ R9-15-106, list any changes that may affect the primary care provider's health service priority in ~~R9-15-207~~ R9-15-206 or ~~R9-15-208~~ R9-15-207, as applicable;
4. For each lender receiving loan repayment funds according to the initial application or ~~R9-15-211~~ R9-15-106, the:
   a. Lender's name, street address, e-mail address, and telephone number;
   b. Street address where the loan repayment funds are sent;
   c. Loan identification number;
   d. If different from the initial application, the percentage of the loan repayment funds that the primary care provider wants a lender to receive;
   e. Current loan balance, including date provided; and
   f. Whether the primary care provider requests to continue loan repayment to the lender;
5. If the primary care provider wants to add a qualifying educational loan:

a. The lender's name, street address, e-mail address, and telephone number;

b. The street address where the loan repayment funds are sent;

c. The loan identification number;

d. The original date of the loan;

e. The primary care provider's name as it appears on the loan contract;

f. The original loan amount;

g. The current balance of the loan, including the date provided;

h. The interest rate on the loan;

i. The purpose for the loan;

j. The month and year of the start and the end of the academic period covered by the loan; and

k. If more than one lender is receiving loan repayment funds, the primary care provider shall advise the Department of the percentage of the loan repayment funds that each lender is identified by the primary care provider to receive;

6. For each qualifying educational loan, a copy of the most recent billing statement from the lender;

7. For any qualifying educational loan identified in subsection (C)(5), documentation from the lender or the National Student Loan Data System established by the U.S. Department of Education verifying that the loan is a qualifying educational loan;

8. Whether the primary care provider is subject to a judgment lien for a debt to a federal agency;

9. If applying to participate in the Primary Care Provider ~~LRP~~ Loan Repayment Program, whether the primary care provider:

a. Has defaulted on:

i. A Federal income tax liability,

ii. Any federally-guaranteed or insured student or home mortgage loan,

iii. A Federal Health Education Assistance Loan,

iv. A Federal Nursing Student Loan, or

v. A Federal Housing Authority Loan; or

b. Is delinquent on:

i. A payment for court-ordered child support, or

ii. A payment for state taxes; or

10. If applying to participate in the Rural Private Primary Care Provider ~~LRP~~ Loan Repayment Program, whether the primary care provider is delinquent on payment for state taxes or court-ordered child support;
11. Whether the primary care provider is providing services at a critical access hospital and primary care services at a service site according to ~~R9-15-202(A)(1)(g)~~ R9-15-201(A)(1)(g);
12. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in ~~R9-15-206~~ R9-15-205;
13. An attestation that:
    a. Except for the circumstances listed in subsection (C)(3), the information in the initial application, other than loan balances and requested repayment amounts, is still current;
    b. The Department is authorized to verify all information provided in the renewal application;
    c. The primary care provider is applying to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable, for an additional year for loan repayment of all or part of the qualifying educational loans identified in the renewal application;
    d. The primary care provider will charge fees for primary care services established in the sliding-fee schedule according to ~~R9-15-202~~ R9-15-201(A)(2)(d); and
    e. The information and documentation submitted as part of the renewal application is true and accurate;
14. The primary care provider's signature and date of signature;
15. For each service site where a primary care provider provides primary care services, documentation, in a Department-provided format, that includes:
    a. A statement signed by the ~~licensee, licensee's designee, or tribal authority from the service site~~ designee of the governing authority of the service site where the primary care provider provides primary care services that the primary care provider's employment is extended at least for an additional year;
    b. The date the primary care provider is expected to end providing primary care services;

c. Whether the primary care provider is providing primary care services full-time or half-time;

d. The number of primary care service hours per week the primary care provider is expected to provide;

e. Documentation of primary care services provided during the past 12 months including the:

i. Number of encounters,

ii. Number of AHCCCS encounters,

iii. Number of Medicare encounters,

iv. Number of self-pay encounters on sliding-fee schedule, and

iv. Number of encounters free-of-charge;

f. If the primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide;

g. An attestation that the service site will comply with the requirements in ~~R9-15-202~~ R9-15-201, including agreeing to notify the Department when the employment status of the primary care provider changes;

h. The name, title, e-mail address, and telephone number of a contact individual for the service site; and

i. The ~~service site's~~ signature of the designee of the governing authority of the service site and date of signature;

16. If a primary care provider provides services at a critical access hospital according to ~~R9-15-202(A)(1)(g)~~ R9-15-201(A)(1)(g), documentation in a Department-provided format that includes the:

a. Name, street address, telephone number, e-mail address, and fax number of the critical access hospital;

b. Number of service hours per week that the primary care provider is expected to provide at the critical access hospital; and

c. Name, title, e-mail address, and telephone number of a contact individual for the critical access hospital;

17. If the primary care provider's employer is not the ~~licensee or tribal~~ governing authority of the service site identified in subsection (C)(15), documentation in a Department-provided format, that includes:

a. A statement that the employer will extend the primary care provider's employment for at least an additional year;

b. The date the primary care provider is expected to end providing primary care services at the service site;

c. Whether the primary care provider is providing primary care services full-time or half-time;

d. The number of primary care service hours per week the primary care provider is expected to provide;

e. If the primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide;

f. An attestation that the employer will comply with the requirements in ~~R9-15-202~~ R9-15-201, including agreeing to notify the Department when the employment status of the primary care provider changes;

g. The name, title, e-mail address, and telephone number of a contact individual for the employer; and

h. The employer's signature and date of signature; and

18. If more than one ~~licensee, tribal authority, or~~ employer is identified in subsection ~~(C)(15) or (16)~~ (C)(17), the signature and date of signature of the designee of each ~~service site licensee, tribal authority, or~~ employer.

D. In addition to the information required in subsection (C), a primary care provider submitting a renewal application shall include the following documentation:

1. Except for a free-clinic, Indian Health Service or tribal facility, or federal prison or state prison, for each service site where the primary care provider provides or will provide primary care services:

   a. A copy of the sliding-fee schedule in ~~R9-15-202(A)(2)(d)(i)~~ R9-15-201(A)(2)(d)(i),

   b. A copy of the sliding-fee schedule policy in ~~R9-15-202(A)(2)(d)(ii)~~ R9-15-201(A)(2)(d)(ii), and

   c. A copy of the service site's sliding-fee schedule signage in ~~R9-15-202(A)(2)(d)(iii)~~ R9-15-201(A)(2)(d)(iii), posted on the premises;

2. If a free-clinic, a copy of the policy in ~~R9-15-202(A)(2)(f)~~ R9-15-201(A)(2)(f) that the free-clinic provides primary care services to individuals at no charge; and

3. Documentation of a service site's HPSA designation and HPSA score, dated within 30 calendar days before the renewal application submission date~~; and~~.

~~4. For each lender receiving loan repayment funds, a copy of the most recent billing statement.~~

E. A primary care provider shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided by the primary care provider.

F. The Department shall accept a renewal application no more than 30 calendar days before the renewal application submission date required in subsection (A) or (B).

G. If the Department receives a renewal application at a time other than the time stated in subsection (A) or (B), the Department shall return the renewal application to the primary care provider that submitted the renewal application.

H. The Department shall review a primary care provider's renewal application according to ~~R9-15-206~~ R9-15-205.

R9-15-204. Supplemental Initial Application

A. If a primary care provider submits an initial application to the Department according to ~~R9-15-203~~ R9-15-202 and is not approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable, during the initial application allocation process, the primary care provider may reapply ~~for participation during the October allocation process of the same calendar year by submitting a supplemental initial application by October 1~~ during the October allocation process by submitting a supplemental initial application according to subsection (B) by October 1 of the same calendar year.

B. A primary care provider reapplying for an October allocation process according to ~~R9-15-203(B)~~ R9-15-202(A) shall submit a supplemental initial application in a Department-provided format to the Department that contains:

1. The primary care provider's name, home address, telephone number, and e-mail address;
2. The primary care provider's attestation that:
    a. The Department is authorized to verify all information provided in the supplemental initial application;
    b. The primary care provider is applying to participate in either the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program for two years for loan repayment of all or part of qualifying educational loans identified in the initial application;
    c. The initial application submitted prior to the October allocation process of the same calendar year is still accurate, except for loan or lender information;
    d. The primary care provider will charge fees for primary care services according to ~~R9-15-202~~ R9-15-201(A)(2)(d);

e. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in ~~R9-15-206~~ R9-15-205;

f. The information and documentation submitted as part of the supplemental initial application is true and accurate; and

g. The primary care provider's signature and date of signature;

3. For each primary care provider lender, the following:

a. The lender's name, street address, e-mail address, and telephone number;

b. The loan identification number; and

c. The loan balance including principal and interest;

4. An attestation from the ~~service site's licensee, licensee's designee, or tribal authority~~ designee of the governing authority of the service site that includes:

a. Name, street address, telephone number, e-mail address, and fax number of the service site;

b. Whether the service site ~~is~~:

i. ~~Public or non-profit service site as allowed in A.R.S. § 36-2172~~ Complies with the requirements in A.R.S. § 36-2172(B)(2), or

ii. ~~Private~~ Is a private practice service site in A.R.S. § 36-2174;

c. The service site provider agrees to comply with the requirements in ~~R9-15-202~~ R9-15-201, including agreeing to notify the Department when the employment status of the primary care provider changes;

d. Whether the primary care provider is providing primary care services full-time or half-time;

e. The dates that the primary care provider is ~~excepted~~ expected to start and end providing primary care services;

f. The name, title, e-mail address, and telephone number of a contact individual for the service site;

g. The information submitted as part of the supplemental initial application is true and accurate; and

h. ~~The service site's licensee, licensee's designee, or tribal authority signature~~ The signature of the designee of the governing authority of the service site and date of signature; ~~and~~

5. If the primary care provider's employer is not the ~~licensee or tribal~~ governing authority of the service site identified in subsection (B)(4), an attestation from the employer that includes:
   a. The name, title, e-mail address, and telephone number of a contact individual for the employer;
   b. Whether the employer ~~is~~:
      i. ~~Public or non-profit service site as allowed in A.R.S. § 36-2172~~ Complies with the requirements in A.R.S. § 36-2172(B)(2), or
      ii. ~~Private~~ Is a private practice service site according to A.R.S. § 36-2174;
   c. Whether the primary care provider is providing primary care services full-time or half-time;
   d. The dates that the primary care provider is expected to start and end providing primary care services;
   e. An attestation that the employer will comply with the requirements in ~~R9-15-202~~ R9-15-201, including agreeing to notify the Department when the employment status of the primary care provider changes;
   f. The information submitted as part of the supplemental initial application is true and accurate; and
   g. The employer's signature and date of signature~~.~~;
6. A copy of the most recent billing statement for the loans listed on the initial application; and
7. Documentation of a service site's HPSA designation and HPSA score dated within 30 calendar days before the supplemental initial application submission date.

C. If more than one service site ~~licensee, tribal authority, or employer~~ governing authority is identified in subsection (B)(4) ~~or (5)~~, the signature and date of signature of the designee of the governing authority of each service site ~~of each service site licensee, tribal authority, or employer~~.

D. The Department shall accept a supplemental initial application no more than 30 calendar days before the ~~renewal~~ supplemental initial application submission date required in subsection (A) ~~or (B)~~.

E. The Department shall review a primary care provider's supplemental initial application according to ~~R9-15-206~~ R9-15-205.

~~R9-15-206.~~ R9-15-205. Time-frames

A. The overall time-frame begins, for:

1. An initial application, on the date established as the deadline for submission of an initial application in ~~R9-15-203~~ R9-15-202(A);
2. ~~A supplemental initial application, on the date established as the deadline for submission of a supplemental initial application in R9-15-204~~ A renewal application, on the date established as the deadline for submission of a renewal application in R9-15-203(A) or (B);
3. ~~A renewal application, on the date established as the deadline for submission of a renewal application in R9-15-205~~ A supplemental initial application, on the date established as the deadline for submission of a supplemental initial application in R9-15-204(A); or
4. A request to add or transfer to another service site or employer, add or change a lender, add or change a qualifying educational loan, change hours worked, suspend or cancel a loan repayment contract, or waive liquidated damages, on the date the request is received by the Department.

B. Within the administrative completeness review time-frame for each type of approval in Table 2.1, the Department shall:

1. Provide a notice of administrative completeness to a primary care provider; or
2. Provide a notice of deficiencies to a primary care provider, including a list of the missing information or documents.

C. If the Department provides a notice of deficiencies to a primary care provider:

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 primary care provider;
2. If the primary care provider submits the missing information or documents to the Department within the time-frame in Table 2.1, the substantive review time-frame begins on the date the Department receives the missing information or documents; and
3. If the primary care provider does not submit the missing information or documents to the Department within the time-frame in Table 2.1, the Department shall consider the application withdrawn.

D. Within the substantive review time-frame for each type of approval in Table 2.1, the Department:

1. Shall approve or deny a primary care provider's request;
2. May make a written comprehensive request for additional information or documentation; and

3. May make supplement requests, if the primary care provider agrees to allow the Department to submit supplemental requests for additional information and documentation.

E. If the Department provides a written comprehensive request for additional information or documentation to the primary care provider:

1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request until the date the Department receives the information and documents requested; and
2. The primary care provider shall submit to the Department the information and documents listed in the written comprehensive request within 10 working days after the date of the written comprehensive request.

F. During the substantive review time-frame the Department shall, for each initial, supplemental initial, or renewal application that the Department determines is complete and demonstrates that the primary care provider and service site comply with the requirements in A.R.S. Title 36, Chapter 21 and this Article, by 60 calendar days after the application submission date established in this Article, determine a:

1. Health service priority according to ~~R9-15-207 or R9-15-208~~ R9-15-206 or R9-15-207, as applicable~~;~~; and
2. Highest HPSA score according to ~~R9-15-207(B)(2) or R9-15-208(B)(1) or (B)(2)~~ R9-15-206(B)(2) or R9-15-207(B)(1) or (B)(2), as applicable.

G. The Department shall issue:

1. An approval for a primary care provider to participate in the:
    a. Primary Care Provider Loan Repayment Program in A.R.S. § 36-2172 when:
        i. The primary care provider and the primary care provider's service site complies with the requirements in A.R.S. Title 36, Chapter 21, and this Article; and
        ii. The primary care provider has a health care priority according to ~~R9-15-207~~ R9-15-206 that makes the primary care provider eligible for available loan repayment funds according to ~~R9-15-202~~ R9-15-201; or
    b. Rural Private Primary Care Provider Loan Repayment Program in A.R.S. § 36-2174 when:
        i. The primary care provider and the primary care provider's service site complies with the requirements in A.R.S. Title 36, Chapter 21, and this Article; and

ii. The primary care provider has a health care priority according to ~~R9-15-208~~ R9-15-207 that makes the primary care provider eligible for loan repayment funds according to ~~R9-15-202~~ R9-15-201; or

2. A denial to a primary care provider, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:

a. The primary care provider does not submit all of the information and documentation listed in a written comprehensive request for additional information and documentation;

b. The Department determines that the primary care provider or the primary care provider's service site does not comply with the requirements in A.R.S. Title 36, Chapter 21, and this Article; or

c. The Department determines that the primary care provider and the primary care provider's service site comply with the requirements in A.R.S. Title 36, Chapter 21, and this Article, but:

i. There are no loan repayment funds available for the primary care provider;

ii. For an initial application, the primary care provider's employer employs four other primary care providers approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable; or

iii. For an initial application, the primary care provider's service site employs two other primary care providers approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, as applicable.

H. If the Department issues a denial based on the determination in subsection (G)(2)(c), the Department shall include in the denial, a notice that, depending on the availability of loan repayment funds, the primary care provider may submit a supplemental initial application for approval to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program during the October allocation process of the same calendar year, as specified in R9-15-204(A).

I. If the Department approves a primary care provider's initial application according to subsection (G)(1) for participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program, the primary care provider is approved to participate for two years.

J. The Department shall determine the effective date of a loan repayment contract after receiving acceptance from a primary care provider following the Department's notice of approval in subsection (G)(1).

Table 2.1. Time-frames (in calendar days)

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for an applicant to complete an application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)
Initial application	~~R9-15-203~~ R9-15-202	45	20	15	30
~~Supplemental initial application~~ Renewal application	~~R9-15-204~~ R9-15-203	45	10	15	30
~~Renewal application~~ Supplemental application	~~R9-15-205~~ R9-15-204	45	10	15	30
Request for Change	~~R9-15-211~~ R9-15-106	15		5	10
Request to suspend a loan repayment contract	~~R9-15-212~~ R9-15-107	15		5	10
Request to waive liquidated damages	~~R9-15-214~~ R9-15-110	15		5	10
Request to cancel a loan repayment contract	~~R9-15-215~~ R9-15-108	15		5	10

~~R9-15-207.~~ R9-15-206. Primary Care Provider Health Service Priority

A. For a primary care provider providing primary care services at multiple service sites, the Department shall determine the health service priority points in subsection (B)(1) through (6) for each service site and:

1. If the number of primary care service hours worked at one service site is more than 50 percent of the primary care provider's total number of primary care service hours worked,

the Department shall use that service site's points to determine an initial application or a renewal application health service priority; or

2. If the number of primary care service hours worked at one service site is not more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use the average of all service sites' points to determine an initial application or a renewal application health service priority.

B. The Department shall review an initial application or a renewal application and assign points based on the following factors to determine the initial application or renewal application health service priority:

1. The service site is located in a rural area:
   a. Yes = 10 points, or
   b. No = 0 points;
2. The service site's highest geographic, facility, or population HPSA score, consistent with subsection (A), assigned by the U.S. Secretary of Health and Human Services for the area in which the service site is located according to the documentation provided by the primary care provider;
3. The service site's percentage of the total encounters reported according to ~~R9-15-203(C)(15)(l) or R9-15-205 (C)(15)(e)~~ R9-15-202(B)(15)(l) or R9-15-203(C)(15)(e) that are AHCCCS, Medicare, approved sliding-fee schedule, and free-of-charge encounters:

Percentage	Points
Greater than 50%	10,
35-50%	8,
26-34%	6,
11-25%	4, or
Less than 10%	2;

4. Except for a service site at a federal prison or state prison, if:
   a. A medical primary care provider, including a pharmacist, and the distance from the primary care provider's service site to the next service site that provides medical services and offers reduced primary care services fees according to an approved sliding-fee schedule is:

Miles	Points
Greater than 25	4, or
Less than 25	0;

b. A dental primary care provider and the distance from the primary care provider's service site to the next service site that provides dental services and offers reduced primary care services fees according to an approved sliding-fee schedule is:

Miles	Points
Greater than 25	4, or
Less than 25	0; and

c. A behavioral health primary care provider and the distance from the primary care provider's service site to the next service site that provides behavioral health services and offers reduced primary care services fees according to an approved sliding-fee schedule is:

Miles	Points
Greater than 25	4, or
Less than 25	0;

5. For an initial application only, the primary care provider is newly employed at the service site or by the employer:
   a. Yes = 2 points, or
   b. No = 0 points;
6. The primary care provider only provides primary care services when the primary care provider and the patient are physically present at the same location:
   a. Yes = 4 points, or
   b. No = 0 points;
7. The primary care provider is a resident of Arizona according to A.R.S. § 15-1802:
   a. Yes = 4 points, or
   b. No = 0 point;
8. The primary care provider is a graduate of an Arizona graduate educational institution:
   a. Yes = 4 points, or
   b. No = 0 point;
9. For an initial application only, the primary care provider has experience providing primary care services to a medically underserved population:
   a. Yes = 4 points, or
   b. No = 0 point; and
10. The primary care provider is providing or agrees to provide primary care services full-time:

a. Yes = 3 points, or

b. No = 0 points.

C. To determine a service site's highest HPSA score, the Department shall apply the following HPSA designations:

1. A Primary Medical Care HPSA score if a primary care provider provides medical or pharmaceutical primary care services,
2. A Dental HPSA score if a primary care provider provides dental primary care services, and
3. A Mental Health HPSA score if a primary care provider provides behavioral health primary care services.

D. For the purpose of determining a health service priority and allocating loan repayment funds, the Department shall consider a primary care provider who provides services at a critical access hospital, in addition to primary care services at a service site according to ~~R9-15-202(A)(1)(g)~~ R9-15-201(A)(1)(g), to be providing services full-time.

E. The Department shall determine a primary care provider's initial or renewal application health service priority by calculating the sum of the assigned points for the factors described in subsection (B).

F. The Department shall apply the factors in subsection (G) if the Department determines there are:

1. More than one initial application or renewal application that have the same health service priority and there are funds available for only one initial or renewal application; or
2. Two or more initial applications that have the same health service priority for:
   a. A service site and there is one health care provider with a higher health service priority approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program during the same June allocation process, or
   b. An employer and there are three primary care providers with a higher health service priority approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Private Primary Care Provider Loan Repayment Program during the same June allocation process.

G. To determine participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program for a primary care provider in subsection (F), the Department shall apply the following to each primary care provider's application:

1. If only one application is for a primary care provider who is a resident of Arizona, the Department shall approve the primary care provider for participation;

2. If more than one application is for a primary care provider who is a resident of Arizona, the Department shall apply each of the following factors in descending order until no two applications are the same and all available loan repayment funds have been allocated:
   a. Whether a primary care provider will provide primary care services full-time;
   b. Whether the primary care provider's service site is located in a rural area;
   c. The service ~~site~~ site's highest HPSA score reported in subsection (B)(2);
   d. Whether the primary care provider provides primary care services when the primary care provider and a patient are at the same location;
   e. Whether the primary care provider has experience providing primary care services to a medically underserved population;
   f. The number of total hours the primary care provider has experience providing primary care services in a medically underserved population if reported in subsection (G)(2)(e); and
   g. Whether the primary care provider's practice or specialty is identified as the greatest unmet healthcare discipline or specialty area in Arizona, as determined by the U. S. Department of Health & Human Services, Health Resources and Services Administration.

H. If more than one initial application or renewal application for a primary care provider in subsection (F) remains after the Department's determinations in subsection (G) and there are limited loan repayment funds available, the Department shall randomly select one primary care provider's initial application or renewal application and approve the primary care provider for participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program.

I. When the Department holds a random selection to determine one initial application or renewal application identified in subsection (H), the Department shall:
1. Assign an Assistant Director from a ~~different~~ division within ~~in~~ the Department, other than the ~~LRP~~ division ~~to be~~ responsible for the Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, to be responsible for the random selection, and
2. Invite all the primary care providers whose initial applications or renewal applications are identified to participate in the random selection.

J. The Department shall notify a primary care provider of the Department's decision according to ~~R9-15-206~~ R9-15-205.

~~R9-15-208.~~ R9-15-207. Rural Private Primary Care Provider Health Service Priority

A. For a primary care provider providing primary care services at multiple service sites, the Department shall determine the health service priority points in subsection (B)(1) through (6) for each service site and:

1. If the number of primary care service hours worked at one service site is more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use that service site's points to determine an initial application or a renewal application health service priority; or
2. If the number of primary care service hours worked at one service site is not more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use the average of all service sites' points to determine an initial application or a renewal application health service priority.

B. The Department shall review an initial application or a renewal application and assign points based on the following factors to determine the initial application or renewal application health service priority:

1. If the service site is a designated HPSA, the service site's highest geographic, facility, or population HPSA score, consistent with subsection (A), assigned by the U.S. Secretary of Health and Human Services for the area in which the service site is located according to documentation provided by the primary care provider;
2. If the service site is not a designated HPSA, the service site's AzMUA score, assigned by the Department, converted to an equivalent HPSA score as calculated by dividing the AzMUA score by 4.65 then rounding the quotient to the higher number;
3. The service site's percentage of the total encounters reported according to ~~R9-15-203(C)(15)(l) or R9-15-205(C)(15)(e)~~ R9-15-202(B)(15)(l) or R9-15-203(C)(15)(e) that are AHCCCS, Medicare, approved sliding-fee schedule, and free-of-charge encounters:

Percentage	Points
Greater than 50%	10,
35-50%	8,
26-34%	6,
11-25%	4, or
Less than 10%	2;

4. Except for a service site at a federal prison or state prison, if:
    a. A medical primary care provider, including a pharmacist, the distance from the primary care provider's service site to the next service site that provides medical

services and offers reduced primary care services fees according to an approved sliding-fee schedule:

Miles	Points
Greater than 25	4, or
Less than 25	0;

b. A dental primary care provider, the distance from the primary care provider's service site to the next service site that provides dental services and offers reduced primary care services fees according to an approved sliding-fee schedule:

Miles	Points
Greater than 25	4, or
Less than 25	0; and

c. A behavioral health primary care provider, the distance from the primary care provider's service site to the next service site that provides behavioral health services and offers reduced primary care services fees according to an approved sliding-fee schedule:

Miles	Points
Greater than 25	4, or
Less than 25	0;

5. For an initial application only, the primary care provider is newly employed at the service site or by the employer:
   a. Yes = 2 points, or
   b. No = 0 points;
6. The primary care provider only provides primary care services when the primary care provider and the patient are physically present at the same location:
   a. Yes = 4 points, or
   b. No = 0 points;
7. The primary care provider is a resident of Arizona according to A.R.S. § 15-1802:
   a. Yes = 4 points, or
   b. No = 0 point;
8. The primary care provider is a graduate of an Arizona graduate educational institution:
   a. Yes = 4 points, or
   b. No = 0 point;

9. For an initial application only, the primary care provider has experience providing primary care services to a medically underserved population:
    a. Yes = 4 points, or
    b. No = 0 point; and
10. The primary care provider is providing or agrees to provide primary care services full-time:
    a. Yes = 3 points, or
    b. No = 0 points.

C. To determine a service site's highest HPSA score, the Department shall apply the following HPSA designations:

1. A Primary Medical Care HPSA score. if a primary care provider provides medical or pharmaceutical primary care services,
2. A Dental HPSA score if a primary care provider provides dental primary care services, and
3. A Mental Health HPSA score if a primary care provider provides behavioral health primary care services.

D. For the purpose of determining a health service priority and allocating loan repayment funds, the Department shall consider a primary care provider who provides services at a critical access hospital, in addition to primary care services at a service site according to ~~R9-15-202(A)(1)(g)~~ R9-15-201(A)(1)(g), to be providing services full-time.

E. The Department shall determine a primary care provider's initial or renewal application health service priority by calculating the sum of the assigned points for the factors described in subsection (B).

F. The Department shall apply the factors in subsection (G) if the Department determines there are:

1. More than one initial application or renewal application that have the same health service priority and there are funds available for only one initial or renewal application; or
2. Two or more initial applications that have the same health service priority for:
    a. A service site and there is one primary care provider with a higher health service priority approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program during the same June allocation process; or
    b. An employer and there are three primary care providers with a higher health service priority approved to participate in the ~~LRP~~ Primary Care Provider Loan

Repayment Program or Rural Health Care Provider Loan Repayment Program during the same June allocation process.

G. To determine participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program for a primary care provider in subsection (F), the Department shall apply the following to each primary care provider's application:

1. If only one application is for a primary care provider who is a resident of Arizona, the Department shall approve the primary care provider for participation;
2. If more than one application is for a primary care provider who is a resident of Arizona, the Department shall apply each of the following factors in descending order until no two applications are the same and all available loan repayment funds have been allocated:
    a. Whether a primary care provider will provide primary care services full-time;
    b. Whether the primary care provider's service site is a non-profit;
    c. The highest service site highest HPSA score or converted AzMUA score in subsection (B)(1) or (2);
    d. Whether the primary care provider provides primary care services when the primary care provider and a patient are at the same location;
    e. Whether the primary care provider has experience providing primary care services to a medically underserved population;
    f. The number of clock hours the primary care provider has experience providing primary care services in a medically underserved population if reported in subsection (G)(2)(e); and
    g. Whether the primary care provider's practice or specialty is identified as the greatest unmet healthcare discipline or specialty area in Arizona determined by the U.S. Department of Health & Human Services, Health Resources and Services Administration.

H. If more than one initial application or renewal application for a primary care provider in subsection (F) remains after the Department's determinations in subsection (G) and there are limited loan repayment funds available, the Department shall randomly select one primary care provider's initial application or renewal application and approve the primary care provider for participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program.

I. When the Department holds a random selection to determine one primary care provider from the primary care providers identified in subsection (H), the Department shall:

1. Assign an Assistant Director from a ~~different~~ division within ~~in~~ the Department, other than the ~~LRP~~ division ~~to be~~ responsible for the Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, to be responsible for the random selection~~;~~; and
2. Invite all the primary care providers whose initial applications or renewal applications are identified to participate in the random selection.

J. The Department shall notify a primary care provider of the Department's decision according to ~~R9-15-206~~ R9-15-205.

~~R9-15-209.~~ R9-15-208. Allocation of Primary Care Provider Loan Repayment or Rural Private Primary Care Provider Loan Repayment Funds

A. Each fiscal year, for an initial application or renewal application that demonstrates a primary care provider's and the primary care provider's service site's compliance with A.R.S. Title 36, Chapter 21 and this Article, the Department shall allocate loan repayment funds according to this Section and in the following order to the primary care provider with the highest health service priority:

1. During the April allocation process, primary care providers with a HPSA score of 14 or more who are approved to participate for a third year in the:
   a. Primary Care Provider ~~LRP~~ Loan Repayment Program, or
   b. Rural Private Primary Care Provider ~~LRP~~ Loan Repayment Program;
2. During the June allocation process, if there are additional loan repayment funds available after the allocation process in subsection (A)(1), primary care providers who are approved for initial participation for two years in the:
   a. Primary Care Provider ~~LRP~~ Loan Repayment Program, or
   b. Rural Private Primary Care Provider ~~LRP~~ Loan Repayment Program; and
3. During the October allocation process, if there are additional loan repayment funds available after the allocation process in subsection (A)(2), primary care providers delineated in subsection (B) in the:
   a. Primary Care Provider ~~LRP~~ Loan Repayment Program; or
   b. Rural Private Primary Care Provider ~~LRP~~ Loan Repayment Program.

B. A primary care provider is allowed to apply for participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program according to the requirements in this Chapter and be allocated loan repayment funds according to subsection (A)(3), if the primary care provider has:

1. Completed the first two years of participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program but was

denied approval to continue participation because no loan repayment funds were available during the allocation process;

2. Previously participated in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, completed at least the first two years of participation, and is applying to resume participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program;
3. Completed the first two years of participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program and is currently providing primary care services at a service site with a HPSA score below 14, and is applying to continue participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program during the same calendar year as the completion of the first two years;
4. Completed the first three years of participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program and is applying to continue participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program during the same calendar year as the completion of the first three years of participation; or
5. Submitted an initial application during the same calendar year that demonstrated the primary care provider's and the primary care provider's service site's compliance with A.R.S. Title 36, Chapter 21 and this Article but was denied approval to participate because:
    a. There were no loan repayment funds available;
    b. For an initial application, the primary care provider's employer employs four other primary care providers approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program; or
    c. For an initial application, the primary care provider's service site employs two other primary care providers approved to participate in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program.

~~C. The Department shall use monies donated to the LRP to supplement allocations made according to A.R.S. Title 36, Chapter 21 and this Article based on a primary care provider's health service priority and, if applicable, any designation made for the donation according to subsection (D).~~

~~**D.** A person donating monies to the LRP shall designate whether the donation is for:~~

~~1. The LRP to use at the discretion of the Department for loan repayment allocations or for LRP administrative costs; or~~

~~2. One of the following:~~

~~a. The Primary Care Provider Loan Repayment Program established according to A.R.S. § 36-2172;~~

~~b. The Rural Private Primary Care Provider Loan Repayment Program established according to A.R.S. § 36-2174;~~

~~c. A specific type or types of primary care provider; or~~

~~d. A specific county in Arizona;~~

~~**E.** If state loan repayment funds and state-appropriated funds are depleted, but there are donated funds available and the primary care provider with the next highest health service priority is not designated to receive the donated funds according to (D)(2) the donated monies are not allocated during the current allocation process.~~

~~**F.**~~**C.** The Department shall determine the amount of loan repayment funds allocated to a primary care provider based on the primary care provider's service site's highest HPSA score as determined in ~~R9-15-207(B)(2) or R9-15-208(B)(1) or (2)~~ R9-15-206(B)(2) or R9-15-207(B)(1) or (2), as follows:

1. If a service site's highest HPSA score is 18 to 26 points, 100 percent of the maximum annual amount;
2. If a service site's highest HPSA score is 14 to 17 points, 90 percent of the maximum annual amount; and
3. If a service site's highest HPSA score is 0 to 13 points, 80 percent of the maximum annual amount.

~~**G.**~~**D.** The Department shall allocate loan repayment funds to physicians and dentists according to the following:

Contract Year of Service	**Maximum Annual Amount for Full-Time**		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	$65,000	$58,500	$52,000
Third year	$35,000	$31,500	$28,000
Fourth year	$25,000	$22,500	$20,000
Fifth year and continuing	$15,000	$13,500	$12,000

Contract Year of Service	**Maximum Annual Amount for Half-Time**		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	$32,500	$29,250	$26,000
Third year	$17,500	$15,750	$14,000
Fourth year	$12,500	$11,250	$10,000
Fifth year and continuing	$7,500	$6,750	$6,000

~~H.~~E. The Department shall allocate loan repayment funds to pharmacists, advance practice providers, and behavioral health care providers according to the following:

Contract Year of Service	**Maximum Annual Amount for Full-Time**		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	$50,000	$45,000	$40,000
Third year	$25,000	$22,500	$20,000
Fourth year	$20,000	$18,000	$16,000
Fifth year and continuing	$10,000	$9,000	$8,000

Contract Year of Service	**Maximum Annual Amount for Half-Time**		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	$25,000	$22,500	$20,000
Third year	$12,500	$11,250	$10,000
Fourth year	$10,000	$9,000	$8,000
Fifth year and continuing	$5,000	$4,500	$4,000

~~I.~~F. When calculating the allocation of loan repayment funds for a primary care provider who resumes participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program, the Department shall consider the loan repayment contract year of service to be the succeeding year following the actual loan repayment contract years of service completed during the primary care provider's previous participation in the ~~LRP~~ Primary Care Provider Loan Repayment Program or Rural Health Care Provider Loan Repayment Program.

~~J.~~**G.** If the Department has inadequate funds to provide the maximum annual amount allowable and a primary care provider agrees to accept the lesser amount, the Department shall allocate the lesser amount agreed to by the primary care provider.

~~K.~~**H.** If the Department determines no loan repayment funds are available during a fiscal year for allocations based on an initial application or a renewal application, the Department shall provide a notice at least 30 calendar days before the initial or renewal application submission date that the Department is not accepting initial or renewal applications.

~~R9-15-210.~~ R9-15-209. Supplemental Verification Requirements of Primary Care Services ~~and Disbursement of Loan Repayment Funds~~

~~A.~~ ~~If~~ In addition to the requirements in R9-15-105, if primary care services are provided:

1. ~~by~~ By means of telemedicine, a primary care provider shall~~:~~

~~1. Report the number of telemedicine hours worked, and~~

~~2.~~ ~~Attest~~ attest that the originating site where the telemedicine patient is located and the distant site where the primary care provider is located are both in a HPSA or, if applicable, both in an AzMUA~~.~~; and

~~B. If a primary care provider provides primary care services~~

2. ~~at~~ At a critical access hospital with a separate qualifying service site, the primary care provider shall report the:

~~1.~~a. Total number of hours the primary care provider provided primary care services at the qualifying service site separate from the critical access hospital, and

~~2.~~b. Total number of hours worked at the critical access hospital.

~~C. A primary care provider shall submit verification of primary care service hours worked at the primary care provider's approved service site on a Department-provided format containing:~~

~~1. The primary care provider's name;~~

~~2. The beginning and ending dates during which the primary care services were provided;~~

~~3. Whether the primary care provider is providing primary care services full-time or half-time;~~

~~4. The primary care provider's notarized signature and date of signature; and~~

~~5. The primary care provider's approved service site's licensee, tribal authority, or employer's notarized signature and date of signature.~~

~~D. A primary care provider shall submit documentation of primary care service encounters provided at the primary care provider's approved service site in a Department-provided form containing:~~

~~1. The primary care provider's name;~~

~~2. The beginning and ending dates during which the primary care services were provided;~~

3. ~~The number of total encounters the primary care provider provided during the time reported in subsection (D)(2);~~

4. ~~The number of total encounters used the sliding-fee scale the primary care provider provided during the time reported in subsection (D)(2);~~

5. ~~The primary care provider's notarized signature and date of signature; and~~

6. ~~The primary care provider's approved service site's licensee, tribal authority, or employer's notarized signature and date of signature.~~

E. ~~Upon receipt of the verification in subsection (C) and the documentation in subsection (D), the Department shall disburse loan payment funds to the primary care provider's lender or lenders.~~

F. ~~Primary care services performed before the effective date of a loan repayment contract do not satisfy the contracted primary care health professional service obligation and are not eligible for loan repayment funds.~~

G. ~~The Department shall disburse loan repayment funds for primary care services provided during a loan repayment contract period according to the allocations in R9-15-209.~~

H. ~~The Department may delay disbursing loan repayment funds to a primary care provider's lender or lenders if the primary care provider fails to submit complete or timely service verification and encounter report forms.~~

I. ~~The Department shall not disburse loan repayment funds to a primary care provider's lender or lenders if the primary care provider fails to submit complete and accurate information required in the service verification and the encounter report forms.~~

R9-15-210. **Renumbered**

R9-15-211. **~~Request for Change~~ Repealed**

A. ~~To request a change, a primary care provider shall submit the following information to the Department, in a Department-provided format:~~

1. ~~The primary care providers name, home address, telephone number, and e-mail address;~~

2. ~~Whether the request is to:~~

   a. ~~Add or transfer to another service site or employer,~~

   b. ~~Add or change a qualifying educational loan or lender, or~~

   c. ~~Change primary care service hours from full-time to half-time or from half-time to full-time;~~

3. ~~Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;~~

4. ~~An attestation that:~~

   a. ~~The Department is authorized to verify all the information provided, and~~

b. The information submitted is true and accurate; and

5. The primary care provider's signature and date of signature.

B. In addition to the information required in subsection (A), a primary care provider:

1. If adding or transferring to a new service site or new employer, shall submit the following information about the new service site or employer:

a. In a Department-provided format:

i. The information required in R9-15-203(C)(15) for the new service site and in R9-15-203(C)(17) for a new critical access hospital, if applicable;

ii. An attestation signed and date signed by a licensee, licensee's designee, or tribal authority from the new service site stating that the new service site will comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;

iii. If the primary care provider's new employer is not the licensee or tribal authority of the service site identified in subsection (B)(1)(a)(i):

(1) An attestation that the new employer will comply with the requirements in R9-15-202, including agreeing to notify the Department when the primary care provider's employment status changes;

(2) The name, title, e-mail address, and telephone number of a contact individual for the new employer;

(3) Whether the primary care provider is providing primary care services full-time or half-time;

(4) The dates that the primary care provider is expected to start and end providing primary care services; and

(5) The new employer's signature and date of signature;

b. Except for a service site that is a free clinic or a federal or state prison, a copy of the new service site's:

i. Sliding-fee schedule in R9-15-202(A)(2)(d)(i),

ii. Sliding-fee schedule policy in R9-15-202(A)(2)(d)(ii), and

iii. Sliding-fee schedule signage in R9-15-202(A)(2)(d)(iii), posted on the premises;

c. Documentation that the new service site is in a HPSA or an AzMUA; and

d. If more than one service site licensee, tribal authority, or employer is identified in subsection (B)(1)(a), the signature and date of signature of each service site licensee, tribal authority, or employer.

2. If adding or changing a qualifying educational loan or lender, shall submit the following information about the qualifying educational loan or lender:

a. In a Department-provided format:

i. An attestation signed and date signed by an individual from the lending institution, certifying that the loan meets the requirements in R9-15-201 for a qualifying educational loan, and

ii. The percentage of the loan repayment funds that the primary care provider is requesting that the lender receive;

b. Documentation from the lender or the National Student Loan Data System, established by the U.S. Department of Education, verifying that the loan is for a qualifying educational loan; and

c. For a qualifying educational loan, a copy of the most recent billing statement from the lender; and

3. If changing primary care service hours worked, shall submit the following information about the change in primary care service hours:

a. In a Department-provided format:

i. The name, title, e-mail address, and telephone number of a contact individual for each service site, tribal authority, or employer; and

ii. The percentage of loan repayment funds each lender may receive if different from the initial application; and

b. A copy of an agreement or a letter verifying approval to change primary care service hours signed by the licensee, tribal authority, or employer from the service site where the primary care provider provides primary care service, including:

i. The name of each service site where the primary care services are provided;

ii. The date the primary care provider is expected to begin revised primary care services hours;

iii. The number of primary care service hours per week the primary care provider is expected to work; and

iv. If a primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide per week.

C. If a primary care provider's personal information changes, the primary care provider shall submit:

1. A written notice stating the information being changed and indicating the new information; and
2. If the change is in the primary care provider's legal name, a copy of one of the following with the primary care provider's new name:
   a. Marriage certificate,
   b. Divorce decree,
   c. Professional license, or
   d. Other legal document establishing the primary care provider's legal name.

D. Before a primary care provider provides primary care service at another service site or employer, or changes primary care services from full-time or half-time hours worked, the primary care provider shall obtain the Department's approval for the change.

E. If a change in service site or a change in primary care service hours worked affects a primary care provider's service site points or health service priority, the Department shall determine whether the primary care provider's loan repayment amount will increase or decrease; and if:

1. A loan repayment amount will increase, the primary care provider's loan repayment amount will not change until the primary care provider obtains approval to renew participation; or
2. A loan repayment amount will decrease, the primary care provider's loan repayment amount will decrease according to amounts in R9-15-209, effective on the date the Department approves the primary care provider's request to change service site or primary care service hours.

F. If a change in primary care service hours worked is from full-time to half-time, the primary care provider's loan repayment funds allocated will decrease by half of the existing contracted loan repayment amount, effective on the date the Department approves the primary care provider's request to change the primary care service hours worked.

G. If a change in primary care service hours worked is from half-time to full-time:

1. The primary care provider's allocated loan repayment funds will not change until the primary care provider's renewal application is approved to continue participation; and
2. For a primary care provider who was initially allocated loan repayment funds based on providing primary care services full-time but is currently providing primary care services

~~half-time, the primary care provider's loan repayment funds will revert to the loan repayment funds initially allocated after the Department approves the primary care provider's request to change back to full-time primary care service hours.~~

~~**H.** A primary care provider shall submit a request to change according to this Section to the Department:~~

~~1. At least 10 working days before the effective date of a change to a qualifying educational loan or lender; and~~

~~2. At least 30 calendar days before the effective date of a change to add or transfer to another service site or employer or to change primary care service hours worked.~~

~~**I.** A primary care provider shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided.~~

~~**J.** For a request submitted according to subsection (A), the Department shall notify a primary care provider of the Department's decision according to R9-15-206.~~

R9-15-212. ~~Loan Repayment Contract Suspension~~ Repealed

~~**A.** A primary care provider may request a loan repayment contract suspension:~~

~~1. For a condition involving the primary care provider or a member of the primary care provider's immediate family that restricts the primary care provider's ability to complete the terms of the loan repayment contract, or~~

~~2. To transfer to another service site or employer.~~

~~**B.** To request a loan repayment contract suspension, a primary care provider shall submit to the Department a written request for a loan repayment contract suspension, at least 30 calendar days before the proposed start date of the loan repayment contract suspension that includes:~~

~~1. The primary care provider's name, home address, telephone number, and e-mail address;~~

~~2. The service site's name, street address, e-mail address, and telephone number, and the name of the individual authorized to act on behalf of the service site;~~

~~3. The reasons for the primary care provider's request to suspend the loan repayment contract;~~

~~4. The beginning and ending dates of the requested loan repayment contract suspension;~~

~~5. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;~~

~~6. A statement that the information included in the request for loan repayment contract suspension is true and accurate; and~~

~~7. The primary care provider's signature and date of signature.~~

~~**C.** Upon receiving a request for a loan repayment contract suspension, the Department may contact the individual in subsection (B)(2):~~

~~1. To verify the information in the request for the loan repayment contract suspension, and~~

~~2. To obtain information regarding the circumstances that caused the request for loan repayment contract suspension.~~

~~**D.** A primary care provider may request an initial loan repayment contract suspension for up to six months. If the primary care provider is unable to resume providing primary care services by the end of the initial loan repayment contract suspension period, the primary care provider may request an additional six-month loan repayment contract suspension for a total maximum allowable loan repayment contract suspension of 12 months.~~

~~**E.** A primary care provider requesting an additional six-month loan repayment contract suspension shall submit a written request to the Department at least 30 calendar days before the expiration of the initial loan repayment contract suspension period that includes the requirements in subsection (B).~~

~~**F.** During a primary care provider's loan repayment contract suspension period, a primary care provider who plans to continue to participate in the LRP is required to submit a renewal application according to R9-15-205.~~

~~**G.** During a primary care provider's loan repayment contract suspension period, the Department shall not disburse loan repayment funds to a primary care provider's lender.~~

~~**H.** A primary care provider is responsible for making loan payments during the loan repayment contract suspension period.~~

~~**I.** If the Department approves a primary care provider's request for a loan repayment contract suspension due to transfer to another service site or employer, the primary care provider shall written report progress made in identifying another service site or employer to the Department at least once every 30 calendar days.~~

~~**J.** If the primary care provider does not obtain employment at another service site or employer or resume providing primary care services by the end of the loan repayment contract suspension period, the Department shall consider that the primary care provider has failed to complete the terms of the loan repayment contract or does not intend to complete the terms of the loan repayment contract.~~

~~**K.** For a request submitted according to subsection (B) or (E), the Department shall notify a primary care provider of the Department's decision according to R9-15-206.~~

R9-15-213. ~~Liquidated Damages for Failure to Complete a Loan Repayment Contract~~ Repealed

~~**A.** A primary care provider who fails to complete the terms of the loan repayment contract shall pay to the Department the liquidated damages owed under A.R.S. § 36-2172(I), unless the primary care provider receives a waiver of the liquidated damages under R9-15-214.~~

~~**B.** Upon receiving notification or upon the Department's determination that a primary care provider is unable or does not intend to complete the terms of the primary care provider's loan repayment contract, the Department shall:~~

~~1. Withhold loan repayment funds;~~

~~2. Determine liquidated damages owed, and~~

~~3. Notify the primary care provider of the amount of liquidated damages owed.~~

~~**C.** A primary care provider shall pay the liquidated damages to the Department within one year after the termination date of a primary care provider's primary care service specified in the loan repayment contract or within one year after the end of a loan repayment contract suspension approved according to R9-15-212, whichever is later.~~

R9-15-214. ~~Waiver of Liquidated Damages~~ Repealed

~~**A.** The Department shall waive liquidated damages owed under A.R.S. Title 36, Chapter 21 or this Article if the primary care provider is unable to complete the terms of the loan repayment contract due to the primary care provider's death.~~

~~**B.** The Department may waive liquidated damages owed under A.R.S. Title 36, Chapter 21 or this Article if the primary care provider is unable to complete the terms of the loan repayment contract because:~~

~~1. The primary care provider suffers from a physical or behavioral health condition resulting in the primary care provider's temporary or permanent inability to perform the services required by the loan repayment contract; or~~

~~2. An individual in the primary care provider's immediate family has a chronic or terminal illness.~~

~~**C.** To request a waiver of liquidated damages, a primary care provider shall submit to the Department:~~

~~1. A written request for a waiver of liquidated damages that includes:~~

~~a. The primary care provider's name, home address, telephone number, and e-mail address;~~

~~b. For each service site where the primary care provider provided primary care services, the service site's:~~

~~i. Name, street address, e-mail address, and telephone number; and~~

~~ii. The name of a contact individual for the service site;~~

~~c. A statement describing the primary care provider's physical or behavioral health condition or the chronic or terminal illness of the primary care provider's immediate family member;~~

~~d. A statement describing why the primary care provider cannot complete the contact;~~

~~e. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;~~

~~f. A statement that the information included in the request for waiver is true and accurate; and~~

~~g. The primary care provider's signature and date of signature; and~~

~~2. Documentation of the primary care provider's physical or behavioral health condition or the chronic or terminal illness of the primary care provider's immediate family member.~~

~~**D.** Upon receiving a request for waiver, the Department may contact the individual authorized to act on behalf of the service site to verify the information in the request for waiver and to obtain any additional information regarding the request for waiver.~~

~~**E.** In determining whether to waive liquidated damages, the Department shall consider:~~

~~1. The physical or behavioral health condition of the primary care provider or the chronic or terminal illness of the primary care provider's immediate family member; and~~

~~2. Whether the documentation demonstrates that the primary care provider is permanently unable or temporarily unable to provide primary care services during or beyond the expiration date of the loan repayment contract.~~

~~**F.** For a request submitted according to subsection (C), the Department shall notify a primary care provider of the Department's approval or disapproval according to R9-15-206.~~

R9-15-215. ~~Loan Repayment Contract Cancellation~~ Repealed

~~**A.** A primary care provider may submit a written request to the Department requesting cancellation of a loan repayment contract within 60 calendar days after the start date of the loan repayment contract if:~~

~~1. No loan repayment has been disbursed to the primary care provider's lender; and~~

~~2. The primary care provider is unable or does not intend to complete the terms of the loan repayment contract, and~~

~~3. A written request that includes:~~

~~a. The primary care provider's name, home address, telephone number, and e-mail address;~~

b. The service site's name, street address, e-mail address, and telephone number; and the name of the individual authorized to act on behalf of the service site;

c. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206; and

d. The primary care provider's signature and date of signature.

B. For a request submitted according to subsection (A), the Department shall notify a primary care provider of the Department's decision according to R9-15-206.

C. The Department may cancel a loan repayment contract and waive liquidated damages based upon a primary care provider's request to cancel the loan repayment contract in subsection (A).

D. The Department may cancel a primary care provider's loan repayment contract if the Department determines that:

1. The primary care provider:
   a. Except as allowed in subsection (A), has failed to complete the terms of the loan repayment contract; or
   b. Is not complying with A.R.S. Title 36, Chapter 21 and this Article; or
2. A primary care provider's service site is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter.

E. If the Department cancels a primary care provider's loan repayment contract, the Department shall provide written notice that includes the specific reason for the cancellation and the appeal process in A.R.S. Title 41, Chapter 6, Article 10.

ARTICLE 3. BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM

R9-15-301. Behavioral Health Care Provider Loan Repayment Program and Service Site Requirements

A. An individual may request to participate in the Behavioral Health Care Provider Loan Repayment Program:

1. If the individual:
   a. Provides behavioral health services through direct patient care as a:
      i. Behavioral health care provider;
      ii. Behavioral health technician, as defined in A.A.C. R9-10-101;
      iii. Registered nurse;
      iv. Practical nurse; or
      v. Physician;
   b. Meets the requirements in A.R.S. § 41-1080;
   c. Has completed the final year of a course of study or program approved by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation for higher education in a health profession licensed under A.R.S. Title 32 or holds a current Arizona license or certificate in a health profession licensed under A.R.S. Title 32;
   d. Demonstrates current employment providing direct patient care with a service site that is:
      i. The Arizona State Hospital;
      ii. A public or nonprofit behavioral health hospital located in a mental health HPSA;
      iii. A public or nonprofit behavioral health residential facility licensed under 9 A.A.C. 10, Article 7, located in a mental health HPSA; or
      iv. A public or nonprofit secure behavioral health residential facility licensed under 9 A.A.C. 10, Article 7 or 13, located in a mental health HPSA;
   e. Demonstrates that the current employer is contracted with AHCCCS to provide services;
   f. Is not participating in another loan repayment program established under this Chapter**;**

g. If a physician, has completed a professional residency program or certification program in behavioral health; and

h. Has satisfied any other health professional service obligation owed under a contract with a federal, state, or local government before beginning a period of service under the Behavioral Health Care Provider Loan Repayment Program; and

2. The service site or employer agrees to notify the Department when the employment status of the applicant changes.

B. An applicant may not participate in the Behavioral Health Care Provider Loan Repayment Program if the applicant:

1. Is delinquent on payment of:

a. State taxes,

b. Court-ordered child support, or

c. A federal income tax liability; or

2. Has defaulted on:

a. Any federally-guaranteed or insured student loan or home mortgage loan,

b. A Federal Health Education Assistance Loan,

c. A Federal Nursing Student Loan, or

d. A Federal Housing Authority Loan.

C. An awardee providing services at the Arizona State Hospital or the secure behavioral health residential facility licensed under 9 A.A.C. 10, Article 13, as a behavioral health specialized transitional facility may provide services at either location without the service location being considered a change in service site.

R9-15-302. Initial Application

A. To apply to participate in the Behavioral Health Care Provider Loan Repayment Program, an applicant who has not previously participated in the Behavioral Health Care Provider Loan Repayment Program shall submit an initial application in subsection (B) to the Department by March 1 of each year.

B. An applicant applying to participate in the Behavioral Health Care Provider Loan Repayment Program shall submit to the Department:

1. The following information in a Department-provided format:

a. The applicant's name, home address, telephone number, e-mail address, Social Security number, and date of birth;

b. The name of each service site where the applicant provides behavioral health services and will continue to provide behavioral health services while participating in the Behavioral Health Care Provider Loan Repayment Program;

c. If applicable, the type of license or certification held by the applicant, including, if applicable, the applicant's National Provider Identifier (NPI) number;

d. The type of behavioral health specialty or subspecialty, if applicable;

e. Whether the applicant:

i. Provides behavioral health services full-time;

ii. Is an Arizona resident;

iii. Has any health professional service obligation;

iv. Has defaulted in a health professional service obligation and, if so, a description of the circumstances of the default;

v. Has experience providing behavioral health services to a medically underserved population; and

vi. Agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-306;

f. For each qualifying educational loan:

i. The lender's name, street address, e-mail address, and telephone number;

ii. The address where the behavioral health loan repayment funds are sent;

iii. The loan identification number;

iv. The original date of the loan;

v. The applicant's name as it appears on the loan contract;

vi. The original loan amount;

vii. The current balance of the loan, including the date provided;

viii. The interest rate on the loan;

ix. The purpose for the loan;

x. The month and year of the start and the end of the academic period covered by the loan; and

xi. The percentage of the behavioral health loan repayment funds the applicant establishes for a lender if more than one lender is receiving behavioral health loan repayment funds;

g. An attestation that:

i. The Department is authorized to verify all information provided in the initial application;

ii. The applicant is applying to participate in the Behavioral Health Care Provider Loan Repayment Program for two years with the State of Arizona for loan repayment of all or part of qualifying educational loans identified according to subsection (B)(1)(f);

iii. The qualifying educational loans identified according to subsection (B)(1)(f) were for the costs of health professional education, including reasonable educational expenses and reasonable living expenses, and do not reflect a loan for other purposes; and

iv. The information and documentation submitted is true and accurate;

h. Whether the applicant is delinquent on:

i. State taxes,

ii. Court-ordered child support, or

iii. A federal income tax liability,

i. Whether the applicant has defaulted on:

i. Any federally-guaranteed or insured student loan or home mortgage loan,

ii. A Federal Health Education Assistance Loan,

iii. A Federal Nursing Student Loan, or

iv. A Federal Housing Authority Loan; and

j. The applicant's signature and date of signature;

2. Documentation that meets the requirements in A.R.S. § 41-1080;

3. A copy of the applicant's Social Security card;

4. A copy of the applicant's current driver's license;

5. If applicable, documentation showing Arizona residency according to A.R.S. § 15-1802;

6. Documentation showing graduation or the completion of the final year of a course of study from an accredited health professional school;

7. If applicable, documentation showing completion of graduate studies issued by an accredited educational agency;

8. If applicable, a copy of the applicant's current Arizona license under A.R.S. Title 32 in a health profession;

9. If a physician, documentation showing that the physician has completed a professional residency program or certification program in behavioral health;

10. For each qualifying educational loan identified according to subsection (B)(1)(f), a copy of the most recent billing statement from the lender;

11. For each qualifying educational loan identified according to subsection (B)(1)(f), documentation from the lender or the National Student Loan Data System established by the U.S. Department of Education verifying that the loan is a qualifying educational loan;

12. For an applicant who has completed health service experience to a medically underserved population, a written statement for each applicable service site where the applicant provided services that includes:

    a. The service site's name, street address, and telephone number;

    b. The name, title, e-mail address, and telephone number of a contact individual for the service site;

    c. The number of clock hours completed;

    d. A description of the services provided;

    e. The service start date and end date;

    f. The service site's federal or state designation as medically underserved:

    g. The name and signature of an individual authorized by the governing authority of the service site and the date signed;

13. If applicable, documentation showing that the applicant's health professional service obligation owed under contract with a federal, state, or local government or another entity will be completed before beginning a period of providing behavioral health services under the Behavioral Health Care Provider Loan Repayment Program;

14. A copy of a contract or a letter verifying employment for each service site where an applicant provides behavioral health services that includes:

    a. The name, street address, e-mail address, and telephone number of the service site;

    b. The name, e-mail address, and telephone number of a contact individual for the service site;

    c. That the applicant is providing behavioral health services full-time;

    d. The employment start date;

    e. For a contract, the signature and date of signature of the applicant and a designee of the governing authority of the service site; and

    f. For a letter verifying employment, the signature and date of signature of a designee of the governing authority of the service site;

15. Documentation from the service site that includes:

    a. The following information, in a Department-provided format:

i. The name, street address, telephone number, and fax number of the service site;

ii. The name, telephone number, and e-mail address of the contact individual for the service site;

iii. A statement that the applicant is providing behavioral health services full-time;

iv. The number of behavioral health service hours per week the applicant is expected to provide;

v. The date that the applicant started providing behavioral health services at the service site;

vi. Service site's health care institution class or subclass, as specified in A.A.C. R9-10-102;

vii. Whether the service site is a public or non-profit service site according to A.R.S. § 36-2175;

viii. An attestation that the service site complies with the requirements in R9-15-301(A)(1)(d) and (e) and (2); and

ix. The name and signature of a designee of the governing authority of the service site and the date signed; and

b. If applicable, documentation of the service site's HPSA designation and HPSA score, dated within 30 calendar days before the date of submission; and

16. If the applicant's employer is not the governing authority of the service site identified in subsection (B)(1)(b), an attestation from the employer that includes:

a. The name and mailing address of the employer;

b. The name, title, e-mail address, and telephone number of a contact individual for the employer;

c. The dates that the applicant started and, if applicable, is expected to end providing behavioral health services for the employer;

d. The employer's agreement to notify the Department when the employment status of the applicant changes, as required in R9-15-301(A)(2);

e. A statement that the information submitted in the attestation is true and accurate; and

f. The employer's signature and date of signature.

C. If the applicant provided documentation of an existing health professional service obligation under subsection (B)(13), the applicant shall submit to the Department documentation

demonstrating the completion of the health professional service obligation before the start of the applicant's behavioral health loan repayment contract with the Department.

D. The Department shall accept an initial application no more than 30 calendar days before the initial application submission date specified in subsection (A).

E. If the Department receives an initial application from an applicant at a time other than the time specified in subsection (A), the Department shall return the initial application to the applicant.

F. Except for when the service site is identified as the Arizona State Hospital, the Department shall not approve an applicant's initial application during a March allocation process if:

1. The applicant's service site employs two other applicants approved to participate in the Behavioral Health Care Provider Loan Repayment Program during the March allocation process, or
2. The applicant's employer employs four other applicants approved to participate in the Behavioral Health Loan Care Provider Repayment Program during the March allocation process.

G. The Department shall review an applicant's initial application according to R9-15-305.

R9-15-303. Renewal Application

A. An applicant who is expected to complete the initial two years of participation in the Behavioral Health Care Provider Loan Repayment Program in the 12 months after January 15 of each year, and whose service site is the Arizona State Hospital or has a HPSA score of 14 or more may request to continue participation by submitting to the Department a renewal application in subsection (B) by January 15 of the same year.

B. An applicant applying to renew participation in the Behavioral Health Care Provider Loan Repayment Program for an additional year shall submit to the Department:

1. The following information in a Department-provided format:
    a. The applicant's name, home address, telephone number, and e-mail address;
    b. The existing behavioral health loan repayment contract number;
    c. The name of each service site where the applicant provides behavioral health services, including street address, telephone number, e-mail address, and fax number;
    d. Except for a request for a change made according to R9-15-106, a list of any changes that may affect the applicant's health service priority in R9-15-306;
    e. For each lender receiving loan repayment funds specified according to R9-15-302(B)(1)(f) or R9-15-106:
        i. The lender's name, street address, e-mail address, and telephone number;

ii. The address where the loan repayment funds are sent;

iii. The loan identification number;

iv. If different from the information specified according to R9-15-302(B)(1)(f) or R9-15-106, the percentage of the loan repayment funds that the applicant wants the lender to receive;

v. Current loan balance, including date provided; and

vi. Whether the applicant requests to continue loan repayment to the lender;

f. If the applicant wants to add a qualifying educational loan:

i. The lender's name, street address, e-mail address, and telephone number;

ii. The address where the loan repayment funds are sent;

iii. The loan identification number;

iv. The original date of the loan;

v. The applicant's name as it appears on the loan contract;

vi. The original loan amount;

vii. The current balance of the loan, including the date provided;

viii. The interest rate on the loan;

ix. The purpose for the loan;

x. The month and year of the start and the end of the academic period covered by the loan; and

xi. The percentage of the loan repayment funds that the applicant wants the lender to receive;

g. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-305;

h. The applicant's attestation that:

i. Except for the circumstances listed in subsection (C)(1)(d), the information specified according to R9-15-302(B), other than loan balances and requested repayment amounts, is still current;

ii. The Department is authorized to verify all information provided in the renewal application;

iii. The applicant is applying to participate in the Behavioral Health Care Provider Loan Repayment Program for an additional year for loan repayment of all or part of the qualifying educational loans identified according to subsection (B)(1)(e) or (f); and

iv. The information and documentation submitted as part of the renewal application is true and accurate;

i. Whether the applicant is delinquent on payment of:

i. State taxes,

ii. Court-ordered child support, or

iii. A federal income tax liability;

j. Whether the applicant has defaulted on:

i. Any federally-guaranteed or insured student loan or home mortgage loan,

ii. A Federal Health Education Assistance Loan,

iii. A Federal Nursing Student Loan, or

iv. A Federal Housing Authority Loan; and

k. The applicant's signature and date of signature;

2. To document the total time that an applicant had health service experience to a medically underserved population, including the time during the period the applicant provided services during the initial two years of participation in the Behavioral Health Care Provider Loan Repayment Program, a written statement for each service site where the applicant provided services that includes:

a. The service site's name, street address, and telephone number;

b. The name, telephone number, and e-mail address of the contact individual for the service site;

c. The number of clock hours completed:

i. Before participation in the Behavioral Health Care Provider Loan Repayment Program,

ii. During the initial two years of participation in the Behavioral Health Care Provider Loan Repayment Program, and

iii. In total at the service site;

d. A description of the services provided;

e. The service start date and end date;

f. The service site's federal or state designation as medically underserved; and

g. The name and signature of an individual authorized by the governing authority of the service site and the date signed;

3. For each qualifying educational loan, a copy of the most recent billing statement from the lender;

4. For any qualifying educational loan identified in subsection (B)(1)(f), documentation from the lender or the National Student Loan Data System established by the U.S. Department of Education verifying that the loan is a qualifying educational loan; and

5. For each service site where the applicant provides behavioral health services, an attestation that includes:

   a. A statement that the applicant's employment is extended at least for an additional year;

   b. The date the applicant started and the date the applicant is expected to end providing behavioral health services;

   c. That the applicant is providing behavioral health services full-time;

   d. The number of behavioral health service hours per week the applicant is expected to provide;

   e. If the applicant will provide telemedicine, the number of telemedicine hours the applicant is expected to provide;

   f. An attestation that the service site will comply with the requirements in R9-15-301(A)(1)(d) and (e) and (2);

   g. The name, title, e-mail address, and telephone number of a contact individual for the service site; and

   h. The signature and date of signature of the designee of the governing authority of the service site;

C. The Department shall accept a renewal application no more than 30 calendar days before the renewal application submission date specified in subsection (A).

D. If the Department receives a renewal application at a time other than the date stated in subsection (A), the Department shall return the renewal application to the applicant.

E. The Department shall review a renewal application according to R9-15-305.

R9-15-304. Supplemental Application

A. By July 1 of each calendar year, the Department shall determine if the Department has sufficient remaining funds available for additional awards under the Behavioral Health Care Provider Loan Repayment Program.

1. If the Department determines that funds are available, the Department shall post, on the Department's website, the information that the Department is accepting applications as specified in subsection (B), including the deadline for accepting applications.

   a. The Department shall post the information in subsection (A)(1) at least 15 calendar days before the date the Department begins accepting applications.

b. The deadline for submission of applications is 30 calendar days after the date the Department begins accepting applications.

2. If the Department determines that the Department does not have sufficient funds available for loan repayment awards, the Department shall, on the Department's website:

a. Post the information that the Department is not accepting applications, and

b. Maintain the information until the next review.

B. An applicant may reapply to participate or apply to renew participation in the Behavioral Health Care Provider Loan Repayment Program by submitting an application to the Department according to subsection (A)(1)(b) that contains:

1. The information and documentation according to subsection (C), if the applicant submitted an initial application to the Department, according to R9-15-302, and was not approved to participate in the Behavioral Health Care Provider Loan Repayment Program during the initial application allocation process for the same calendar year;

2. The information and documentation according to R9-15-302(B), if the applicant previously participated in the Behavioral Health Care Provider Loan Repayment Program and completed at least the first two years of participation in the Behavioral Health Loan Care Provider Repayment Program; and

3. The information and documentation according to R9-15-303(B), if the applicant:

a. Provides services at the Arizona State Hospital and will have completed at least the initial two years of participation in the Behavioral Health Care Provider Loan Repayment Program before December 31 of the same calendar year,

b. Will have completed at least the initial two years of participation in the Behavioral Health Care Provider Loan Repayment Program before December 31 of the same calendar year and was previously denied participation because loan repayment funds were not available,

c. Will have completed at least the initial two years of participation in the Behavioral Health Care Provider Loan Repayment Program before December 31 of the same calendar year at a service site with a HPSA score of less than 14, or

d. Will complete three or more years of participation in the Behavioral Health Care Provider Loan Repayment Program before December 31 of the same calendar year.

C. An applicant reapplying according to subsection (B)(1) shall submit an application to the Department that contains:

1. The following information in a Department-provided format:

a. The applicant's name, home address, telephone number, and e-mail address;

b. The name, street address, telephone number, e-mail address, and fax number for each service site;

c. For each applicant lender, the following:

i. The lender's name, street address, e-mail address, and telephone number;

ii. The loan identification number; and

iii. The loan balance including principal and interest;

d. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-305;

e. The applicant's attestation that:

i. The Department is authorized to verify all information provided in the supplemental application;

ii. The applicant is applying to participate in the Behavioral Health Care Provider Loan Repayment Program for two years for loan repayment of all or part of qualifying educational loans identified in the initial application, as specified in R9-15-302(B)(1)(f);

iii. The information and documentation submitted according to R9-15-302 is still accurate, except for loan or lender information; and

iv. The information and documentation submitted as part of the application is true and accurate; and

f. The applicant's signature and date of signature;

2. A copy of the most recent billing statement for the loans listed according to R9-15-302(B)(1)(f);

3. An attestation from a designee of the governing authority for each service site listed according to subsection (B)(1)(b) that includes:

a. The name and mailing address of the service site;

b. The name, title, e-mail address, and telephone number of a contact individual for the service site;

c. Whether the service site is a public or non-profit service site in A.R.S. § 36-2175;

d. That the applicant is providing behavioral health services full-time;

e. The dates that the applicant started and, if applicable, is expected to end providing behavioral health services at the service site;

f. The service site's agreement to notify the Department when the employment status of the applicant changes, as required in R9-15-301(A)(2);

g. A statement that the information submitted in the attestation is true and accurate; and

h. The signature of the designee of the governing authority for the service site and date of signature; and

4. If the applicant's employer is not the governing authority of the service site identified in subsection (B)(1)(b), an attestation from the employer that includes:

a. The name and mailing address of the employer;

b. The name, title, e-mail address, and telephone number of a contact individual for the employer;

c. The dates that the applicant started and, if applicable, is expected to end providing behavioral health services for the employer;

d. The employer's agreement to notify the Department when the employment status of the applicant changes, as required in R9-15-301(A)(2);

e. A statement that the information submitted in the attestation is true and accurate; and

f. The employer's signature and date of signature; and

5. If applicable, documentation of the service site's HPSA designation and HPSA score, dated within 30 calendar days before the supplemental application submission date.

D. The Department shall accept an application submitted according to subsection (A)(1)(b) no more than 30 calendar days before the submission date specified in subsection (A).

E. The Department shall review an application according to R9-15-305.

F. If the Department receives an application at a time other than the date stated in subsection (A), the Department shall return the application to the applicant.

R9-15-305. Time-frames

A. The overall time-frame begins, for:

1. An initial application, on the date established as the deadline for submission of an initial application in R9-15-302(A);

2. A renewal application, on the date established as the deadline for submission of a renewal application in R9-15-303(A);

3. An application submitted according to R9-15-304, on the date established as the deadline for submission in R9-15-304(A); or

4. A request to add or transfer to another service site or employer, add or change a lender, add or change a qualifying educational loan, change hours worked, suspend or cancel a

behavioral health loan repayment contract, or waive liquidated damages, on the date the request is received by the Department.

B. Within the administrative completeness review time-frame for each type of approval in Table 3.1, the Department shall:

1. Provide a notice of administrative completeness to an applicant; or
2. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.

C. 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;
2. If the applicant submits the missing information or documents to the Department within the time-frame in Table 3.1, the substantive review time-frame begins on the date the Department receives the missing information or documents; and
3. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 3.1, the Department shall consider the application withdrawn.

D. Within the substantive review time-frame for each type of approval in Table 3.1, the Department:

1. Shall approve or deny an applicant's request;
2. May make a written comprehensive request for additional information or documentation; and
3. May make supplement requests, if the applicant agrees to allow the Department to submit supplemental requests for additional information and documentation.

E. If the Department provides a written comprehensive request for additional information or documentation or a supplemental request to the applicant:

1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the Department receives the information and documents requested; and
2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request or supplemental request within 10 working days after the date of the written comprehensive request or supplemental request.

F. During the substantive review time-frame, the Department shall, for each initial, supplemental, or renewal application that the Department determines is complete and demonstrates that the applicant and service site comply with the requirements in A.R.S. Title 36, Chapter 21 and the

applicable Section of this Article, by 60 calendar days after the application submission date established in this Article, determine a health service priority according to R9-15-306(A).

G. The Department shall issue:

1. An approval for an applicant to participate in the Behavioral Health Care Provider Loan Repayment Program when:
   a. The applicant and the applicant's service site comply with the applicable requirements in A.R.S. Title 36, Chapter 21 and this Article; and
   b. The applicant has a health care priority according to R9-15-306 that makes the applicant eligible for available loan repayment funds according to R9-15-301; or
2. A denial to an applicant, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:
   a. The applicant does not submit all of the information and documentation listed in a written comprehensive request for additional information and documentation or a supplemental request within the time-frame in Table 3.1;
   b. The Department determines that the applicant or the applicant's service site does not comply with the applicable requirements in A.R.S. Title 36, Chapter 21 and this Article; or
   c. The Department determines that the applicant and the applicant's service site comply with the requirements in A.R.S. Title 36, Chapter 21 and this Article, but:
      i. There are no loan repayment funds available for the applicant;
      ii. Except as specified in R9-15-302(F), for an initial application, the applicant's service site employs two other applicants approved to participate in the Behavioral Health Care Provider Loan Repayment Program; or
      iii. Except as specified in R9-15-302(F), for an initial application, the applicant's employer employs four other applicants approved to participate in the Behavioral Health Care Provider Loan Repayment Program.

H. If the Department issues a denial based on the determination in subsection (G)(2)(c), the Department shall include in the denial, a notice that, depending on the availability of Behavioral Health Loan Repayment funds, the applicant may reapply to participate in the Behavioral Health Care Provider Loan Repayment Program according to R9-15-304(B)(1).

I. If the Department issues an approval for an applicant to participate in the Behavioral Health Care Provider Loan Repayment Program according to subsection (G)(1), the applicant is approved to participate for:

1. Two years, for an application submitted according to R9-15-302(B) or R9-15-304(C); and
2. One additional year, for an application submitted according to R9-15-303(B).

J. The Department shall determine the effective date of a loan repayment contract after receiving acceptance from an applicant following the Department's notice of approval in subsection (G)(1).

Table 3.1. Time-frames (in calendar days)

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for an applicant to complete an application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)
Initial application	R9-15-302	45	20	15	30
Renewal application	R9-15-303	45	10	15	30
Supplemental initial application	R9-15-304	45	10	15	30
Request for change	R9-15-106	15		5	10
Request to suspend a loan repayment contract	R9-15-107	15		5	10
Request to waive liquidated damages	R9-15-110	15		5	10
Request to cancel a loan repayment contract	R9-15-108(C)	15		5	10

R9-15-306. Behavioral Health Care Provider Health Service Priority

A. The Department shall review an application and assign points based on the following factors to determine the health service priority:

1. The applicant is a resident of Arizona according to A.R.S. § 15-1802:
   a. Yes = 4 points, or
   b. No = 0 points;
2. The applicant's service site is:
   a. The Arizona State Hospital or a behavioral health residential facility licensed under 9 A.A.C. 10, Article 13 = 10 points;
   b. A behavioral health hospital in a rural county = 7 points;

c. A behavioral health hospital in an urban county, other than as specified in subsection (A)(2)(a) = 5 points;

d. A behavioral health residential facility in a rural county = 3 points; or

e. A behavioral health residential facility in an urban county = 1 point;

3. The applicant is providing direct patient care in a site that has a mental health HPSA score or at the Arizona State Hospital:

a. Arizona State Hospital = 35 points; or

b. If in a HPSA, the most current mental health HPSA score for the site = 0 through 25 points;

4. The applicant's years of service at the current service site:

a. Less than 1 year = 0 points,

b. 1 to 3 years = 4 points,

c. 3+ to 7 years = 6 points, or

d. 7+ years = 8 points;

5. The length of time the applicant has held the applicable license in Arizona:

a. Less than 1 year = 0 points,

b. 1 to 5 years = 4 points, or

c. 5+ years = 6 points;

6. The applicant is a graduate of an accredited Arizona health professional school or program:

a. Yes = 4 points, or

b. No = 0 points; and

7. The applicant has health service experience with a medically underserved population:

a. Yes = 4 points, or

b. No = 0 points.

B. The Department shall determine an applicant's health service priority by calculating the sum of the assigned points for the factors described in subsection (A).

C. The Department shall apply the factors in subsection (D) if the Department determines there are:

1. More than one application that have the same health service priority and there are funds available for only one application; or

2. Except for when the service site is identified as the Arizona State Hospital, two or more applications that have the same health service priority for:

a. A service site and there was already another applicant with a higher health service priority approved to participate in the Behavioral Health Care Provider

Loan Repayment Program at the same service site during the same allocation process, or

b. An employer and there were already three other applicants with the same employer and with a higher health service priority approved to participate in the Behavioral Health Care Provider Loan Repayment Program during the same allocation process.

D. To determine participation in the Behavioral Health Care Provider Loan Repayment Program for an applicant in subsection (C), the Department shall apply the following to each applicant's application:

1. If only one application is for an applicant who has a service site at the Arizona State Hospital, the Department shall approve the applicant for participation;
2. If only one application is for an applicant who is a resident of Arizona and whose service site is not at the Arizona State Hospital, the Department shall approve the applicant for participation;
3. If more than one application is for an applicant who is a resident of Arizona or whose service site is at the Arizona State Hospital, the Department shall apply each of the following factors in descending order until no two health service priority scores are the same and all available loan repayment funds have been allocated:
   a. The highest score reported in subsection (A)(3);
   b. How long the applicant has been providing services at the current service site;
   c. How long the applicant has held a professional license in Arizona;
   d. Whether the applicant has health service experience to a medically underserved population; and
   e. The total number of hours the applicant has health service experience to a medically underserved population if reported in subsection (D)(3)(d).

E. If more than one application for an applicant in subsection (C) remains after the Department's determinations in subsection (D) and there are limited loan repayment funds available, the Department shall randomly select one application and approve the applicant for participation in the Behavioral Health Care Provider Loan Repayment Program.

F. When the Department holds a random selection to determine one application identified in subsection (E), the Department shall:

1. Assign an Assistant Director from a division within the Department, other than the division responsible for the Behavioral Health Care Provider Loan Repayment Program, to be responsible for random selection, and

2. Invite all the applicants whose applications are identified to participate in the random selection.

G. The Department shall notify an applicant of the Department's decision according to R9-15-305.

R9-15-307. Allocation of Behavioral Health Care Provider Loan Repayment Funds

A. Each fiscal year, for an application that demonstrates an applicant's and the applicant's service site's compliance with A.R.S. Title 36, Chapter 21, and this Article, the Department shall allocate Behavioral Health Care Provider Loan Repayment funds according to this Section and in the following order to the applicant with the highest health service priority:

1. During the January allocation process of applications submitted according to R9-15-303(B), applicants, whose service site is the Arizona State Hospital or has a HPSA score of 14 or more, who are approved to participate for a third year in the Behavioral Health Care Provider Loan Repayment Program;
2. During the March allocation process of applications submitted according to R9-15-302(B), if there are additional loan repayment funds available after the allocation process in subsection (A)(1), applicants who are approved for initial participation for two years in the Behavioral Health Care Provider Loan Repayment Program; and
3. During the allocation process specified in R9-15-304, if there are additional loan repayment funds available after the allocation process in subsection (A)(2), applicants submitting an application according to R9-15-304(B).

B. The Department shall allocate loan repayment funds to an applicant according to the following:

1. For the initial two contract years of service, a maximum of $50,000; and
2. For each subsequent year, a maximum of $25,000.

C. If the Department has inadequate funds to provide the maximum annual amount allowable and an applicant agrees to accept the lesser amount, the Department shall allocate the lesser amount agreed to by the applicant.

D. If the Department determines no loan repayment funds are available during a fiscal year for allocations based on an application, the Department shall provide a notice at least 30 calendar days before the application submission date that the Department is not accepting applications.

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.

36-2172. Primary care provider loan repayment program; purpose; eligibility; default; use of monies

A. The primary care provider loan repayment program is established in the department to pay off portions of education loans taken out by physicians, dentists, pharmacists, advance practice providers and behavioral health providers.

B. The department shall prescribe application and eligibility requirements that are consistent with the requirements of the national health service corps loan repayment program (42 Code of Federal Regulations part 62). To be eligible to participate in the primary care provider loan repayment program, an applicant shall meet all of the following requirements:

1. Have completed the final year of a course of study or program approved by recognized accrediting agencies for higher education in a health profession licensed pursuant to title 32 or hold an active license in a health profession licensed pursuant to title 32.

2. Demonstrate current or prospective employment with a public or nonprofit entity located and providing services in a federally designated health professional shortage area in this state as designated under 42 Code of Federal Regulations part 5.

3. Contract with the department to serve and be qualified to serve in general dentistry, family medicine, pediatrics, obstetrics, internal medicine, geriatrics, psychiatry, pharmacy or behavioral health.

C. In addition to the requirements of subsection B of this section, an applicant who is a physician shall meet both of the following requirements:

1. Have completed a professional residency program in family medicine, pediatrics, obstetrics, internal medicine or psychiatry or a fellowship, residency or certification program in geriatrics.

2. Contract with the department to serve for at least two years.

D. An advance practice provider, behavioral health provider or dentist who participates in the primary care provider loan repayment program shall initially contract with the department to provide services pursuant to this section for at least two years.

E. An applicant who works at an Indian health service facility or tribal or urban Indian health facility is not required to provide a sliding fee scale to be eligible for the program.

F. In making recommendations for the primary care provider loan repayment program, the department shall give priority to applicants who:

1. Intend to practice in rural areas most in need of primary care services.

2. Have been assigned to a high-need health professional shortage area pursuant to 42 Code of Federal Regulations part 5.

3. Meet criteria established in rule to determine priority consistent with the national health service corps loan repayment program (42 Code of Federal Regulations part 62, subpart B).

G. All loan repayment contract obligations are subject to the availability of monies and legislative appropriation. The department may cancel or suspend a loan repayment contract based on unavailability of monies for the program. The department is not liable for any claims, actual damages or consequential damages arising out of a cancellation or suspension of a contract.

H. This section does not prevent the department from encumbering an amount that is sufficient to ensure payment of each primary care provider loan for the services rendered during a contract period.

I. The department shall issue program monies to pay primary care provider loans that are limited to the amount of principal, interest and related expenses of educational loans, not to exceed the provider's total student loan indebtedness, according to the following schedule:

1. For physicians and dentists:

(a) For the first two years of service, a maximum of $65,000.

(b) For subsequent years, a maximum of $35,000.

2. For advance practice providers, pharmacists and behavioral health providers:

(a) For the first two years of service, a maximum of $50,000.

(b) For subsequent years, a maximum of $25,000.

J. A participant in the primary care provider loan repayment program who breaches the loan repayment contract by failing to begin or to complete the obligated services is liable for liquidated damages in an amount equivalent to the amount that would be owed for default as prescribed by the federal grants to states for loan repayment program or as determined and authorized by the department. The department may waive the liquidated damages provisions of this subsection if it determines that death or permanent physical disability accounted for the failure of the participant to fulfill the contract. The department may prescribe additional conditions for default, cancellation, waiver or suspension that are consistent with the national health service corps loan repayment program (42 Code of Federal Regulations sections 62.27 and 62.28).

K. Notwithstanding section 41-192, the department may retain legal counsel and commence whatever actions are necessary to collect loan payments and charges if there is a default or a breach of a contract entered into pursuant to this section.

L. The director of the department may authorize the program to be implemented independent of the federal grants for state loan repayment program based on the needs of this state.

M. The department may use monies to develop programs such as resident-to-service loan repayment and employer recruitment assistance to increase participation in the primary care provider loan repayment program. The department may use private donations, grants and federal monies to implement, support, promote or maintain the program.

36-2174. Rural private primary care provider loan repayment program; private practice; rules

A. Subject to the availability of monies, the department shall establish a rural private primary care provider loan repayment program for physicians, dentists, pharmacists, behavioral health providers and advance practice providers with current or prospective rural primary care practices located in federally designated health professional shortage areas or medically underserved areas in this state, as prescribed in section 36-2352. To be eligible to participate in the program, an applicant shall agree to provide organized, discounted, sliding fee scale services for medically uninsured individuals from families with annual incomes below two hundred percent of the federal poverty guidelines as established annually by the United States department of health and human services. An applicant who works at an Indian health service or tribal facility is not required to provide a sliding fee scale to be eligible for the program. The department shall approve the sliding fee scale used by the provider. The provider shall ensure notice to consumers of the availability of these services. The department shall give preference to applicants who agree to serve in rural areas.

B. Except as provided in section 36-2172, subsection B, paragraph 2, the program established pursuant to this section and loan repayment contracts made pursuant to this section shall comply with the requirements of section 36-2172.

C. The department may apply for and receive private donations and grant monies to implement the rural private primary care provider loan repayment program established pursuant to this section.

D. The department shall adopt rules to cancel or suspend a loan repayment contract, impose a penalty for default or find a person in default of a contract.

36-2175. Behavioral health care provider loan repayment program; purpose; eligibility; default; use of monies

A. The behavioral health care provider loan repayment program is established in the department to pay off portions of educational loans taken out by behavioral health care providers and nurses, including behavioral health technicians, behavioral health nurse practitioners, psychiatric nurse practitioners and licensed practical nurses, physicians, psychiatrists, and psychologists who serve in behavioral health facilities, including the Arizona state hospital, behavioral health residential facilities and secure behavioral health residential facilities.

B. The department shall prescribe application and eligibility requirements. To be eligible to participate in the behavioral health care provider loan repayment program, an applicant shall meet at least the following requirements:

1. Have completed the final year of a course of study or program approved by recognized accrediting agencies for higher education in a health profession licensed pursuant to title 32 or hold an active license in a health profession licensed pursuant to title 32.

2. Demonstrate current employment providing direct patient care with a public or nonprofit entity located and providing services in a behavioral health hospital, a behavioral health residential facility or a secure behavioral health residential facility in this state.

3. Demonstrate that the current employer is contracted with the Arizona health care cost containment system to provide services.

4. Not be participating in any other loan repayment program established by this article.

C. In addition to the requirements of subsection B of this section, an applicant who is a physician shall have completed a professional residency or certification program in behavioral health care.

D. A behavioral health care provider or nurse who participates in the behavioral health care provider loan repayment program shall initially contract with the department to provide services pursuant to this section for at least two years.

E. In making recommendations for the behavioral health care provider loan repayment program, the department shall give priority to applicants who intend to practice in the Arizona state hospital, a behavioral health residential facility or a secure behavioral health residential facility in this state.

F. All loan repayment contract obligations are subject to the availability of monies and legislative appropriation. The department may cancel or suspend a loan repayment contract based on unavailability of monies for the program. The department is not liable for any claims, actual damages or consequential damages arising out of a cancellation or suspension of a contract.

G. This section does not prevent the department from encumbering an amount that is sufficient to ensure payment of each behavioral health care provider loan for the services rendered during a contract period.

H. The department shall issue program monies to pay behavioral health care provider loans that are limited to the amount of principal, interest and related expenses of educational loans, not to exceed the behavioral health care provider's or nurse's total student loan indebtedness, according to the following schedule:

1. For the first two years of service, a maximum of $50,000.

2. For subsequent years, a maximum of $25,000.

I. A participant in the behavioral health care provider loan repayment program who breaches the loan repayment contract by failing to begin or to complete the obligated services is liable for liquidated damages in an amount equivalent to the amount that would be owed for default as determined and authorized by the department. The department may waive the liquidated damages provisions of this subsection if it determines that death or permanent physical disability accounted for the failure of the participant to fulfill the contract. The department may prescribe additional conditions for default, cancellation, waiver or suspension.

J. Notwithstanding section 41-192, the department may retain legal counsel and commence actions that are necessary to collect loan payments and charges if there is a default or a breach of a contract entered into pursuant to this section.

K. The department may use monies to develop programs such as resident-to-service loan repayment and employer recruitment assistance to increase participation in the behavioral health care provider loan repayment program. The department may use private donations, grants and federal monies to implement, support, promote or maintain the program.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

TITLE 9. HEALTH SERVICES

CHAPTER 15. DEPARTMENT OF HEALTH SERVICES -
LOAN REPAYMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

October 2023

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 15. DEPARTMENT OF HEALTH PROGRAM SERVICES–

LOAN REPAYMENT

1. An identification of the rulemaking:

Arizona Revised Statutes (A.R.S.) §§ 36-2172 and 36-2174 provides authorization to the Department of Health Services (Department) to establish a loan repayment program to pay portions of qualifying educational loans taken out by physicians, dentists, and mid-level providers who agree to provide primary care services to patients in Health Professional Shortage areas (HPSAs) or Arizona medically underserved areas in an out-patient treatment setting. As an extension of these programs, Laws 2022, Ch. 314 adopts A.R.S. § 36-2175, which establishes a Behavioral Health Loan Repayment Program in the Department to pay portions of qualifying educational loans taken out by "behavioral health care providers and nurses, including behavioral health technicians, behavioral health nurse practitioners, psychiatric nurse practitioners and licensed practical nurses, physicians, psychiatrists, and psychologists who serve in behavioral health facilities, including the [A]rizona [S]tate [H]ospital, behavioral health residential facilities, and secure behavioral health residential facilities." Laws 2022, Ch. 314 also requires the Department to promulgate new rules to prescribe Program application and eligibility requirements. The Department has already received the designated appropriation for loan repayment funds and is prepared to begin receiving applications once rules are promulgated and implemented. After receiving an exception from the Governor's rulemaking moratorium, established by Executive Order 2022-01 and rulemaking approval pursuant to A.R.S. § 41-1039, the Department adopted Program application and eligibility requirements through emergency rulemaking to enable the appropriated funds to be used before the funds expire. Now the Department is adopting rules through regular rulemaking to implement Laws 2021, Ch. 77, and Laws 2022, Ch. 314, and permanently establish these requirements in 9 A.A.C. 15.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

a. The Department

b. Applicants and awardees

c. Service sites

d. The general public

3. Cost/Benefit Analysis

This analysis covers the cost and benefit associated with adopting Program application and eligibility requirements to implement Laws 2022, Ch. 314, which establishes a Behavioral Health Care Provider Loan Repayment Program, as well as to make corresponding and other clarifying changes elsewhere in the Chapter. No new full-time employees are required due to this rulemaking. The annual cost and revenue changes are designated 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. Costs are 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			
The Department	Requires technical resources and personnel to promulgate new rules	Minimal	Significant
	Requires administrative support to update the website database, forms, and other administrative documents	Minimal	Significant
	Requires the loan repayment program staff to review, track, and process applications for individuals who are applying for a loan repayment program	Minimal	Significant
	Establish the criteria for granting or denying a loan repayment award	Minimal	None

	Requires staffing to implement enforcement procedures for behavioral health care provider loan repayment awardees	Minimal	None
	Clarifying requirements throughout the Chapter	Minimal	None
	Implementing the new Program	Minimal	Significant
B. Privately Owned Businesses			
Applicants and awardees	Establishes a new Behavioral Health Care Provider Loan Repayment Program	Minimal	Significant
	Requires the registered health care provider to report to the Department if participating in another loan repayment program	Minimal	None
	Requires the awardee to provide documentation on qualifying educational loans	Minimal	None
	Clarifies, consolidates, and makes consistent the requirements for existing loan repayment programs	Moderate	None
Service Sites	Staffing recruitment	Moderate	Significant
	Be contracted with Arizona Health Care Cost Containment System	Minimal	None
C. Consumers			

The General Public	Increases and improves accessibility and continuity of healthcare	Substantial	Significant

The Department

Arizona Revised Statutes (A.R.S.) §§ 36-2172 and 36-2174 provide authorization to the Department to establish loan repayment programs to pay portions of qualifying educational loans taken out by physicians, dentists, pharmacists, advanced practice providers, and behavioral health providers who agree to provide primary care services to patients in Health Professional Shortage Areas (HPSAs) or Arizona Medically Underserved Areas (AzMUAs). HPSA designations are assigned by the federal government to prioritize the distribution of resources to meet health care needs and can be used by health care facilities to establish a need for additional health care professionals. AzMUAs designation identifies areas or populations as having a need for medical services based on demographic data. The current rules in 9 A.A.C. 15 establish the Primary Care Provider Loan Repayment Program and the Rural Private Primary Care Provider Loan Repayment Program, at 7 A.A.R. 2823, effective August 9, 2001. Laws 2022, Ch. 314 adopts A.R.S. § 36-2175, establishing the Behavioral Health Loan Repayment Program in the Department to pay portions of qualifying educational loans taken out by an individual who serves, according to A.R.S. § 36-2175(B)(2), in a behavioral health hospital, including the Arizona State Hospital, in a behavioral health residential facility, or a secure behavioral health residential facility as a behavioral health care provider, behavioral health technician, behavioral health nurse practitioner, psychiatric nurse practitioner, registered nurse, practical nurse, physician, psychiatrist, or psychologist. In the fiscal year 2023, the Department received a $2 million allocation in state general funds for this new program. The funding is available as of July 1, 2022, and expires on June 30, 2023.

Technical resources are required to amend and promulgate the new rules related to the Behavioral Health Care Provider Loan Repayment Program. Administrative support is also needed to update the Department's website, database, forms, and other administrative documents necessary to establish the new loan repayment program. In addition, to promulgating the new rules, other changes are being made to the current rules to add better clarity and specify which loan repayment program the rule applies to. 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 expects to incur a minimal cost to draft and promulgate the new rules but believes the benefit of having new rules over time will exceed any cost incurred.

The Department is expanding Article 1 to include general rules that apply to any of the three loan repayment programs. To eliminate redundancy, the Department added nine new Sections (R9-15-102 through R9-15-102) in Article 1, which are Sections renumbered from Article 2 and include requirements that would apply to individuals affected by the new Article 3. Moving these Sections to Article 1 allows for better clarity since these rules are general and apply to three state loan repayment programs. Therefore, in Article 2, five Sections were repealed and ten Sections were renumbered and amended to make the rules more clear, concise, and understandable. The Department anticipates that these changes may provide a significant benefit by having rules that are easier to understand.

Definitions outlined in R9-15-101 were amended to be more generalized and apply to all three loan repayment programs. Other definitions were added to include the new Behavioral Health Care Provider Loan Repayment Program. The Department is also amending antiquated terms and citations, removing terms no longer used, and drafting the new rules to conform to statutory authority and current rulemaking format and style requirements. Other terms and definitions were amended and simplified to be more clear, concise, and understandable. For example, the definition of "state prison" was amended to specify that the Arizona Department of Corrections manages the state prison. The new rules clarify the definition of the term "loan repayment funds," by specifying the state loan repayment funds and appropriated funds. The term, "loan repayment program" was amended to specify the three different programs, and remove the acronym "LRP" to improve clarity by spelling out the term. Another change that may provide a significant benefit to the Department is the new R9-15-102, which outlines the qualifying educational loans and restrictions, applicable to all three loan repayment programs. The Department is to use loan repayment funds to pay for principal, interest, and related expenses of a qualifying educational loan taken out by an awardee. According to the new R9-15-103, an individual applying to a loan repayment program must execute any document necessary for the Department to access records and acquire information necessary to verify the information. R9-15-102 and R9-15-103 require Department staff to review and process applications from individuals applying to participate in a loan repayment program.

The new R9-15-104 establishes the criteria for an individual donating money to the Department for funding a loan repayment program. The person donating monies may specify if

the money may be used by the Department for either loan repayment allocations or administrative costs associated with a loan repayment program. The new R9-15-105 establishes criteria for an awardee of a loan repayment program to submit verification of services and disbursement of loan repayment funds. The new R9-15-106 establishes criteria for an awardee of any of the three loan repayment programs who need to update their demographic information, service site, or employment. Department staff will need to review and process the documentation received for verification of services and applications requesting a change of information, however, no additional costs are expected to be incurred since this is a process the Department already responds to. Adding the new Behavioral Health Care Loan Repayment Program may require Department staff to spend at a minimum, an additional amount of time reviewing verification documentation and applications for a change.

Under the new R9-15-107, provisions where the Department may suspend a loan repayment contract, are outlined. A contract suspension may be requested by loan repayment providers who are unable to complete service at their approved service site and wishes to transfer to another service site. A provider who is unable to find employment at an eligible service site during or by the end of the initial suspension period may file a request for an additional 6-month contract suspension to the Department. Once the Department grants the additional contract suspension request, the provider must assume responsibility for the loan and report, to the Department, the progress in identifying another service site. The new R9-15-108 outlines the provisions where the Department may cancel an awardee's loan repayment contract, such as if there is an insufficient amount of funds or if the awardee or service site is not complying with A.R.S. Title 36, Chapter 21 or this Chapter. Additionally, the new R9-15-109 outlines criteria for an awardee who fails to complete the terms of the loan repayment contract and requires the awardee to pay the liquidated damages to the Department. Provisions and criteria for when the Department may waive liquidated damages are outlined in the new R9-15-110. The requirements outlined in these sections are already established in the current Article 2. Therefore, the Department does not expect to incur additional costs due to the new rules in Article 1 but receive a significant benefit for having rules that are more clear, concise, and understandable.

To incorporate the rules in the new Behavioral Health Care Provider Loan Repayment Program and be less duplicative, the Department renumbers this criterion from Article 2 to Article 1. Creating these new sections in Article 1 allows for better clarity since the rule applies to the three different loan repayment programs, outlined in more specific detail in Articles 2 and 3. Moving Sections from Article 2 to Article 1 clarifies the language of the rule without changing its effect on the current Primary Care Provider Loan Repayment Program and Rural Private Primary

Care Provider Loan Repayment Program. By having general rules that apply to anyone involved with a loan repayment program, the Department anticipates individuals affected by the rules will benefit significantly from having rules that are easier to understand. In addition, the Department does not anticipate additional costs since the new Sections in Article 1 are requirements already established by the current Article 2.

In this rulemaking, the Department is updating and streamlining the rules in Article 2 for the Primary Care Provider Loan Repayment Program and Rural Private Primary Care Provider Loan Repayment Program by correcting typographical errors and other changes to clarify the language of the rule without changing its effect. Additional amendments in Article 2 included implementing Laws 2022, Ch. 77, which specifies that Rural Private Primary Care Provider Loan Repayment Program and Primary Care Provider Loan Repayment Program applicants who work at an Indian Health Service facility, tribal or urban Indian health facility are not required to provide a sliding fee scale to be eligible for participation. The terms, "licensee, tribal authority, or employer" were replaced with the defined term, "governing authority." Also, throughout Article 2, many subsections were rearranged and reworded to remove duplicative language to make the rules clearer and more understandable. Also, the Department, in both Articles 1 and 2, amended antiquated terms and citations and drafted the new rules to conform to statutory authority and current rulemaking format and style requirements. The Department expects to receive a significant benefit for having rules that are more clear, concise, and understandable – especially by potentially reducing the number of questions that may be asked and the amount of technical assistance the Department provides.

The new Article 3 establishes criteria and requirements in seven new Sections and one new Table for the new Behavioral Health Care Provider Loan Repayment Program. R9-15-301 outlines the eligibility requirements to participate in the Behavioral Health Care Provider Loan Repayment Program. Initial application requirements are outlined in the new R9-15-302. An individual wanting to continue participation in the Behavioral Health Care Loan Repayment Program after two years is delineated in the new R9-15-303 to submit a renewal application. Individuals who were not able to participate in the Behavioral Health Care Provider Loan Repayment Program after submitting an initial application may submit a supplemental application, as outlined in the new R9-15-304. Department staff is needed to review and process these applications. Time-frame requirements for the Department to review and process applications are outlined in the new R9-15-305 and Table 3.1. Table 3.1 specifically lays out the overall time-frames for an initial application, supplemental application, renewal application, request for change, request to suspend a loan repayment contract, request to waive liquidated

damages, and request to cancel a loan repayment contract. As described in the new R9-15-306, the Department is to review initial and renewal applications and assign points based on the factors to determine the health service priority. For instance, if an applicant is a resident of Arizona according to A.R.S. § 15-1802, they receive priority due to the fact that typically individuals who are from Arizona and/or have resided in Arizona for a long period are more likely to remain in Arizona as their primary residence. The Department determines an applicant's initial or renewal application health service priority by calculating the sum of the assigned points. Lastly, the new R9-15-307 establishes the criteria for the allocation of the Behavioral Health Care Provider Loan Repayment funds. According to this Section, the Department shall allocate Behavioral Health Care Provider Loan Repayment funds to the applicant with the highest health service priority. For the initial two contract years of service, the Department may allocate up to $50,000 to an awardee and for each subsequent year, an awardee may receive up to $25,000. If the Department has inadequate funds to provide loan repayment funds, the Department shall allocate a lesser amount, if available. Similarly, if the Department determines no loan repayment funds are available during a fiscal year for allocations, the Department shall provide a notice at least 30 calendar days before the initial or renewal application submission date that the Department is not accepting initial or renewal applications.

Since the new Behavioral Health Care Provider Program is similar in structure to the current Primary Care Provider Loan Repayment Program and the Rural Private Primary Care Provider Loan Repayment Program, which all fall under the Arizona State Loan Repayment Program, no new full-time employees are necessary due to this rulemaking. The application process and operations for the new Behavioral Health Care Provider Loan Repayment Program are substantially similar to the already established loan repayment programs. The Department expects to incur up to minimal costs to promulgate the new rules in Article 3 and receive a significant benefit from establishing a new loan repayment program for behavioral health care providers.

As stated, while implementing new rules and requirements for the Behavioral Health Care Provider Loan Repayment Program, the Department is also amending the current rules in 9 A.A.C. 15 to remove obsolete requirements, update antiquated language, and improve the effectiveness of the rules. The amended rules streamline the three loan repayment programs, simplify the language of the rule, and provide better clarity to the rules. The Department estimates costs to amend the existing rules are minimal and anticipates that consolidating, restructuring, and deleting antiquated Sections and requirements will provide a significant benefit to the Department

for having rules that are clearer, more concise, and more effective, no longer having obsolete requirements.

Applicants and awardees

The Arizona State Loan Repayment Programs consist of the Primary Care Provider Loan Repayment Program for public, non-profit providers and the Rural Private Primary Care Provider Loan Repayment Program for providers in rural private practice sites. These programs aim to promote the recruitment and retention of health care professionals by repaying their qualifying educational loans in exchange for their two-year commitment to provide primary care services in federally designated HPSA or AzMUA. Laws 2022, Ch 314 establishes the Behavioral Health Care Provider Loan Repayment Program, expanding the eligibility for the Arizona State Loan Repayment Programs. Behavioral health care providers and nurses who serve in behavioral health facilities, the Arizona State Hospital (ASH), behavioral health residential facilities, or secure behavioral health may be eligible participants of the new Behavioral Health Care Provider Loan Repayment Program and can apply to be an awardee.

As of September 2022, Betterment's 401(k) Business[1] surveyed 1,000 full-time employees to examine their understanding of financial wellness and found that an estimated 35% of employees prioritize paying their student loans more now than they did pre-pandemic. The Federal Reserve estimates that 30 percent of all adults, which is roughly 4 in 10 people who went to college, collectively owe more than $1.7 trillion in student loans, spread out among about 48 million borrowers. That's about $412 billion more than the total U.S. auto loan debt. Among the class of 2020, 55% of bachelor's degree recipients took out student loans, graduating with an average of $28,400 in federal and private debt, and 14% of parents with children in the class of 2019 took out an average of $37,200 in federal parent PLUS loans. Students and parents borrowed an estimated $95.9 billion in the 2020-2021 academic year, and 13% of that were private and other non federal loans. This represents a sizable percentage of the workforce that employers are recruiting from amid the current tight job market. Findings from an October survey by the Employee Benefit Research Institute[2] show that 17% of employers currently offer student loan debt assistance and another 31% plan to do so. A staggering 85% of student loan borrowers would be enticed to leave their job for an employer that offered better financial benefits. Nearly 70% of medical school graduates left school with debt in 2021, according to the Association of American Medical Colleges. The median debt—not including undergraduate study—was $200,000 per student. By offering a loan repayment program as a benefit of employment, the

[1] https://resources.betterment.com/hubfs/PDFs/b4b/reports/financial-wellness-benefits-survey.pdf
[2] https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_544_fwes2021-28oct21.pdf?sfvrsn=51443b2f_4

Department estimates it will incentivize employees to work in the behavioral health care field, as well as incentivize employees to remain employed.

The staff at ASH includes behavioral health technicians, nurses, nurse practitioners, social workers, occupational therapists, psychologists, psychiatrists, and physicians. In September 2022, staff turnover at ASH for certain direct service positions was 43.9% for behavioral health technicians and 31.2% for registered nurses (RN). Generally, staff turnover can cost a company about $15,000 per employee who makes an average salary of $45,000. Taking into account the background checks, drug tests, screening, and other hire-on costs, in addition to the costs to train an employee, high employee turnover is a significant cost to a behavioral health facility or ASH. Costs negatively affecting ASH reduces the efficient use of taxpayer money. According to the National Healthcare Retention & RN Staffing survey, "the average cost of turnover for a bedside RN is $52,100 and ranges from $40,300 to $64,000 resulting in the average hospital losing $4.4M – $6.9M. Each percent change in RN turnover will cost/save the average hospital an additional $328,400." The Department could potentially decrease the high turnover rate by providing another benefit of employment, an incentive to remain employed by ASH, and save Arizona taxpayers money. In addition, the new Behavior Health Care Loan Repayment Program, for the first time, uniquely establishes eligibility and priority for specific disciplines that serve in behavioral health facilities, including ASH. ASH has historically not been eligible to participate in established federal or state loan repayment programs due to federal and state regulations.

Staff retention and turnover at ASH have been an ongoing issue and are highlighted in Laws 2022, Ch 314. ASH treats patients that are committed under a court order for treatment under A.R.S. Title 36, Chapter 5, due to their being a danger to themselves, a danger to others, persistently or acutely disabled, gravely disabled, or under A.R.S. Title 13, after committing a violent crime deemed as "Guilty Except Insane." The staff at ASH are regularly tasked with incredible challenges with the type of population at ASH, as the level of acuity is high, which has led to continued issues with staff retention and high turnover. In September 2022, the Arizona State Hospital had a 31 percent staffing turnover rate in nursing. Also, due to the COVID-19 pandemic, there has been an increase in clients seeking mental health services. At the start of the COVID-19 pandemic, many clients were navigating the tough transition to sheltering at home and quarantining. This caused an immediate demand that superseded mental health care. The emotional distress hotline operated by the Substance Abuse and Mental Health Services Administration saw an increase in inquiries of more than 1,000% compared with the same period in 2019. Many mental health professionals have become inundated and busier with an increased number of clients seeking services than there were prior to the pandemic.

While it may be difficult to predict the number of expected applications for the Program, based on historical data and similar state loan repayment programs, the Department estimates an average of about 82 applications for the Program a year. During the past seven years, the existing state loan repayment programs received the following number of applications every year; 2016: 32, 2017: 76, 2018: 108, 2019: 120, 2020: 107, 2021: 78, 2022: 55. Out of the applications received, the Department estimates to issue about 40 loan repayment awards to individuals who qualify for the Program. It takes about 4 months from the application due date to get a contract in place.

The new Behavioral Health Care Provider Loan Repayment Program is an option for qualifying individuals who serve in a behavioral health facility or the Arizona State Hospital as a behavioral health care provider, behavioral health technician, RN, practical nurse, or physician. In exchange for two years of employment in an eligible site, qualifying individuals can receive up to $50,000 in loan repayment for full-time work, and for each subsequent year, up to $25,000, as prescribed in R9-15-307. The Behavioral Health Care Provider Loan Repayment Program and Service Site requirements, as prescribed in R9-15-301, a qualifying individual must meet the requirements in A.R.S. § 41-1080 and complete a course of study or program approved by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation for higher education in a health professional licensed under A.R.S. Title 32 or holds a current Arizona license or certificate in a health professional licensed under A.R.S. Title 32. A qualifying individual must also demonstrate current employment of providing direct patient care with a service site that is a public or nonprofit entity located at the Arizona State Hospital, a behavioral health hospital, a behavioral health residential facility licensed under 9 A.A.C. 10, Article 7, or a secure behavioral health residential facility licensed under 9 A.A.C. 10, Article 13 in Arizona. In addition, the current employer (service site) must be contracted with the Arizona Health Care Cost Containment System to provide services.

To apply to participate in the Behavioral Health Care Provider Loan Repayment Program, an applicant may submit an initial application to the Department by March 1 of each year, according to R9-15-302. As prescribed in R9-15-303, an applicant may request to continue participation by submitting a renewal application if the individual's service site is the Arizona State Hospital or has a HPSA score of 14. Under R9-15-304, if an applicant submits an initial application and is not approved to participate in the Behavioral Health Care Provider Loan Repayment Program during the initial application allocation process, the applicant may reapply by submitting a supplemental application, if the Department determines that there are sufficient funds available for additional awardees.

As previously stated, under Article 1, nine new sections generalize the requirements that apply to the three loan repayment programs offered and overseen by the Department. Several changes were made to R9-15-101, including adding definitions for the terms: “applicant,” “awardee,” “Behavioral health care provider,” and “Behavioral health technician.” In addition, the definitions were amended to provide better clarity to the rules and to generalize the terms so that it applies to all three loan repayment programs. For example, the definition of the term “primary care provider” was amended to clarify the types of services provided. Another clarification made to the rules is the use of the term “a certified nurse midwife” under the “Primary care provider” definition, which is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period. The Department anticipates that the new rules may provide a significant benefit to applicants and awardees, if the amount of technical assistance needing to be provided is reduced, and perhaps a minimal-to-moderate benefit to the Department.

The new R9-15-102 provides criteria for what qualifies as an educational loan and outlines the restrictions. An individual applying to any of the three loan repayment programs shall execute any document necessary for the Department to access records and acquire information necessary to verify information, as outlined in the new R9-15-103. The new R9-15-105 provides the criteria for an awardee of a loan repayment program to submit verification of services and disbursement of loan repayment funds. While the application requirements for the three loan repayment programs are different, the criteria for an awardee of a loan repayment program who needs to update their demographic information, service site, or employment and outlined in the new R9-15-106. Provisions where the Department may suspend a loan repayment contract are outlined in the new R9-15-107. The Department may cancel an awardee’s loan repayment contract under the provisions outlined in the new R9-15-108, if the Department determines that there are insufficient funds or if the awardee or the awardee’s service site is not complying with A.R.S. Title 36, Chapter 21 or this Chapter. For any of the three loan repayment programs, an awardee who fails to complete the terms of the loan repayment contract shall pay to the Department the liquidated damages, as outlined in the new R9-15-109. Provisions and criteria for when the Department may waive liquidated damages under the new R9-15-110. The requirements outlined in the new sections are already established in the current Article 2. Since the Department is establishing the new Behavioral Health Care Provider Loan Repayment Program in the new Article 3 and the general requirements apply to all the loan repayment programs. The rules are more clear, concise, and understandable by consolidating the general requirements under new sections in Article 1. Therefore, five sections in Article 2 were repealed and nine Sections were

renumbered and amended to make the rules more clear, concise, and understandable. Throughout Article 2, the Department is amending the rules to remove duplicative language, update cross-references, and reword subsections to provide better clarity of the rules, as well as spelling out the terms "loan repayment program" rather than using the acronym, "LRP." In addition, the Department is amending R9-15-202 to clarify that the rule does not apply to individuals submitting a supplemental application.

The new Article 3 establishes the Behavioral Health Care Provider Loan Repayment Program. Requirements for an individual who wishes to participate in the Behavioral Health Care Provider Loan Repayment Program are established in the new R9-15-301. As outlined in the new R9-15-302, an applicant who has not previously participated in a loan repayment program under this Chapter may submit an initial application to the Department by March 1 of each year. Requirements for an individual to submit a renewal application to continue participation in the Behavioral Health Care Loan Repayment Program after two years are outlined in the new R9-15-303. Supplemental initial application requirements for individuals applying to participate in the Behavioral Health Care Provider Loan Repayment Program are prescribed in the new R9-15-304. The new R9-15-305 and Table 3.1 establishes time-frame requirements for individuals applying or awardees participating in the Behavioral Health Care Loan Repayment Program. To determine the initial application or renewal application health service priority points for awardees of the Behavioral Health Care Provider Loan Repayment Program are outlined in the new R9-15-306. Lastly, in R9-15-307, criteria for the allocation of the Behavioral Health Care Provider Loan Repayment funds are established. The Department anticipates that the new rules may provide a significant benefit to individuals who qualify to participate in the Behavioral Health Care Loan Repayment Program and are awarded educational loan repayments.

Service Sites

The Department expects that service sites will benefit from the new rules that establish the Behavioral Health Care Loan Repayment Program, expanding qualifying individuals to participate and receive loan repayment awards, which may incentivize staff to remain employed at the service site. Eligible sites must be behavioral health facilities, including the Arizona State Hospital, behavioral health residential facilities, and secure behavioral health residential facilities in Arizona. ADHS expects that the vast majority of loan repayment program providers will complete their service obligations at their originally selected sites. However, it is anticipated that this will not always be the case. Despite best efforts and intentions, not every provider is correctly suited to the original site. Life changes on the part of the provider, and/or organizational changes

at the site may precipitate the need to change sites. Providers and service sites must make their best effort to seek a resolution of the issues in order for the provider to remain at the original site for the duration of his/her service obligation. If a resolution is not possible, timely communication between ADHS and providers will facilitate the identification of the appropriate action by the ADHS. Service sites are expected to receive a significant benefit from new Article 3 rules that expand the current state loan repayment program to behavioral health care providers.

In this rulemaking, the Department is amending R9-15-101 to add definitions including "Arizona State Hospital," "behavioral health facility," "behavioral health hospital," "behavioral health residential facility," and "governing authority." Also, in this section, the term "telemedicine" was amended to adhere to the new statutory changes. Throughout Article 2, rules were amended to clarify and specify that the criteria apply to an Indian Health Service or tribal facility, as required by Laws 2022, Ch. 77. The terms, "licensee, tribal authority, or employer" were replaced with the defined term, "governing authority." Also, as previously stated, throughout Article 2, many subsections were rearranged and reworded to remove duplicative language, correct cross-references, and make the rules more clear, concise, and understandable.

As prescribed in the new R9-15-301, a service site shall notify the Department if there is a change in employment status for an individual participating in the Behavioral Health Care Provider Loan Repayment Program. According to the new R9-15-302, a service site shall comply with the requirements of employment in R9-15-301 and submit to the Department an attestation for each awardee including information about the service site and the number of hours worked by the awardee. At the end of each calendar quarter, the provider must submit, in coordination with a representative from ASH, an employment verification document. This verifies that the participant provided full-time direct patient care during the specified dates. It must be signed and notarized by both the provider and service site administrator. As applicable for physicians, the employment verification must also include the number of patient encounters provided during the quarter, and the number of telemedicine hours, if applicable. Receipt of this document will trigger loan repayment disbursement. The Department expects service sites to incur minimal-to-moderate administrative costs to implement the new rules, but also receive a significant benefit and increase in staff retention.

Due to the new rules and implementation of the new Behavioral Health Care Provider Loan Repayment Program, the Department estimates that service sites may incur moderate costs for recruiting staff. The rulemaking is expected to increase staff retention and attract more individuals to work at service sites, including the Arizona State Hospital. In addition, a service site must be contracted with Arizona Health Care Cost Containment System to provide services,

according to Laws 2022, Chapter 314, in order for an applicant to be eligible to participate in the Behavioral Health Care Provider Loan Repayment Program.

The General Public

The Behavioral Risk Factor Surveillance System (BRFSS) is the nation's premier system of health-related telephone surveys that collect state data about U.S. residents regarding their health-related risk behaviors, chronic health conditions, and the use of preventive services. In the 2016 BRFSS, 13.6% of Arizonans reported they could not afford needed health care. This is higher than the national average of 12.1% but represents a decrease in Arizona from its 2012 percentage of 19.8%. Twenty-three percent of people in the unable-to-work category reported being unable to see a doctor because of cost. Patients who are admitted to service sites and being treated by a behavioral health care provider are negatively affected by service sites having a turnaround in staff as well as staffing shortages. Individuals in crisis, in need of urgent and inpatient care, have longer wait times for care including life-threatening emergencies. Inpatient environments become less stable, potentially at risk for physical harm and patient treatment is difficult to deliver, impacting patients' recovery and leading to longer stays, relapse, and recidivism.

The Behavioral Health Care Provider Program is intended to help retain and potentially attract people to the behavioral health workforce in Arizona. Moreover, not sustaining a sufficient workforce in healthcare is a significant cost to the State, as clients seeking behavioral health services increasingly go unserved and are far less likely to become safe and self-sufficient. Arizona continues to experience a high number of mental health professional shortages for a variety of reasons. Arizona's healthcare workforce has not kept up with the State's rapid population growth and meets just 11% of the current mental health care workforce needs. Also, Arizona ranks 47th in terms of behavioral health workforce availability, and worst of all states in the percentage (30%) of children (ages 0 to 17) with at least two Adverse Childhood Experiences. The behavioral health workforce as measured by provider per 100, 000 population ratio is four to five percent higher than the percent of the population living in urban areas than in rural areas for all professions except substance abuse counselors. Psychiatrists mostly practice in urban areas (96.7%), exceeding the percentage of the population living in urban areas (92%) by almost five percent. The ability of Arizona's rural population to access high quality behavioral health services is particularly concerning. Arizona continues to experience a high number of mental health professional shortages for a variety of reasons. Arizona's healthcare workforce has not kept up with the state's rapid population growth. In Arizona, there are 194 mental health professional

shortage areas. To eliminate the current shortage, Arizona needs an estimated additional 181 psychiatrists statewide. Many inpatient facilities in Maricopa County have closed inpatient beds due to staffing shortages, which has made significant gaps in service to some of Arizona's most vulnerable residents with serious mental illnesses, including schizophrenia, bipolar disorder, and severe depression. These all impact the ability to provide inpatient court-ordered evaluation and treatment for individuals transferred from outside of Maricopa County. Staffing shortages, closure, and/or reductions in available licensed beds can lead to a delay in treatment while creating an undue burden on the individual, family, law enforcement, emergency department, and justice systems, as well as escalating costs.

In addition, patient safety is negatively impacted by staffing shortages. Inpatient environments become less stable, patients and staff are potentially at risk for physical harm, and patient treatment is difficult to deliver, impacting patients' recovery, leading to longer stays, relapse, and recidivism. The need for adequate mental health staffing has especially been challenging due to the COVID-19 pandemic which has led to a number of negative impacts on the healthcare delivery system. Many frontline employees have left the profession. In recent months, inpatient facilities in Maricopa County have closed several inpatient beds due to staffing shortages, and significant gaps in service to some of Arizona's most vulnerable residents with serious mental illnesses including schizophrenia, bipolar disorder, and severe depression. All impacting the ability to provide inpatient court-ordered evaluation and treatment for individuals transferred from outside of Maricopa County. Staffing shortages, closure, and/or reductions in available licensed beds such as these can lead to delay in service, and detainment, while creating an undue burden on the person, family, law enforcement, emergency department, and justice systems, and escalating costs.

The Arizona State Loan Repayment Program seeks to improve access to care in medically underserved areas in Arizona by increasing the number of health care providers working in underserved communities. The Department estimates that the general public will receive a significant benefit from having rules that provide increased access to health care and likely increase the quality of care if staff retention is to increase, specifically for behavioral health care providers. In consideration of the summary provided, the Department has determined that the potential benefits to regulated persons outweigh the probable cost of the rulemaking and the rules impose the least burden and costs to regulated persons. The potential benefits to regulated persons outweigh the probable cost of the rulemaking.

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:**

The Department does not expect the rules to have a negative impact on employment for private and public businesses, agencies, and political subdivisions. Rather, the Department is optimistic that employment, including staff retention, will increase by the incentive of providing a loan repayment opportunity to behavioral health care providers eligible to participate in the Behavioral Health Care Provider Loan Repayment Program.

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 rulemaking may include service sites

   b. **The administrative and other costs required for compliance with the rules:**

   A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in Paragraph 3. The administrative costs to implement the Behavioral Health Care Loan Repayment Program are expected to be minimal since the Department already oversees similar loan repayment programs.

   c. **A description of the methods that the agency may use to reduce the impact on small businesses:**

   The Department knows of no other methods to further reduce the impact on small businesses.

   d. **The probable costs and benefits to private persons and consumers who are directly affected by the rules:**

   A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis Paragraph 3.

6. **A statement of the probable effect on state revenues:**

The Department has received a $2 million allocation in state general funds, legislative appropriation of FY 2023 tax-payer monies, for the new Program.

7. **A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

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 financial data used to develop this document was obtained, as cited, from the Department's licensing database and financial records and projections, not from any outside data. Information about the costs related to health care appointments was obtained from published research and review articles. As such, the Department believes the data is acceptable.

C-3

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16

New Article: Article 7

New Section: R9-16-701, R9-16-702, R9-16-703, R9-16-704, R9-16-705, R9-16-706, Table 7.1, R9-16-707, R9-16-708

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 21, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16

New Article: Article 7

New Section: R9-16-701, R9-16-702, R9-16-703, R9-16-704, R9-16-705, R9-16-706, Table 7.1, R9-16-707, R9-16-708

Summary:

This expedited rulemaking from the Department of Health Services (DHS) or (Department) seeks to establish a new article with eight (8) rules and one (1) table in Title 9, Chapter 16, Article 7 regarding Occupational Licensing of Laser Technicians. Article 7 relates to Laser Technicians including definitions, eligibility and scope of practice, application for initial certification, renewal of certification, changes affecting a certificate, review time-frames, fees, and enforcement.

As part of a 5YRR for Title 9, Chapter 7, Article 14 approved by the Council October 2020, the Department indicated that the rules regarding certification of training programs and laser technicians, including aestheticians and cosmetologists, were difficult to find and to understand, imposing an undue burden on individuals wanting to obtain certification as a laser technician. The Department proposed a course of action where they would reformat and move the regulations into a separate Article under Chapter 16, Occupational Licensing.

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 satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3) because it essentially reformats and moves the requirements without substantive changes (from 9 A.A.C. 7, Article 14) so that the rules are easier to find and understand. The Department also indicates that the rulemaking also satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(8) because the Department inherited these requirements when it consolidated with the Arizona Radiation Regulatory Agency pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234.

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 23, 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 it believes the certification issued to an individual is a general permit because certification specifies the individual and the tasks/services the individual is authorized to provide, but a certified individual is not limited to providing in any one location.

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 establish a new article with eight (8) rules and one (1) table in Title 9, Chapter 16, Article 7 regarding Occupational Licensing of Laser Technicians. As part of a recent 5YRR for Title 9, Chapter 7, Article 14 approved by the Council October 2020, the Department identified that a rulemaking should be conducted to reformat and move the regulations to Chapter 16 as they were difficult to find and to understand, imposing an undue burden on individuals wanting to obtain certification as a laser technician.

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

September 28, 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. 16, Article 7, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 10, 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 essentially reformats and moves requirements from one location in the Arizona Administrative Code (9 A.A.C. 7, Article 14) to another (9 A.A.C. 16) without substantive changes to make the requirements easier to find and understand, as specified according to A.R.S. § 41-1027(A)(3). The requirements currently in 9 A.A.C. 7, Article 14, were inherited by the Department when the Arizona Radiation Regulatory Agency was consolidated with the Department pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, so this rulemaking also meets the requirements for expedited rulemaking in A.R.S. § 41-1027(A)(8). The rulemaking adopts changes identified in a five-year-review report for 9 A.A.C. 7, Article 14, but falls outside the time specified in A.R.S. § 41-1027(A)(7) due to when the approval for the rulemaking was granted.

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. 16, Article 7, relates to a five-year-review report for 9 A.A.C. 7, Article 14, approved by the Council on October 6, 2020.

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 December 5, 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 16. DEPARTMENT OF HEALTH SERVICES

OCCUPATIONAL LICENSING

PREAMBLE

1.	Article, Part or Sections Affected (as applicable)	Rulemaking Action
	Article 7	New Article
	R9-16-701	New Section
	R9-16-702	New Section
	R9-16-703	New Section
	R9-16-704	New Section
	R9-16-705	New Section
	R9-16-706	New Section
	Table-7.1	New Section
	R9-16-707	New Section
	R9-16-708	New Section

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. §§ 30-654(B)(5), 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 30-654(B)(9), 32-516, 32-3233

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. 1202, May 26, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 1395, June 23, 2023

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.) § 32-3233 specifies requirements for the certification of laser technicians and for programs providing training to individuals enabling them to apply for certification. A.R.S. § 32-516 requires an aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices to apply for and receive a certificate from the Department. The rules for certification of training programs and laser technicians, including aesthetician and cosmetologists, are currently embedded in 9 A.A.C. 7, Article 14, where the rules were recodified from 12 A.A.C. 1 after the Department assumed responsibility, pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, for the regulation of radioactive material, devices containing or producing radioactivity, and the persons using them. The requirements are difficult to find and to understand, imposing an undue burden on individuals wanting to obtain certification as a laser technician. As part of a recent five-year review report on the rules in 9 A.A.C. 7, Article 14, the Department proposed removing the requirements for certification of training programs and laser technicians into a separate Article under 9 A.A.C. 16, Occupational Licensing. The Department is adopting these existing requirements in Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 7. The Department believes that this rulemaking will improve effectiveness and reduce 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 Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

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 16. DEPARTMENT OF HEALTH SERVICES

OCCUPATIONAL LICENSING

ARTICLE 7. LASER TECHNICIANS

ARTICLE 7. LASER TECHNICIANS

R9-16-701. Definitions

In addition to the definitions in A.R.S. §§ 32-516 and 32-3231, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means an individual who submits an application packet.
2. "Application packet" means the information, documents, and fees required by the Department for a certificate.
3. "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.
4. "Department-certified training program" means a curriculum of courses and learning activities that is granted approval through the Department under 9 A.A.C. 7, Article 14.

R9-16-702. Laser Technician - Eligibility and Scope of Practice

A. An individual is eligible for certification as a laser technician if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has:
      i. Completed a course consistent with requirements in 9 A.A.C. 7, Article 14, provided by a Department-certified training program;
      ii. Achieved a score of at least 80% on an examination consistent with requirements in 9 A.A.C. 7, Article 14;
      iii. For use of a laser or IPL device for hair removal, completed 10 procedures and 24 hours of hands-on training for hair removal consistent with requirements in 9 A.A.C. 7, Article 14; and
      iv. For use of a laser or IPL device for a cosmetic procedure other than hair removal, has completed, in addition to the hands-on training required according to subsection (A)(2)(a)(iii), an additional 10 procedures and 24 hours of hands-on training hands-on training for the other cosmetic procedure consistent with requirements in 9 A.A.C. 7, Article 14; or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a laser technician is authorized to use a laser or IPL device to perform:

1. Only those cosmetic procedures specified on the certificate issued by the Department to the individual according to R9-16-703, R9-16-704, or R9-16-705;
2. Hair removal under the indirect supervision of a health professional licensed under A.R.S. Title 32 whose scope of practice permits the supervision; and
3. For a cosmetic procedure other than hair removal, under the direct supervision of a health professional licensed under A.R.S. Title 32 whose scope of practice permits the supervision.

R9-16-703. Application for Initial Certification as a Laser Technician

A. Except as provided in subsection (B), an applicant for certification as a laser technician shall submit to the Department an application packet that includes:

1. The following information in a Department-provided format:
   a. The applicant's name;
   b. The applicant's residential address and, if different, mailing address;
   c. The applicant's telephone number;
   d. The applicant's e-mail address;
   e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
   f. The applicant's date of birth;
   g. The applicant's current employment as a laser technician, if applicable, including:
      i. The employer's name,
      ii. The applicant's position,
      iii. Dates of employment,
      iv. The address of the employer,
      v. The supervisor's name,
      vi. The supervisor's email address, and
      vii. The supervisor's telephone number;
   h. Each type of cosmetic procedure, from the list of Department-approved cosmetic procedures on the Department's website at https://www.azdhs.gov/licensing/special/index.php#laser-technicians-provider-application, for which the applicant is requesting certification;
   i. Whether the applicant holds other professional licenses or certifications and, if so:
      i. The professional license or certification, and

ii. The state in which the professional license or certification was issued;

j. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;

k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-706;

l. An attestation that the information and documentation submitted as part of an application packet is true and accurate; and

m. The applicant's signature and date of signing;

2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:

a. The date of the disciplinary action, revocation, or suspension;

b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and

c. An explanation of the disciplinary action, revocation, or suspension;

3. If the applicant is currently ineligible for licensing or certification in any state because of a professional license revocation or suspension, documentation that includes:

a. The date of the ineligibility for licensing or certification,

b. The state or jurisdiction of the ineligibility for licensing or certification, and

c. An explanation of the ineligibility for licensing or certification;

4. A copy of the provisional certificate for course completion issued to the applicant consistent with requirements in 9 A.A.C. 7, Article 14;

5. Either:

a. Documentation from a Department-certified training program certifying that the applicant completed 10 procedures and 24 hours of hands-on training for each type of cosmetic procedure specified according to subsection (A)(1)(h); or

b. Both:

i. A copy of the document, in a Department-provided format, issued to the applicant by the supervising health professional or laser technician, consistent with requirements in 9 A.A.C. 7, Article 14, verifying and attesting to the successful completion of the applicant's 24 hours of hands-on training; and

ii. A log, in a Department-provided format, documenting 10 procedures and 24 hours of hands-on training for each type of cosmetic procedure specified according to subsection (A)(1)(h);

6. Documentation for the applicant that complies with A.R.S. § 41-1080; and

7. The applicable fee in R9-16-707.

B. If an applicant for initial certification as a laser technician may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in subsection (A)(1) and, if applicable, (A)(2) or (3);

2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;

3. Documentation showing the types of cosmetic procedures for which the applicant has a professional license or certification;

4. A statement, signed and dated by the applicant, attesting that the applicant:

a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;

b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);

c. Has not voluntarily surrendered a professional license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have a complaint, an allegation, or an investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

5. The applicable fee in R9-16-707.

C. The Department shall approve or deny an application for initial certification according to R9-16-706.

D. Initial certification as a laser technician is valid for one year after issuance, unless revoked, and must be renewed annually.

R9-16-704. Renewal of Certification

A. A laser technician may apply for renewal of certification:

1. Within 60 days before the expiration date of the laser technician's current certification, or

2. Within the extension time period granted under A.R.S. § 32-4301.

B. An applicant for renewal of certification shall submit to the Department an application packet that includes:

1. The following information in a Department-provided format:
   a. The applicant's name, address, telephone number, and email address;
   b. The applicant's current certification number;
   c. The applicant's current employment as a laser technician, if applicable, including:
      i. The employer's name,
      ii. The applicant's position,
      iii. Dates of employment,
      iv. The address of the employer,
      v. The supervisor's name,
      vi. The supervisor's email address, and
      vii. The supervisor's telephone number;
   d. Whether the applicant has, within the previous year before the date of the application, had:
      i. A certificate issued under this Article suspended or revoked; or
      ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;
   e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-706;
   f. Attestation that all the information submitted as part of the application packet is true and accurate; and
   g. The applicant's signature and date of signature; and
2. The renewal fee required in R9-16-707.

C. The Department shall approve or deny an application for renewal of certification according to R9-16-706.

R9-16-705. Changes Affecting a Certificate; Request for a Revised/Duplicate Certificate

A. A laser technician shall notify the Department in writing, within 30 calendar days after the effective date of a change in:

1. The laser technician's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address, as applicable;
2. The laser technician's name, including:
   a. The following information, in a Department-provided format:

i. The laser technician's name, as recorded by the Department, and the laser technician's current certificate number and expiration date;

ii. The laser technician's new name; and

iii. The laser technician's signature and date of signature;

b. A copy of the legal document establishing the laser technician's new name; and

c. The fee required in R9-16-707 for a revised/duplicate certificate that reflects the laser technician's name change; or

3. The laser technician's employer, including the name and address of the new employer.

B. A laser technician may request to add a cosmetic procedure to the laser technician's certificate by submitting to the Department an application packet that includes:

1. The following information in a Department-provided format:

a. The laser technician's name, address, telephone number, and email address;

b. The laser technician's current certification number;

c. Each type of cosmetic procedure that the laser technician is requesting be added to the laser technician's certificate;

d. Attestation that all the information submitted as part of the application is true and accurate; and

e. The laser technician's signature and date of signature;

2. A copy of the document issued to the laser technician by the supervising health professional or laser technician, consistent with requirements in 9 A.A.C. 7, Article 14, verifying the successful completion of the laser technician's 24 hours of hands-on training;

3. A log, in a Department-provided format, documenting 10 procedures and 24 hours of hands-on training for each type of cosmetic procedure specified according to subsection (B)(1)(c); and

4. The fee required in R9-16-707 for a revised/duplicate certificate that reflects the added cosmetic procedure.

C. The Department shall approve or deny a request to add a cosmetic procedure to the laser technician's certificate according to R9-16-706.

D. In addition to the circumstances in subsections (A) and (B), a laser technician may obtain a revised/duplicate certificate by submitting to the Department:

1. A written request for a revised/duplicate certificate, in a Department-provided format, that includes:

a. The laser technician's name and address,

b. The laser technician's certificate number, and

c. The laser technician's signature and date of signature; and

2. The revised/duplicate certificate fee in R9-16-707.

R9-16-706. Review Time-frames

A. For each type of certificate or approval issued by the Department under this Article, Table 7.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.

2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of certificate or approval issued by the Department under this Article, Table 7.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

1. The administrative completeness review time-frame begins on the date the Department receives an application packet required in this Article.

2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.

a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.

b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.

c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.

3. If the Department issues a certificate or approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of certificate or approval issued by the Department under this Article, Table 7.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
   a. The Department may make one comprehensive written request for additional information or documentation; and
   b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or approval.

D. An applicant who is denied a certificate or approval may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 7.1. Time-frames

Type of Application	Administrative Completeness Review Time-frame (in Calendar Days)	Substantive Review Time-frame (in Calendar Days)	Overall Time-frame (in Calendar Days)
Initial laser technician certificate	30	30	60
Renewal of a laser technician certificate	30	30	60
Addition of a procedure	30	30	60

R9-16-707. Fees

A. Except as provided in subsection (B), an applicant shall submit to the Department the following nonrefundable fees for:
1. An initial application or renewal application for certification as a laser technician, $50; and
2. A revised/duplicate certificate, $10.

B. An applicant for initial certification as a laser technician is not required to submit the applicable fee in subsection (A)(1) if the applicant, as part of the application packet in R9-16-703, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

R9-16-708. Enforcement

A. The Department may deny, revoke, or suspend a certificate under A.R.S. § 32-3233.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of individuals affected by the violations,
6. The degree of harm to an individual,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A laser technician may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

Statutory Authority for Rulemaking

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-516. Aestheticians; cosmetologists; cosmetic laser and IPL device use; certification; fees; definitions

A. An aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices must:

1. Apply for and receive a certificate from the department.

2. Comply with the requirements of this section and department rules.

3. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.

4. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

5. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of specific procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The

health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.

6. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.

B. The department shall issue a laser technician certificate authorizing the aesthetician or cosmetologist to use lasers and IPL devices if the applicant has completed the training for hair removal or lasers and IPL devices for other cosmetic procedures, as applicable, and shall maintain a current register of those laser technicians in good standing and whether certification is for hair removal only or other cosmetic procedures as well. The department may establish a fee for the registration of aestheticians or cosmetologists as laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.

C. An aesthetician or a cosmetologist who has been certified as a laser technician by the department may use a laser or IPL device:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the aesthetician or cosmetologist is directly supervised by a health professional whose scope of practice permits the supervision and the aesthetician or cosmetologist has been certified in those procedures.

D. The board shall investigate any complaint from the public or from another board or agency regarding a licensed aesthetician or cosmetologist who performs cosmetic laser procedures or procedures using IPL devices pursuant to this section. The board shall report to the department any complaint it receives about the training or performance of an aesthetician or a cosmetologist who is certified as a laser technician.

E. An aesthetician or a cosmetologist who used laser and IPL devices before November 24, 2009 may continue to do so if the aesthetician or cosmetologist received a certificate pursuant to this section before October 1, 2010.

F. For the purposes of this section:

1. "Department" means the department of health services.

2. "Directly supervised" means a health professional who is licensed in this state and whose scope of practice allows the supervision supervises the use of a laser or IPL device for cosmetic purposes while the health professional is present at the facility where and when the device is being used.

3. "Health professional" means a person who is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and who specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title.

4. "Indirect supervision" means supervision by a health professional who is licensed in this state, whose scope of practice allows the supervision and who is readily accessible by telecommunication.

5. "IPL device" means an intense pulse light class II surgical device certified in accordance with the standards of the department for cosmetic procedures.

6. "Laser" means any device that can produce or amplify electromagnetic radiation with wavelengths in the range of one hundred eighty nanometers to one millimeter primarily by the process of controlled stimulated emission and certified in accordance with the standards for the department for cosmetic procedures.

7. "Laser technician" means a person who is or has been certified by the department pursuant to its rules and chapter 32, article 2 of this title.

32-3233. Lasers; IPL devices; authorized use; authorized supervision

A. A health professional may register, operate and use a laser or IPL device that is registered with the department or administer drugs or devices for cosmetic purposes to the extent the use is allowed by the health professional's scope of practice and the health professional has completed any training required by the health professional's regulatory board and the department.

B. A health professional may supervise another health professional in the use of a laser or IPL device for cosmetic purposes to the extent the supervision is allowed or required by the supervising health professional's scope of practice and the supervising health professional has completed any training required by the supervising health professional's regulatory board and the department.

C. The health professional's regulatory board shall investigate any complaint from the public or another board or agency involving the training, education, supervision or use of a laser or IPL device. A health professional shall report to the department any complaint received about the training or performance of a laser technician.

D. A health professional may supervise a laser technician in the use of a laser or IPL device for cosmetic purposes if:

1. The health professional is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title and the supervision is within the health professional's scope of practice.

2. The supervision does not conflict with the requirements of this article.

3. The laser technician has been certified by the department to use a laser or IPL device for hair removal or other cosmetic procedures.

E. A laser technician who wishes to perform cosmetic laser procedures and procedures using IPL devices must:

1. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.

2. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or supervising laser technician shall verify that the laser technician has completed the training and supervision as prescribed by this section.

3. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or supervising laser technician shall verify that the laser technician has completed the training and supervision as prescribed by this section.

4. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.

F. The department shall issue a laser technician certificate authorizing the use of lasers and IPL devices only for hair removal if the applicant meets the applicable requirements of subsection E of this section, or for hair removal and other cosmetic procedures if the applicant meets the applicable requirements of subsection E of this section. The department shall maintain a current register of those laser technicians in good standing and whether certification is only for hair removal or for hair removal and other cosmetic procedures. The department may establish a fee for the registration of laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.

G. A laser technician who has been using laser and IPL devices before November 24, 2009 may continue to do so if the laser technician applies for and receives a certificate pursuant to this section before October 1, 2010.

H. A laser technician may use a laser or IPL device in the following circumstances:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the laser technician is directly supervised by a health professional whose scope of practice permits the supervision.

I. The supervising health professional, the employer of a laser technician and the registrant who owns or operates the laser or IPL device are subject to disciplinary action by the appropriate regulatory board for any errors made by a laser technician or for the use of a laser or IPL device that is not allowed by this article. A person who employs a person who operates a laser or IPL device must report any misuse of a laser or IPL device to the operator's regulatory board and to the department.

J. The department shall investigate any complaint from a member of the public or another board or agency involving the training, education, practice or complaint of harm resulting from a laser technician performing procedures for cosmetic purposes under this article and shall take appropriate disciplinary action as necessary, including revocation of the laser technician's certification or revocation of a registrant's or employer's license to own or operate a laser or IPL device.

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; definition

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. Whenever 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 no 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 fund-raising 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) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. 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 obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods 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.

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 the preservation or storage of 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 preparation of 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 food for commercial purposes pursuant to paragraph 4 of this subsection.

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. For the purposes of this section, "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.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9, Article 9

Amend: R18-9-A905, R18-9-B90, R18-9-B904, R18-9-B906

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: November 17, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 9, Article 9

Amend: R18-9-A905, R18-9-B90, R18-9-B904, R18-9-B906

Summary:

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend four (4) rules in Title 18, Chapter 9, Article 9 regarding the Arizona Pollutant Discharge Elimination System (AZPDES) program. Specifically, this rulemaking seeks to correct typographical errors, clarify language of a rule without changing its effect, and incorporate by reference without material change federal statutes, pursuant to A.R.S. § 41-1027 (A)(3) and (4).

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 proposed amendments do not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of regulated persons. Furthermore, the Department indicates the proposed amendments correct typographical errors, clarify language of a rule without changing its effect,

and incorporate by reference without material change federal statutes, pursuant to A.R.S. § 41-1027(A)(3) and (4).

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 public comment regarding this rulemaking expressing that no polluted waters should be able to "make it to our aquifers of future pollute our environment any more." The commenter stated there must be a better way to use septic systems to ensure protection of our environment and stated concern with allowing municipalities to discharge wastewater treatment plants toxic sludge into our watersheds.

The Department responded that this rulemaking does not reduce the protection of any waters in Arizona and updates State regulations to be consistent with Federal regulations. Council staff believes the Department has adequately responded to public comments related to this rulemaking. A copy of the public comment is also included in the final materials for the Council's reference.

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 this rulemaking incorporates by reference the Code of Federal Regulations and updates these references to the most recent amendment, thereby aligning to the federal rules, and is no more stringent than 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?

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(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates this rulemaking does not require a new permitting category but does affect current permit holders by reducing technical and administrative burdens. Specifically, the rules provide for a pretreatment condition within a permit. The Department indicates this condition is applied to AZPDES individual permits only, which the Department has previously determined are necessary because of the types of facilities requesting permits. As such, pursuant to A.R.S. § 41-1037(A)(3), the Department states "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements."

Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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 four (4) rules in Title 18, Chapter 9, Article 9 regarding the AZPDES program. Specifically, this rulemaking seeks to correct typographical errors, clarify language of a rule without changing its effect, and incorporate by reference without material change federal statutes.

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
Cabinet Executive Officer
Executive Deputy Director

Wednesday, October 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, Chapter 9. Department of Environmental Quality – Water Pollution Control, Article 9

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final expedited rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the next available Council Meeting.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1027 and A.A.C. R1-6-202:

1. Information Required by A.A.C. R1-6-202(A)(1)
    a. The public record closed for all rules on June 30, 2023.
    b. The rule meets the criteria of A.R.S. § 41-1027(A)(3) and (4) because it corrects typographical errors and clarifies language without changing its effect, and it incorporates by reference without material change federal regulations pursuant to section 41-1028.
    c. The rulemaking activity does not relate to a five-year review report.
    d. The agency did not rely on any studies for this rulemaking.
    e. The agency includes the following documents:
        i. The Notice of Final Rulemaking
        ii. One written comment
        iii. Material incorporated by reference
        iv. General and specific statutes authorizing the rule
        v. Governor's Office Approval to proceed with the Notice of Expedited Final Rulemaking

Thank you for your timely review and approval. Please contact Chris Montague-Breakwell, Surface Water Quality Permit Unit Manager, Water Quality Division, 602-771-4162 or montague-breakwell.chris@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters
Cabinet Executive Officer
Executive Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY – WATER POLLUTION CONTROL

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PREAMBLE

1.	**Article, Part, or Section Affected (as applicable)**	**Rulemaking Action**
	R18-9-A905	Amend
	R18-9-B901	Amend
	R18-9-B904	Amend
	R18-9-B906	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. § 49-203(A)(2)

Implementing statute: A.R.S. §§ 49-255.01 and 49-255.02

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 proposed rule:

Notice of Rulemaking Docket Opening: 28 A.A.R. 2219

Notice of Proposed Expedited Rulemaking: 28 A.A.R. 2207 (comment period extended by Agency)

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

Name: Chris Montague-Breakwell

Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4162

E-mail: montague-breakwell.chris@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:

The purpose of this Arizona Department of Quality (ADEQ) expedited rulemaking is to address issues related to the Arizona Pollutant Discharge Elimination System (AZPDES) program, specifically, to correct typographical errors, clarify language of a rule without changing its effect, and incorporate by reference without material change federal statutes, pursuant to A.R.S. § 41-1027 (A)(3) and (4). This expedited rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of regulated persons.

In 2005, the EPA issued a Pretreatment Streamlining Rule, which revised several provisions of the General Pretreatment Regulations (40 CFR, Part 403). *See* 70 FR 60134 (Oct. 14, 2005). The Pretreatment Program requires industrial dischargers to use treatment techniques and management practices to reduce or eliminate the discharge of harmful pollutants to sanitary sewers. The Pretreatment Streamlining Rule was designed to reduce the overall regulatory burden on both Industrial Users (IUs) and Control Authorities without adversely affecting environmental protection. As a result of the federal rule changes, various Code of Federal Regulations (CFR) references in 18 A.A.C. Chapter 9 are no longer current as the references rely on the provisions of the 2003 version of CFR. Within R18-9-A905, the referenced CFR sections that are no longer current are: 40 CFR sections 122.21, 122.22, 122.26, 122.33, 122.34, 122.35, 122.41, 122.42, 122.43, 122.44, 122.48, 122.62, and 40 CFR Parts 125, 136, 403, 412, 420, 423, 430, 431, 432, 435, 437, 438, 439, 442, 450, 451, 455, 465, and 503. Updating the CFR references to the most recent amendments of the CFR will provide clarity to industrial dischargers about these reduced burdens and will conform with federal provisions that are required for ADEQ to implement the Clean Water Act.

Updating the CFR references to the most recent amendments of the CFR will also impact all AZPDES program standards that reference the incorporation date. Pursuant to State statute, A.R.S. § 49-203(A)(2), the Arizona program must be consistent with but no more stringent than the requirements of the clean water act. The outdated CFR references currently contained in State rules mean that the State program is currently not consistent with the Clean Water Act. The update to the CFR references will not be more burdensome to regulated parties than is already required by law, however, because the State statute requires the program to be consistent with but not more stringent than the requirements of the Clean Water Act, and State program authorization from the United States Environmental Protection Agency is contingent on the State program being as stringent as the Clean Water Act. In addition, as noted above, updates to the pretreatment rules will reduce burdens on regulated persons.

In addition, several other citation updates and clarifying language changes should be made. First, the citation in R18-9-A905(B)(4) to R19-14-610(B) is incorrect and must be updated to R19-14-610(C). Second, subsection (B)(1)(a) of R18-9-B901 references 40 CFR § 122.21(l); the reference should be changed to 40 CFR § 122.21(f) through (k), because subsection (l) discusses new sources in states that do not have primacy of the National Pollutant Discharge Elimination System (NPDES) program and is not applicable to an authorized NDPES program state like Arizona. Finally, R18-9-

B904 must be amended by removing the term “NPDES” in subsection (C) to clarify there are no state NPDES permits.

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:

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 to rule language between the proposed expedited rulemaking and the final expedited rulemaking. The comment period was extended for the proposed expedited rulemaking to allow for an additional comment period because the final rulemaking was not submitted within 120 days after the initial proposed 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.

Comment: A comment was made June 28, 2023, expressing that no polluted waters should be able to "make it to our aquifers of future pollute our environment any more." The commenter said there must be a better way to use septic systems to ensure protecting of our environment. The commenter stated concern with allowing municipalities to discharge wastewater treatment plants toxic sludge into our watersheds.

Agency Response: The Agency appreciates the commenter's concern for Arizona waters. The Agency implements federal and state laws, as authorized, which includes surface water and groundwater standards as well as drinking water standards for public water systems. This rulemaking does not reduce the protection of any waters in Arizona. The rulemaking updates State regulations to be consistent with Federal regulations.

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 new permitting category but does affect current permit holders by reducing technical and administrative burdens. The rules provide for a pretreatment condition within a permit. This condition is applied to AZPDES individual permits only. ADEQ has previously determined individual permits are necessary because of the types of facilities requesting permits.

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 rule incorporates by reference to the Code of Federal Regulations and this rulemaking updates these references to the most recent amendment, thereby aligning to the federal rules, and is no more stringent than 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:

No persons submitted an analysis to ADEQ.

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

40 CFR 122.7, amended as of April 15, 2023.
R18-9-A905(A)(1)(a)

40 CFR 122.21, except 40 CFR 122,21(a) through (e) and (l), amended as of April 15, 2023.
R18-9-A905(A)(1)(b)

40 CFR 122.22, amended as of April 15, 2023.
R18-9-A905(A)(1)(c)

40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2), amended as of April 15, 2023.
R18-9-A905(A)(1)(d)

40 CFR 122.29, amended as of April 15, 2023.
R18-9-A905(A)(1)(e)

40 CFR 122.32, amended as of April 15, 2023.
R18-9-A905(A)(1)(f)

40 CFR 122.33, amended as of April 15, 2023.
R18-9-A905(A)(1)(g)

40 CFR 122.34, amended as of April 15, 2023.
R18-9-A905(A)(1)(h)

40 CFR 122.35, amended as of April 15, 2023.
R18-9-A905(A)(1)(i)

40 CFR 122.62(a) and (b), amended as of April 15, 2023.
R18-9-A905(A)(1)(j)

40 CFR 124.8, except 40 CFR 122.41(a)(2) and (a)(3), amended as of April 15, 2023.
R18-9-A905(A)(2)(a)

40 CFR 124.56, amended as of April 15, 2023.
R18-9-A905(A)(2)(b)

40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3) amended as of April 15, 2023.
R18-9-A905(A)(3)(a)

40 CFR 122.42, amended as of April 15, 2023.
R18-9-A905(A)(3)(b)

40 CFR 122.43, amended as of April 15, 2023.
R18-9-A905(A)(3)(c)

40 CFR 122.44, amended as of April 15, 2023.
R18-9-A905(A)(3)(d)

40 CFR 122.45, amended as of April 15, 2023.
R18-9-A905(A)(3)(e)

40 CFR 122.47, amended as of April 15, 2023.
R18-9-A905(A)(3)(f)

40 CFR 122.48, amended as of April 15, 2023.
R18-9-A905(A)(3)(g)

40 CFR 122.50, amended as of April 15, 2023.
R18-9-A905(A)(3)(h)

40 CFR 125, Subparts A, B, D, H, and I, amended as of April 15, 2023.
R18-9-A905(A)(4)

40 CFR 129, amended as of April 15, 2023.
R18-9-A905(A)(5)

40 CFR 133, amended as of April 15, 2023.
R18-9-A905(A)(6)

40 CFR 136, amended as of April 15, 2023.
R18-9-A905(A)(7)
R18-9-A905(B)(1), (2), and (3)

40 CFR 401, amended as of April 15, 2023.
R18-9-A905(A)(8)(a)

40 CFR 403 and Appendixes A, D, E, and G, amended as of April 15, 2023.
R18-9-A905(A)(8)(b)
R18-9-A906(A)
R18-9-B906(B)(1)(h)

40 CFR 405 through 471*, amended as of April 15, 2023.*
R18-9-A905(A)(9)

40 CFR 503, Subpart C*, amended as of April 15, 2023.*
R18-9-A905(A)(10)

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 9. DEPARTMENT OF ENVIRONMENTAL QUALITY – WATER POLLUTION CONTROL

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

Section

R18-9-A905 AZPDES Program Standards

R18-9-A906 General Pretreatment Regulations for Existing and New Sources of Pollution

PART B. INDIVIDUAL PERMITS

Section

R18-9-B901 Individual Permit Application

R18-9-B904 Individual Permit Duration, Reissuance, and Continuation

R18-9-B906 Modification, Revocation and Reissuance, and Termination of Individual Permits

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

R18-9-A905. AZPDES Program Standards

A. Except for subsection (A)(11), the following 40 CFR sections and appendices, ~~April 15, 2023 edition~~ amended as of April 15, 2023, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department:

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

i. No change

j. No change

2. No change

a. No change

b. No change

3. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

4. No change

5. No change

6. No change

7. No change

8. No change

a. No change

b. No change

9. No change

10. No change

11. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

i. No change

B. No change

1. No change

2. No change

3. No change

4. If a test procedure for a pollutant is not available under subsection (B)(1) through (B)(3), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610~~(B)~~(C).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

A. No change

1. No change
   a. No change
   b. No change
   c. No change
2. No change
3. No change
   a. No change
   b. No change

B. No change

1. No change
   a. The information required under 40 CFR 122.21~~(f) through (l)~~(f) through (k);
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
2. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change

C. No change

1. No change
2. No change

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation

A. No change

1. No change
2. No change
3. No change

B. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change

C. Continuation. ~~A NPDES or~~ An AZPDES individual permit may continue beyond its expiration date if:

1. No change
2. No change

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. No change

1. No change
    a. No change
    b. No change
    c. No change
    d. No change
        i. No change
        ii. No change
2. No change
    a. No change
    b. No change
        i. No change
        ii. No change
3. No change

B. No change

1. No change
    a. No change
    b. No change
    c. No change

d. No change

e. No change

f. No change

g. No change

h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-~~A905(A)(7)(b)~~ A905(A)(8) as enforceable conditions of the permit, and

i. No change

2. No change

C. No change

1. No change

a. No change

b. No change

c. No change

d. No change

2. No change

a. No change

b. No change

c. No change

d. No change

Gmail **Edwin Slade <slade.edwin@azdeq.gov>**

Fwd: POLLUTANTS DISCHARGE

Chris Montague-Breakwell <montague-breakwell.chris@azdeq.gov> Wed, Jun 28, 2023 at 3:13 PM
To: Edwin Slade <slade.edwin@azdeq.gov>

Hi Eddie,

This is a comment from our biosolids rulemaking.

Regards,

Chris Montague-Breakwell
Environmental Program Manager 2
Ph: 602-771-4162

azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

---------- Forwarded message ---------
From: **Courtney Ramirez** <courtneylramirez74@gmail.com>
Date: Wed, Jun 28, 2023 at 9:17 AM
Subject: POLLUTANTS DISCHARGE
To: <montague-breakwell.chris@azdeq.gov>

EXTENDED | COMMENT PERIOD BEGINS | Proposed Arizona Pollutant Discharge Elimination System (AZPDES) Incorporation of Federal Rules

I don't feel it's safe for any polluted waters to be able to make it to our aquafirs or future pollute our environment any more. There must be a cleaner way.

There must be a better way for septics systems to be used as well as making all accommodations to ensure our water, air and environment is as safe as possible!

Just like allowing our municipalities to discharge wastewater treatment plants toxic sludge into our watersheds ect. Do you realize how many toxins go into those plants? Then get dumped into our earth to then soak into the aquifer to then be drank by humans?

It's insane the things that have allowed to happen!

October 19, 1989 (Supp. 89-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-815. Repealed

Historical Note

Former Section R9-8-332 renumbered without change as Section R18-9-815 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-816. Repealed

Historical Note

Former Section R9-8-351 renumbered without change as Section R18-9-816 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-817. Repealed

Historical Note

Former Section R9-8-352 renumbered without change as Section R18-9-817 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-818. Repealed

Historical Note

Former Section R9-8-353 renumbered without change as Section R18-9-818 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-819. Repealed

Historical Note

Former Section R9-8-361 renumbered without change as Section R18-9-819 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS

R18-9-A901. Definitions

In addition to the definitions in A.R.S. § 49-201 and 49-255, the following terms apply to this Article:

1. "Animal confinement area" means any part of an animal feeding operation where animals are restricted or confined including open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables.
2. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
   a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
   b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
3. "Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, "designated project area" means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.
4. "Border area" means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. "CAFO" means any large concentrated animal feeding operation, medium concentrated animal feeding operation, or animal feeding operation designated under R18-9-D901.
7. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
   a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the Salmonidae family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
      i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
      ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
   b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the Ameiuride, Centrarchidae, and Cyprinidae families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
      i. A closed pond that discharges only during periods of excess runoff; or
      ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

9. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
   a. The term includes the addition of any pollutant into a navigable water from:
      i. A treatment works treating domestic sewage;
      ii. Surface runoff that is collected or channeled by man;
      iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
      iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
   b. The term does not include an addition of a pollutant by any industrial user as defined in A.R.S. § 49-255(4).
10. "Draft permit" means a document indicating the Director's tentative decision to issue, deny, modify, revoke and reissue, terminate, or reissue a permit.
   a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
   b. A notice of intent to deny a permit is a type of draft permit.
   c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
11. "EPA" means the U.S. Environmental Protection Agency.
12. "General permit" means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
13. "Individual permit" means an AZPDES permit for a single point source, a single facility, or a municipal separate storm sewer system.
14. "Land application area," for purposes of Article 9, Part D, means land under the control of an animal feeding operation owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.
15. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at least the number of animals specified in any of the following categories:
   a. 700 mature dairy cows, whether milked or dry;
   b. 1,000 veal calves;
   c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
   d. 2,500 swine each weighing 55 pounds or more;
   e. 10,000 swine each weighing less than 55 pounds;
   f. 500 horses;
   g. 10,000 sheep or lambs;
   h. 55,000 turkeys;
   i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
   j. 125,000 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
   k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
   l. 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
   m. 5,000 ducks, if the animal feeding operation uses a liquid manure handling system.
16. "Large municipal separate storm sewer system" means a municipal separate storm sewer that is either:
   a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
   b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
   c. Owned or operated by a municipality other than those described in subsections (16)(a) and (16)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.
17. "Manure" means any waste or material mixed with waste from an animal including manure, bedding, compost and raw materials, or other materials commingled with manure or set aside for disposal.
18. "Manure storage area" means any part of an animal feeding operation where manure is stored or retained including lagoons, run-off ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles.
19. "Medium concentrated animal feeding operation" means an animal feeding operation in which:
   a. The type and number of animals that it stables or confines falls within any of the following ranges:
      i. 200 to 699 mature dairy cows, whether milked or dry;
      ii. 300 to 999 veal calves;
      iii. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
      iv. 750 to 2,499 swine each weighing 55 pounds or more;
      v. 3,000 to 9,999 swine each weighing less than 55 pounds;
      vi. 150 to 499 horses;
      vii. 3,000 to 9,999 sheep or lambs;
      viii. 16,500 to 54,999 turkeys;
      ix. 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
      x. 37,500 to 124,999 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
      xi. 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
      xii. 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
      xiii. 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; and
   b. Either one of the following conditions are met:

i. Pollutants are discharged into a navigable water through a man-made ditch, flushing system, or other similar man-made device; or

ii. Pollutants are discharged directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.

20. "Medium municipal separate storm sewer system" means a municipal separate storm sewer that is either:
    a. Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
    b. Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
    c. Owned or operated by a municipality other than those described in subsections (20)(a) and (20)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
21. "MS4" means municipal separate storm sewer system.
22. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
    a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
    b. Designed or used for collecting or conveying stormwater;
    c. That is not a combined sewer; and
    d. That is not part of a POTW.
23. "Municipal separate storm sewer system" means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through (iv).
24. "New discharger" includes an industrial user and means any building, structure, facility, or installation:
    a. From which there is or may be a discharge of pollutants;
    b. That did not commence the discharge of pollutants at a particular site before August 13, 1979;
    c. That is not a new source; and
    d. That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
25. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    a. After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
    b. After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.
26. "NPDES" means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.
27. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
    a. Sewage from vessels; or
    b. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)
28. "POTW" means a publicly owned treatment works.
29. "Process wastewater," for purposes of Article 9, Part D, means any water that comes into contact with a raw material, product, or byproduct including manure, litter, feed, milk, eggs, or bedding and water directly or indirectly used in the operation of an animal feeding operation for any or all of the following:
    a. Spillage or overflow from animal or poultry watering systems;
    b. Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities;
    c. Direct contact swimming, washing, or spray cooling of animals; or
    d. Dust control.
30. "Proposed permit" means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
31. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
32. "Production area," for purposes of Article 9, Part D, means the animal confinement area, manure storage area, raw materials storage area, and waste containment areas. Production area includes any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of animal mortalities.
33. "Raw materials storage area" means the part of an animal feeding operation where raw materials are stored including feed silos, silage bunkers, and bedding materials.

34. "Silviculture point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
    a. "Log sorting and log storage facilities" means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
    b. "Rock crushing and gravel washing facilities" mean facilities that process crushed and broken stone, gravel, and riprap.
35. "Small municipal separate storm sewer system" means a separate storm sewer that is:
    a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
    b. Not defined as a "large" or "medium" municipal separate storm sewer system or designated under R18-9-A902(D)(2).
    c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
36. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.
37. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.
38. "Waste containment area" means any part of an animal feeding operation where waste is stored or contained including settling basins and areas within berms and diversions that separate uncontaminated stormwater.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.
    1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
        a. The effective date of EPA approval of the AZPDES program;
        b. The name and address of the Department;
        c. The name of each individual permitted facility and its permit number;
        d. The title of each general permit administered by the Department;
        e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
        f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and
        g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
    2. The Department shall provide the following entities with a copy of the notice:
        a. Each county department of health, environmental services, or comparable department;
        b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
        c. Any person who requested, in writing, notification of the activity;
        d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
        e. The United States Section of the International Boundary and Water Commission.
    3. If a timely application for a NPDES permit is submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
    4. The terms and conditions under which the permit was issued remain the same until the permit is modified.

B. Article 9 of this Chapter applies to any "discharge of a pollutant." Examples of categories that result in a "discharge of a pollutant" and may require an AZPDES permit include:
    1. CAFOs;
    2. Concentrated aquatic animal production facilities;
    3. Case-by-case designation of concentrated aquatic animal production facilities;
        a. The Director may designate any warm- or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to navigable waters. The Director shall consider the following factors when making this determination:

i. The location and quality of the receiving waters of the United States;
ii. The holding, feeding, and production capacities of the facility;
iii. The quantity and nature of the pollutants reaching navigable waters; and
iv. Any other relevant factor;

b. A permit application is not required from a concentrated aquatic animal production facility designated under subsection (B)(3)(a) until the Director conducts an onsite inspection of the facility and determines that the facility should and could be regulated under the AZPDES permit program;

4. Aquaculture projects;
5. Manufacturing, commercial, mining, and silviculture point sources;
6. POTWs;
7. New sources and new dischargers;
8. Stormwater discharges:
   a. Associated with industrial activity as defined under 40 CFR 122.26(b)(14), incorporated by reference in R18-9-A905(A)(1)(d). The Department shall not consider a discharge to be a discharge associated with industrial activity if the discharge is composed entirely of stormwater and meets the conditions of no exposure as defined under 40 CFR 122.26(g), incorporated by reference in R18-9-A905(A)(1)(d);
   b. From a large, medium, or small MS4;
   c. From a construction activity, including clearing, grading, and excavation, that results in the disturbance of:
      i. Equal to or greater than one acre or;
      ii. Less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; but
      iii. Not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility;
   d. Any discharge that the Director determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to a navigable water, which may include a discharge from a conveyance or system of conveyances (including roads with drainage systems and municipal streets) used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers.

C. Articles 9 and 10 of this Chapter apply to the following biosolids categories and may require an AZPDES permit:
1. Treatment works treating domestic sewage that would not otherwise require an AZPDES permit; and
2. Using, applying, generating, marketing, transporting, and disposing of biosolids.

D. Director designation of MS4s.
1. The Director may designate and require any small MS4 located outside of an urbanized area to obtain an AZPDES stormwater permit. The Director shall base this designation on whether a stormwater discharge results in or has the potential to result in an exceedance of a water quality standard, including impairment of a designated use, or another significant water quality impact, including a habitat or biological impact.
   a. When deciding whether to designate a small MS4, the Director shall consider the following criteria:
      i. Discharges to sensitive waters,
      ii. Areas with high growth or growth potential,
      iii. Areas with a high population density,
      iv. Areas that are contiguous to an urbanized area,
      v. Small MS4s that cause a significant contribution of pollutants to a navigable water,
      vi. Small MS4s that do not have effective programs to protect water quality, and
      vii. Any other relevant criteria.
   b. The same requirements for small MS4s designated under 40 CFR 122.32(a)(1) apply to permits for designated MS4s not waived under R18-9-B901(A)(3).
2. The Director may designate an MS4 as part of a large or medium system due to the interrelationship between the discharges from a designated storm sewer and the discharges from a municipal separate storm sewer described under R18-9-A901(16)(a) and (b), or R18-9-A901(20)(a) or (b), as applicable. In making this determination, the Director shall consider the following factors:
   a. Physical interconnections between the municipal separate storm sewers;
   b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R18-9-A901(16)(a) and R18-9-A901(20)(a);
   c. The quantity and nature of pollutants discharged to a navigable water;
   d. The nature of the receiving waters; and
   e. Any other relevant factor.
3. The Director shall designate a small MS4 that is physically interconnected with a MS4 that is regulated by the AZPDES program if the small MS4 substantially contributes to the pollutant loading of the regulated MS4.

E. Petitions. The Director may, upon a petition, designate as a large, medium or small MS4, a municipal separate storm sewer located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R18-9-A901(16), R18-9-A901(20) or R18-9-A901(35), as applicable.

F. Phase-ins.
1. The Director may phase-in permit coverage for a small MS4 serving a jurisdiction with a population of less than 10,000 if a phasing schedule is developed and implemented for approximately 20 percent annually of all small MS4s that qualify for the phased-in coverage.
   a. If the phasing schedule is not yet approved for permit coverage, the Director shall, by December 9, 2002, determine whether to issue an AZPDES permit or allow a waiver under R18-9-B901(A)(3) for each eligible MS4.
   b. All regulated MS4s shall have coverage under an AZPDES permit no later than March 8, 2007.
2. The Director may provide a waiver under R18-9-B901(A)(3) for any municipal separate storm sewage system operating under a phase-in plan.

G. Exclusions. The following discharges do not require an AZPDES permit:
1. Discharge of dredged or fill material into a navigable water that is regulated under section 404 of the Clean Water Act (33 U.S.C. 1344);

2. The introduction of sewage, industrial wastes, or other pollutants into POTWs by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with a permit until all discharges of pollutants to a navigable water are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through a pipe, sewer, or other conveyance owned by the state, a municipality, or other party not leading to treatment works;
3. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR 300, The National Oil and Hazardous Substances Pollution Contingency Plan; or 33 CFR 153.10(e), Control of Pollution by Oil and Hazardous Substances, Discharge Removal;
4. Any introduction of pollutants from a nonpoint source agricultural or silvicultural activity, including stormwater runoff from an orchard, cultivated crop, pasture, rangeland, and forest land, but not discharges from a concentrated animal feeding operation, concentrated aquatic animal production facility, silvicultural point source, or to an aquaculture project;
5. Return flows from irrigated agriculture;
6. Discharges into a privately owned treatment works, except as the Director requires under 40 CFR 122.44(m), which is incorporated by reference in R18-9-A905(A)(3)(d);
7. Discharges from conveyances for stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of the operations.

H. Conditional no exposure exclusion.
1. Discharges composed entirely of stormwater are not considered stormwater discharges associated with an industrial activity if there is no exposure, and the discharger satisfies the conditions under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d).
2. For purposes of this subsection:
   a. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.
   b. "Industrial materials or activities" include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.
   c. "Material-handling activities" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A903. Prohibitions

A. The Director shall not issue a permit for a discharge to a WOTUS:
1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:
   a. There are sufficient remaining wasteload allocations to allow for the discharge, and
   b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

B. The Director shall not issue a permit for a discharge to a non-WOTUS protected surface water:
1. If the permit or the conditions of the permit violate the restrictions listed in A.R.S. § 49-255.04; and
2. If the conditions of the permit do not provide for compliance with 18 A.A.C. 11, Article 2 and the applicable requirements of 18 A.A.C. 9, Article 9.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 296 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-9-A904. Effect of a Permit

A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reis-

sue, suspend, or terminate a permit during its term for cause under R18-9-B906.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A905. AZPDES Program Standards

A. Except for subsection (A)(11), the following 40 CFR sections and appendices, July 1, 2003 edition, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department:

1. General program requirements.
   a. 40 CFR 122.7;
   b. 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l);
   c. 40 CFR 122.22;
   d. 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2);
   e. 40 CFR 122.29;
   f. 40 CFR 122.32;
   g. 40 CFR 122.33;
   h. 40 CFR 122.34;
   i. 40 CFR 122.35;
   j. 40 CFR 122.62(a) and (b).
2. Procedures for Decision making.
   a. 40 CFR 124.8, except 40 CFR 124.8(b)(3); and
   b. 40 CFR 124.56.
3. Permit requirements and conditions.
   a. 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3);
   b. 40 CFR 122.42;
   c. 40 CFR 122.43;
   d. 40 CFR 122.44;
   e. 40 CFR 122.45;
   f. 40 CFR 122.47;
   g. 40 CFR 122.48; and
   h. 40 CFR 122.50.
4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, H, and I.
5. Toxic pollutant effluent standards. 40 CFR 129.
6. Secondary treatment regulation. 40 CFR 133.
7. Guidelines for establishing test procedures for the analysis of pollutants, 40 CFR 136.
8. Effluent guidelines and standards.
   a. General provisions, 40 CFR 401; and
   b. General pretreatment regulations for existing and new sources of pollution, 40 CFR 403 and Appendices A, D, E, and G.
9. Effluent limitations guidelines. 40 CFR 405 through 40 CFR 471.
10. Standards for the use or disposal of sewage sludge. 40 CFR 503, Subpart C.
11. The following substitutions apply to the material in subsections (A)(1) through (A)(10):
    a. Substitute the term AZPDES for any reference to NPDES;
    b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
    c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
    d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;
    e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
    f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
    g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
    h. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
    i. Substitute R18-9-1010 for any reference to 40 CFR 503.33.

B. A person shall analyze a pollutant using a test procedure for the pollutant specified by the Director in an AZPDES permit. If the Director does not specify a test procedure for a pollutant in an AZPDES permit, a person shall analyze the pollutant using:

1. A test procedure listed in 40 CFR 136, which is incorporated by reference in subsection (A)(7);
2. An alternate test procedure approved by the EPA as provided in 40 CFR 136;
3. A test procedure listed in 40 CFR 136, with modifications allowed by the EPA and approved as a method alteration by the Arizona Department of Health Services under A.A.C. R9-14-610(B); or
4. If a test procedure for a pollutant is not available under subsection (B)(1) through (B)(3), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

A. The reduction or alteration of a pollutant may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited under 40 CFR 403.6(d), which is incorporated by reference in R18-9-A905(A)(8)(b). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit calculated under 40 CFR 403.6(e), which is incorporated by reference in R18-9-A905(A)(8)(b).

B. Pretreatment applies to:

1. Pollutants from non-domestic sources covered by pretreatment standards that are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

2. POTWs that receive wastewater from sources subject to national pretreatment standards; and
3. Any new or existing source subject to national pretreatment standards.

C. National pretreatment standards do not apply to sources that discharge to a sewer that is not connected to a POTW.

D. For purposes of this Section the terms "National Pretreatment Standard" and "Pretreatment Standard" mean any regulation containing pollutant discharge limits promulgated by EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C. 1317), which applies to Industrial Users. This term includes prohibitive discharge limits established under 40 CFR 403.5.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A907. Public Notice

A. Individual permits.
1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
   a. The name and address of the Department;
   b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
   c. A brief description of the business conducted at the facility or activity described in the permit application;
   d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
   e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
   f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
   g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
   h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
   i. Any additional information considered necessary to the permit decision.
2. The Department shall provide the applicant with a copy of the draft individual permit.
3. Copy of the notice. The Department shall provide the following entities with a copy of the notice:
   a. The applicant or permittee;
   b. Any user identified in the permit application of a privately owned treatment works;
   c. Any affected federal, state, tribal, or local agency, or council of government;
   d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona Historic Preservation Office, and the U.S. Army Corps of Engineers;
   e. Each applicable county department of health, environmental services, or comparable department;
   f. Any person who requested, in writing, notification of the activity; and
   g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9-C901, the Director shall publish a general notice of the draft permit in the *Arizona Administrative Register*. The notice shall contain:
1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A908. Public Participation, EPA Review, EPA Hearing

A. Public comment period.
1. The Director shall accept written comments from any interested person before a decision is made on any notice published under R18-9-A907(A) or (B).
2. The public comment period begins on the publication date of the notice and extends for 30 calendar days.
3. The Director may extend the comment period to provide commenters a reasonable opportunity to participate in the decision-making process.
4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.
   a. Corps of Engineers.
      i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.
      ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial

of a permit or conditions specified by the District Engineer.

iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.

b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.

B. Public hearing.

1. The Director shall provide notice and conduct a public hearing to address a draft permit or denial regarding a final decision if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information have been brought to the attention of the Director during the comment period that was not considered previously in the permitting process.
2. If, after publication of the notice under R18-9-A907, the Director determines that a public hearing is necessary, the Director shall schedule a public hearing and publish notice of the public hearing at least once, in one or more newspapers of general circulation where the facility is located. The notice for public hearing shall contain:
   a. The date, time, and place of the hearing;
   b. Reference to the date of a previous public notice relating to the proposed decision, if any; and
   c. A brief description of the nature and purpose of the hearing, including reference to the applicable laws and rules.
3. The Department shall accept written public comment until the close of the hearing or until a later date specified by the person presiding at the public hearing.

C. EPA review of draft and proposed permits.

1. Individual permits.
   a. The Department shall send a copy of the draft permit to EPA.
   b. If EPA objects to the draft permit within 30 days from the date of receipt of the draft permit, the EPA comment period is extended to 90 days from the date of receipt of the draft permit and the substantive review time-frame is suspended until EPA makes a final determination.
   c. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 30 days from the date of receipt of the proposed permit, the EPA comment period is extended to 90 days from the date of receipt of the proposed permit and the substantive review time-frame is suspended until EPA makes a final determination.
   d. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.
2. General permits. The Director shall send a copy of the draft permit to EPA and comply with the following review procedure for EPA comments:
   a. If EPA objects to the draft permit within 90 days from receipt of the draft permit, the Department shall not issue the permit until the objection is resolved;
   b. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 90 days from receipt of the proposed permit, the Department shall not issue the permit until the objection is resolved;
   c. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.

D. EPA hearing. Within 90 days of receipt by the Director of a specific objection by EPA, the Director or any interested person may request that EPA hold a public hearing on the objection.

1. If following the public hearing EPA withdraws the objection, the Director shall issue the permit.
2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification of the EPA objection, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
4. If EPA issues the permit instead of the Director, the Department shall close the application file.

E. Final permit determination.

1. Individual permits. At the same time the Department notifies a permittee or an applicant of the final individual permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final individual permit determination. The Department shall:
   a. Specify the provisions, if any, of the draft individual permit that have been changed in the final individual permit determination, and the reasons for the change; and
   b. Briefly describe and respond to all significant comments on the draft individual permit or the permit application raised during the public comment period, or during any hearing.
2. General permits. The Director shall publish a general notice of the final permit determination in the *Arizona Administrative Register*. The notice shall:
   a. Specify the provisions, if any, of the draft general permit that have been changed in the final general permit determination, and the reasons for the change;
   b. Briefly describe and respond to all significant comments on the draft general permit raised during the public comment period, or during any hearing; and

c. Specify where a copy of the final general permit may be obtained.
3. The Department shall make the response to comments available to the public.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A909. Petitions
A. Any person may submit a petition to the Director requesting:
1. The issuance of a general permit;
2. An individual permit covering any discharge into an MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or
3. An individual permit under R18-9-C902(B)(1).
B. The petition shall contain:
1. The name, address, and telephone number of the petitioner;
2. The location of the facility;
3. The exact nature of the petition, and
4. Evidence of the validity of the petition.
C. The Department shall provide the permittee with a copy of the petition.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application
A. Time to apply.
1. Any person who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:
a. Is exempt under R18-9-A902(G);
b. Is covered by a general permit under Article 9, Part C of this Chapter; or
c. Is a user of a privately owned treatment works, unless the Director requires a permit under 40 CFR 122.44(m).
2. Construction. Any person who proposes a construction activity under R18-9-A902(B)(9)(c) or R18-9-A902(B)(9)(d) and wishes coverage under an individual permit, shall apply for the individual permit at least 90 days before the date on which construction is to commence.
3. Waivers.
a. Unless the Director grants a waiver under 40 CFR 122.32, a person operating a small MS4 is regulated under the AZPDES program.
b. The Director shall review any waiver granted under subsection (A)(3)(a) at least every five years to determine whether any of the information required for granting the waiver has changed.
B. Application. An individual permit applicant shall submit the following information on an application obtained from the Department. The Director may require more than one application from a facility depending on the number and types of discharges or outfalls.
1. Discharges, other than stormwater.
a. The information required under 40 CFR 122.21(f) through (l);
b. The signature of the certifying official required under 40 CFR 122.22;
c. The name and telephone number of the operator, if the operator is not the applicant; and
d. Whether the facility is located in the border area, and, if so:
i. A description of the area into which the effluent discharges from the facility may flow, and
ii. A statement explaining whether the effluent discharged is expected to cross the Arizona-Sonora, Mexico border.
2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):
a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);
b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);
c. For small MS4s:
i. A stormwater management program under 40 CFR 122.34, and
ii. The application requirements under 40 CFR 122.33.
C. Consolidation of permit applications.
1. The Director may consolidate two or more permit applications for any facility or activity that requires a permit under Articles 9 and 10 of this Chapter.
2. Whenever a facility or activity requires an additional permit under Articles 9 and 10 of this Chapter, the Director may coordinate the expiration date of the new permit with the expiration date of an existing permit so that all permits expire simultaneously. The Department may then consolidate the processing of the subsequent applications for renewal permits.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B902. Requested Coverage Under a General Permit
An owner or operator may request that an individual permit be revoked, if a source is excluded from a general permit solely because it already has an individual permit.
1. The Director shall grant the request for revocation of an individual permit upon determining that the permittee otherwise qualifies for coverage under a general permit.
2. Upon revocation of the individual permit, the general permit applies to the source.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B903. Individual Permit Issuance or Denial
A. Once the application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
B. Permit issuance. If, based upon the information obtained by or available to the Department under R18-9-A907, R18-9-A908, and R18-9-B901, the Director determines that an applicant complies with A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, the Director shall issue a permit that is effective as prescribed in A.R.S. 49-255.01(H).
C. Permit denial.
1. If the Director decides to deny the permit application, the Director shall provide the applicant with a written notice

of intent to deny the permit application. The written notification shall include:

a. The reason for the denial with reference to the statute or rule on which the denial is based;

b. The applicant's right to appeal the denial with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the denial, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and

c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

2. The Director shall provide an opportunity for public comment under R18-9-A907 and R18-9-A908 on a denial.

3. The decision of the Director to deny the permit application takes effect 30 days after the decision is served on the applicant, unless the applicant files an appeal under A.R.S. 49-255.01(H)(1).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation

A. Permit duration.

1. An AZPDES individual permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.

2. If the Director does not reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).

3. If a permittee of a large or medium MS4 allows a permit to expire by failing to reapply within the time period specified in subsection (B), the permittee shall submit a new application under R18-9-B901 and follow the application requirements under 40 CFR 122.26(d), which is incorporated by reference in R18-9-A905(A)(1)(d).

B. Permit reissuance.

1. A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.

2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:

a. The name, address, and telephone number of the MS4;

b. The name, address, and telephone number of the contact person;

c. The status of compliance with permit conditions, including an assessment of the appropriateness of the selected best management practices and progress toward achieving the selected measurable goals for each minimum measure;

d. The results of any information collected and analyzed, including monitoring data, if any;

e. A summary of the stormwater activities planned for the next reporting cycle;

f. A change in any identified best management practices or measurable goals for any minimum measure; and

g. Notice of relying on another governmental entity to satisfy some of the permit obligations.

C. Continuation. A NPDES or AZPDES individual permit may continue beyond its expiration date if:

1. The permittee has submitted a complete application for an AZPDES individual permit at least 180 days before the expiration date of the existing permit and the permitted activity is of a continuing nature; and

2. The Department is unable, through no fault of the permittee, to issue an AZPDES individual permit on or before the expiration date of the existing permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B905. Individual Permit Transfer

A. A permittee may request the Director to transfer an individual permit to a new permittee. The Director may modify, or revoke and reissue the permit to identify the new permittee, or make a minor modification to identify the new permittee.

B. Automatic transfer. The Director may automatically transfer an individual permit to a new permittee if:

1. The current permittee notifies the Director by certified mail at least 30 days in advance of the proposed transfer date and includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

2. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify, or revoke and reissue the permit. A modification under this subsection may include a minor modification specified in R18-9-B906(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. Permit modification, revocation and reissuance.

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:

a. The Director receives a written request from an interested person;

b. The Director receives information, such as when inspecting a facility;

c. The Director receives a written request to modify, or revoke and reissue a permit from a permittee as required in the individual permit; or

d. After review of a permit file, the Director determines one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.

i. If the Director decides a written request is not justified under 40 CFR 122.62 or subsection (B), the Director shall send the requester a brief written response giving a reason for the decision.

ii. The denial of a request for modification, or revocation and reissuance is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

2. If the Director tentatively decides to modify, or revoke and reissue an individual permit, the Director shall prepare a draft permit incorporating the proposed changes.

The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application.

a. Modified individual permit. The Director shall reopen only the modified conditions when preparing a new draft permit and process the modifications.
b. Revoked and reissued individual permit.
   i. The permittee shall submit a new application.
   ii. The Director shall reopen the entire permit just as if the permit had expired and was being reissued.

3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

B. Minor modifications.

1. Upon consent of the permittee, the Director may make any of the following modifications to an individual permit:
   a. Correct typographical errors;
   b. Update a permit condition that changed as a result of updating an Arizona water quality standard;
   c. Require more frequent monitoring or reporting by the permittee;
   d. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
   e. Allow for a change in ownership or operational control of a facility, if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
   f. Change the construction schedule for a new source discharger. The change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation before the discharge;
   g Delete a point source outfall if the discharge from that outfall is terminated and does not result in a discharge of pollutants from other outfalls except under permit limits;
   h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-A905(A)(7)(b) as enforceable conditions of the permit, and
   i. Annex an area by a municipality.
2. Any modification processed under subsection (B)(1) is not subject to the public notice provision under R18-9-A907 or public participation procedures under R18-9-A908.

C. Permit termination.

1. The Director may terminate an individual permit during its term or deny reissuance of a permit for any of the following causes:
   a. The permittee's failure to comply with any condition of the permit;
   b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact;
   c. The Director determined that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
   d. A change occurs in any condition that requires either a temporary or permanent reduction or elimination of any discharge, sludge use, or disposal practice controlled by the permit, for example, a plant closure or termination of discharge by connection to a POTW.
2. If the Director terminates a permit during its term or denies a permit renewal application for any cause listed in subsection (C)(1), the Director shall issue a Notice of Intent to Terminate, except when the entire discharge is terminated.
   a. Unless the permittee objects to the termination notice within 30 days after the notice is sent, the termination is final at the end of the 30 days.
   b. If the permittee objects to the termination notice, the permittee shall respond in writing to the Director within 30 days after the notice is sent.
   c. Expedited permit termination. If a permittee requests an expedited permit termination procedure, the permittee shall certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.
   d. The denial of a request for termination is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B907. Individual Permit Variances

A. The Director may grant or deny a request for any of the following variances:

1. An extension under section 301(i) of the Clean Water Act (33 U.S.C. 1311) based on a delay in completion of a POTW;
2. After consultation with EPA, an extension under section 301(k) of the Clean Water Act (33 U.S.C. 1311) based on the use of innovative technology;
3. A variance under section 316(a) of the Clean Water Act (33 U.S.C. 1326) for thermal pollution, or
4. A variance under R18-11-122 for a water quality standard.

B. The Director may deny, forward to EPA with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant under section 301(c) of the Clean Water Act (33 U.S.C. 1311); or
2. A variance based on water quality related effluent limitations under 302(b)(2) (33 U.S.C. 1312) of the Clean Water Act.

C. The Director may deny or forward to EPA with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline is based; and
2. A variance based upon water quality factors under section 301(g) of the Clean Water Act (33 U.S.C. 1311).

D. If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance

A. The Director may issue a general permit to cover one or more categories of discharges, sludge use, or disposal practices, or facilities within a geographic area corresponding to existing geographic or political boundaries, if the sources within a covered category of discharges are either:
1. Stormwater point sources; or
2. One or more categories of point sources other than stormwater point sources, or one or more categories of treatment works treating domestic sewage, if the sources, or treatment works treating domestic sewage, within each category all:
   a. Involve the same or substantially similar types of operations;
   b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
   c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
   d. Require the same or similar monitoring; and
   e. Are more appropriately controlled under a general permit than under an individual permit.

B. Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.

C. Exemption from filing a Notice of Intent.
1. The following dischargers are not exempt from submitting a Notice of Intent:
   a. A discharge from a POTW;
   b. A combined sewer overflow;
   c. A MS4;
   d. A primary industrial facility;
   e. A stormwater discharge associated with industrial activity;
   f. A CAFO;
   g. A treatment works treating domestic sewage; and
   h. A stormwater discharge associated with construction activity.
2. For dischargers not listed in subsection (C)(1), the Director may consider a Notice of Intent inappropriate for the discharge and authorize the discharge under a general permit without a Notice of Intent. In making this finding, the Director shall consider:
   a. The type of discharge,
   b. The expected nature of the discharge,
   c. The potential for toxic and conventional pollutants in the discharge,
   d. The expected volume of the discharge,
   e. Other means of identifying the discharges covered by the permit, and
   f. The estimated number of discharges covered by the permit.
3. The Director shall provide reasons for not requiring a Notice of Intent for a general permit in the public notice.

D. Notice of Intent. The Director shall specify the contents of the Notice of Intent in the general permit and the applicant shall submit information sufficient to establish coverage under the general permit, including, at a minimum:
1. The name, position, address, and telephone number of the owner of the facility;
2. The name, position, address, and telephone number of the operator of the facility, if different from subsection (D)(1);
3. The name and address of the facility;
4. The type and location of the discharge;
5. The receiving streams;
6. The latitude and longitude of the facility;
7. For a CAFO, the information specified in 40 CFR 122.21(i)(1) and a topographic map;
8. The signature of the certifying official required under 40 CFR 122.22; and
9. Any other information necessary to determine eligibility for the AZPDES general permit.

E. The general permit shall contain:
1. The expiration date; and
2. The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits, under R18-9-A905(A)(1), R18-9-A905(A)(2), and R18-9-A905(A)(3) and determined by the Director as necessary and appropriate for the protection of navigable waters.

F. The Department shall inform a permittee if EPA requests the permittee's Notice of Intent, unless EPA requests that the permittee not be notified.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-C902. Required and Requested Coverage Under an Individual Permit

A. Individual permit requirements.
1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:
   a. A discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general permit;
   b. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
   c. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
   d. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;
   e. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

f. Standards for sewage sludge use or disposal are promulgated for the sludge use and disposal practices covered by the general permit; or
g. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:
i. The location of the discharge with respect to navigable waters,
ii. The size of the discharge,
iii. The quantity and nature of the pollutants discharged to navigable waters, and
iv. Any other relevant factor.

2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
a. A brief statement of the reasons for the decision,
b. An application form,
c. A statement setting a deadline to file the application,
d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,
e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

3. The discharger shall apply for a permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
4. If the permittee fails to submit the individual permit application within the time period established in subsection (A)(3), the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
5. Coverage under the general permit shall continue until an individual permit is issued unless the permit coverage is terminated under subsection (A)(4).

B. Individual permit request.
1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than 90 days after publication of the general permit.
b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C903. General Permit Duration, Reissuance, and Continuation

A. General permit duration.
1. An AZPDES general permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.

B. Continued coverage. Any permittee granted permit coverage before the expiration date automatically remains covered by the continued permit until the earlier of:
1. Reissuance or replacement of the permit, at which time the permittee shall comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
2. The date the permittee has submitted a Notice of Termination; or
3. The date the Director has issued an individual permit for the discharge; or
4. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C904. Change of Ownership or Operator Under a General Permit

If a change of ownership or operator occurs for a facility operating under a general permit:
1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.
a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted.
b. A permittee shall comply with the permit conditions specified in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.
2. New owner or operator.
a. The new owner or operator shall complete and file a Notice of Intent with the Department within the time period specified in the general permit before taking over operational control of, or initiation of activities at, the facility.
b. If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.
c. The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:

i. The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities,
ii. The construction is complete and final site stabilization is achieved, or
iii. The operator's status changes.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C905. General Permit Modification and Revocation and Reissuance

A. The Director may modify or revoke a general permit issued under R18-9-A907(B), R18-9-A908, and R18-9-C901 if one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.

B. The Director shall follow the procedures specified in R18-9-A907(B) and R18-9-A908 to modify or revoke and reissue a general permit.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

R18-9-D901. CAFO Designations

A. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. The Director shall designate an animal feeding operation as a CAFO if the animal feeding operation significantly contributes a pollutant to a navigable water. The Director shall consider the following factors when making this determination:
1. The size of the animal feeding operation and the amount of wastes reaching a navigable water;
2. The location of the animal feeding operation relative to a navigable water;
3. The means of conveyance of animal wastes and process wastewaters into a navigable water;
4. The slope, vegetation, rainfall, and any other factor affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into a navigable water; and
5. Any other relevant factor.

C. The Director shall conduct an onsite inspection of the animal feeding operation before the making a designation under subsection (B).

D. The Director shall not designate an animal feeding operation having less than the number of animals established in R18-9-A901(19)(a) as a CAFO unless a pollutant is discharged:
1. Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or
2. Directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.

E. If the Director makes a designation under subsection (B), the Director shall notify the owner or operator of the operation, in writing, of the designation.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D902. AZPDES Permit Coverage Requirements

A. Any person who owns or operates a CAFO, except as provided in subsections (B) and (C), shall submit an application for an individual permit under R18-9-B901(B) or seek coverage under a general permit under R18-9-C901(B) within the applicable deadline specified in R18-9-D904(A).

B. If a person who owns or operates a large CAFO receives a no potential to discharge determination under R18-9-D903, coverage under an AZPDES permit described in this Part is not required.

C. The discharge of manure, litter, or process wastewater to a navigable water from a CAFO as a result of the application of manure, litter, or process wastewater by the CAFO to land areas under its control is subject to AZPDES permit requirements, except where it is an agricultural stormwater discharge as provided in section 502(14) of the Clean Water Act (33 U.S.C. 1362(14)). For purposes of this Section, an "agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO when the person who owns or operates the CAFO has applied the manure, litter, or process wastewater according to site-specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the manure, litter, or process wastewater, as specified under 40 CFR 122.42(e)(1)(vi) through (ix).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D903. No Potential To Discharge Determinations for Large CAFOs

A. For purposes of this Section, "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to enter into a navigable water under any circumstance or climatic condition.

B. Any person who owns or operates a large CAFO and has not had a discharge within the previous five years may request a no potential to discharge determination by submitting to the Department:
1. The information specified in 40 CFR 122.21(f) and 40 CFR 122.21(i)(1)(i) through (ix) on a form obtained from the Department, by the applicable date specified in R18-9-D904(A); and
2. Any additional information requested by the Director to supplement the request or requested through an onsite inspection of the CAFO.

C. Process for making a no potential to discharge determination.
1. Upon receiving a request under subsection (B), the Director shall consider:
   a. The potential for discharges from both the production area and any land application area, and
   b. Any record of prior discharges by the CAFO.
2. The Director shall issue a public notice that includes:
   a. A statement that a no potential to discharge request has been received;
   b. A fact sheet, when applicable;
   c. A brief description of the type of facility or activity that is the subject of the no potential to discharge determination;
   d. A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and

e. A description of the procedures for reaching a final decision on the no potential to discharge determination.

3. The Director shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.
4. The Director shall notify the owner or operator of the large CAFO of the final determination within 90 days of receiving the request.

D. If the Director determines that the operation has the potential to discharge, the person who owns or operates the CAFO shall seek coverage under an AZPDES permit within 30 days after the determination of potential to discharge.

E. A no potential to discharge determination does not relieve the CAFO from the consequences of a discharge. An unpermitted CAFO discharging a pollutant into a navigable water is in violation of the Clean Water Act even if the Director issues a no potential to discharge determination for the facility. If the Director issues a determination of no potential to discharge to a CAFO facility but the owner or operator anticipates a change in circumstances that could create the potential for a discharge, the owner or operator shall contact the Director and apply for and obtain permit authorization before the change of circumstances.

F. When the Director issues a determination of no potential to discharge, the Director retains the authority to subsequently require AZPDES permit coverage if:
1. Circumstances at the facility change;
2. New information becomes available; or
3. The Director determines, through other means, that the CAFO has a potential to discharge.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D904. AZPDES Permit Coverage Deadlines

A. Any person who owns or operates a CAFO shall apply for or seek coverage under an AZPDES permit and shall comply with all applicable AZPDES requirements, including the duty to maintain permit coverage under subsection (C).
1. Permit coverage deadline for an animal feeding operation operating before April 14, 2003.
   a. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was defined as a CAFO before February 2, 2004 shall apply for or seek permit coverage or maintain permit coverage and comply with the conditions of the applicable AZPDES permit;
   b. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was not defined as a CAFO until February 2, 2004 shall apply for or seek permit coverage by a date specified by the Director, but no later than February 13, 2006;
   c. An owner or operator of an animal feeding operation that operated before April 14, 2003 who changes the operation on or after February 2, 2004, resulting in the operation being defined as a CAFO, shall apply for or seek permit coverage as soon as possible, but no later than 90 days after the operational change. If the operational change will not make the operation a CAFO as defined before February 2, 2004, the owner or operator may take until April 13, 2006 or 90 days after the operation is defined as a CAFO, whichever is later, to apply for or seek permit coverage;
   d. An owner or operator of an animal feeding operation that operated before April 14, 2003 who constructs additional facilities on or after February 2, 2004, resulting in the operation being defined as a CAFO that is a new source, shall apply for or seek permit coverage at least 180 days before the new source portion of the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.
2. Permit coverage deadline for an animal feeding operation operating on or after April 14, 2003. An owner or operator who started construction of a CAFO on or after April 14, 2003, including a CAFO subject to the effluent limitations guidelines in 40 CFR 412, shall apply for or seek permit coverage at least 180 days before the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.
3. Permit coverage deadline for a designated CAFO. Any person who owns or operates a CAFO designated under R18-9-D901(B) shall apply for or seek permit coverage no later than 90 days after receiving a designation notice.

B. Unless specified under R18-9-D903(E) and (F), the Director shall not require permit coverage for a CAFO that the Director determines under R18-9-D903 to have no potential to discharge. If circumstances change at a CAFO that has a no potential to discharge determination and the CAFO now has a potential to discharge, the person who owns or operates the CAFO shall notify the Director within 30 days after the change in circumstances and apply for or seek coverage under an AZPDES permit.

C. Duty to maintain permit coverage.
1. The permittee shall:
   a. If covered by an individual AZPDES permit, submit an application to renew the permit no later than 180 days before the expiration of the permit under R18-9-B904(B); or
   b. If covered by a general AZPDES permit, comply with R18-9-C903(B).
2. Continued permit coverage or reapplication for a permit is not required if:
   a. The facility ceases operation or is no longer a CAFO; and
   b. The permittee demonstrates to the Director that there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D905. Closure Requirements

A. Closure.
1. A person who owns or operates a CAFO shall notify the Department of the person's intent to cease operations

without resuming an activity for which the facility was designed or operated.

2. A person who owns or operates a CAFO shall submit a closure plan to the Department for approval 90 days before ceasing operation. The closure plan shall describe:
   a. For operations that met the "no potential to discharge" under R18-9-D903, facility-related information based on the Notice of Termination form for the applicable general permit;
   b. The approximate quantity of manure, process wastewater, and other materials and contaminants to be removed from the facility;
   c. The destination of the materials to be removed from the facility and documentation that the destination is approved to accept the materials;
   d. The method to treat any material remaining at the facility;
   e. The method to control the discharge of pollutants from the facility;
   f. Any limitations on future land or water use created as a result of the facility's operations or closure activities;
   g. A schedule for implementing the closure plan; and
   h. Any other relevant information the Department determines necessary.

B. The owner or operator shall provide the Department with written notice that a closure plan has been fully implemented within 30 calendar days of completion and before redevelopment.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
   a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and
   b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.
3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means a person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
   a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
   b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
   c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
   d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
   e. Sludge generated at an industrial facility during the treatment of industrial wastewater, including industrial wastewater combined with domestic sewage;
   f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
   g. Special wastes as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including a POTW for which the Department assumes local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the Director or by the Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
10. *"Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376).* A.R.S. 49-201(6).
11. "Coarse fragments" means rock particles in the gravel-size range or larger.
12. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
13. "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
14. "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.
15. "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta

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.

49-255.01. Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; general permit

A. A person shall not discharge except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article or rules authorized under section 49-203, subsection A, paragraph 2.

2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

B. The director shall adopt rules to establish an AZPDES permit program for discharges to WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement for WOTUS that is more stringent than any requirement of the clean water act. The director shall not adopt any requirement that conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and not more stringent than the clean water act and this article.

C. The rules adopted by the director under subsection B of this section shall provide for:

1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.

2. Establishing permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 8 including case-by-case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).

3. Modifications and variances as allowed by the clean water act.

4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

D. This article does not affect the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.

E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:

1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:

(a) An upset occurred and that the permittee can identify the specific cause of the upset.

(b) The permitted facility was being properly operated at the time of the upset.

(c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours after the upset.

(d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.

2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.

F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:

1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.

2. Limitations for pollutants in WOTUS adopted pursuant to sections 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.

G. Notwithstanding section 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

1. Within the thirty-day period, an appeal is filed with the water quality appeals board pursuant to section 49-323.

2. A later effective date is specified in the decision.

I. In addition to other reservations of rights provided by this chapter, this article does not impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

J. The director shall establish by rule fees, including maximum fees, to pay expenses incurred in implementing the AZPDES 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.

K. Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.

L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:

1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.

3. The owner or operator complies with good housekeeping measures included in the general permit.

4. The owner or operator maintains the capacity of the retention basins.

5. Construction conforms to the standards prescribed by this section.

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

49-255.02. Pretreatment program; rules and standards

A. The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of sections 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act, except the director shall apply the pretreatment program to publicly owned treatment works that discharge to a non-WOTUS protected surface water.

B. The rules adopted by the director shall provide for all of the following:

1. Development or modification of local pretreatment programs by the owners of publicly owned treatment works that discharge or as otherwise required under the clean water act or this article to prevent the use or disposal of sewage sludge produced by a publicly owned treatment works in violation of section 405 of the clean water act or requirements established pursuant to section 49-255.03, subsection A.

2. Approval by the director of new or modified local pretreatment programs or site specific modifications to pretreatment standards.

3. Oversight by the director of local program implementation.

C. The rules adopted by the director shall provide for the department to ensure that any industrial user of any publicly owned treatment works will comply with the requirements of sections 307 and 308 of the clean water act.

DEPARTMENT OF LIQUOR LICENSE AND CONTROL
Title 19, Chapter 1, Article 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 21, 2023**

SUBJECT: **DEPARTMENT OF LIQUOR LICENSE AND CONTROL**
Title 19, Chapter 1, Article 8

Summary

This One Year Review Report from the Department of Liquor Licenses and Control (Department) relates to four (4) rules in Title 19, Chapter 1, Article 8 regarding leasing off-sale privileges.

Laws 2021, Chapter 375 authorizes a bar or liquor store licensee to deliver mixed cocktails off the licensed premises and authorizes restaurant licensees to enter a lease agreement with a bar or liquor store under which they can enjoy the off-sale privilege of the bar or liquor store licensee. The Department was granted a one-time exemption from the rulemaking requirements of the Administrative Procedure Act to adopt the necessary rules in Laws 2022, Chapter 282, Sec. 12. The rules and cross-referenced regulations include specific requirements for packaging, labeling, age restrictions, and identification.

Proposed Action

The Department indicates that R19-1-804 relating to the registration of an alcohol delivery contractor has not caused any issue with enforcement or confusion, but that it could potentially be made more clear. The rule says "individuals" but applies to actual individual persons and entities. To date, only delivery companies—such as Uber Eats and Doordash—have

applied for registration. The Department indicates that amending R19-1-804 to read "individuals or entities" may help provide clarity but that they are not proposing any changes to the rules at this time.

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 states that Laws 2022, Chapter 282, Sec. 12, exempted the Department from all rulemaking requirements in A.R.S. Title 41, Chapter 6. They state the exemption included the requirement to provide an economic, small business, and consumer impact statement.

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 determined the probable benefits of the rules outweigh the costs and impose the least burden necessary to achieve the regulatory objective of the rules, which is to facilitate the leasing of a licensee's off-sale privilege regarding spirituous liquor while protecting public health and safety. Licensees that enter these lease agreements do so voluntarily because they too have determined the probable benefits of the rules outweigh the costs.

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 since they were adopted.

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

The Department indicates that while there has been no difficulty enforcing R19-1-804 and they have not received any complaints or concerns, the exclusive use of the word individual, and the cross reference to R19-1-201, which delineates between individuals, and various corporate entities, has the potential for causing confusion in the future. The Department indicates that amending to read "individuals or entities" may help provide clarity, but is not proposing any amendments at this time.

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

The Department indicates that the rules are consistent with other rules and statutes.

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

The Department indicates that the rules are effective in achieving their objectives.

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

The Department indicates that the rules are enforced as written.

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

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

10. Has the agency completed any additional process required by law?

The Department indicates that 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 the registration of an alcohol delivery contractor under A.R.S. § 4-205.13 is not a general permit and that the Department is required to review a person's qualifications before registering.

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 related to leasing off-sale privileges. The Department is not proposing any changes to the rules at this time.

Council staff recommends approval of this report.

STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Katie Hobbs
GOVERNOR

Ben Henry
DIRECTOR

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: Department of Liquor Licenses and Control
One-year-review Report required under A.R.S. § 41-1095(A)
19 A.A.C. 1, Article 8 (Leasing Off-sale Privileges)

Dear Ms. Sornsin:

The Department submits the referenced report. It is due on October 13, 2023.

The Department certifies it complies with A.R.S. § 41-1091.

For questions about this report, please contact Gino A. Duran, Assistant Director, at gino.duran@azliquor.gov.

Sincerely,

Gino A. Duran
Digitally signed by Gino A. Duran
Date: 2023.08.16 10:06:22 -07'00'

Gino A. Duran
Assistant Director

One-year-review Report required under A.R.S. § 41-1095(A)
A.A.C. Title 19. Alcohol, Dog and Horse Racing, Lottery and Gaming
Chapter 1. Department of Liquor Licenses and Control
Article 8. Leasing Off-sale Privileges
Submitted for

INTRODUCTION

The Department of Liquor Licenses and Control, which is created by A.R.S. § 4-111, consists of the State Liquor Board and the Office of the Director of the Department. The Board is responsible for granting or denying licenses and holding hearings regarding appeals. The Director is responsible for administering the statutory provisions regarding liquor licenses and control. The legislature created the Department to regulate the liquor industry through the license control process, collect fees and taxes for the maintenance of government, and enforce statutes to maintain the health and welfare of the community. The mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently.

In response to the impact the Coronavirus pandemic of 2020 had on the economic well-being of restaurants and bars, the legislature enacted Laws 2021, Chapter 375, which authorized a bar or liquor store licensee to take orders for and sell and deliver mixed cocktails off the licensed premises and authorized restaurant licensees to, under specified circumstances, enter a lease agreement with a bar, beer and wine bar, or liquor store licensee. Under the lease agreement, the restaurant licensee enjoys the off-sale privilege of the bar, beer and wine bar, or liquor store licensee.

The reviewed rules established procedures for entering lease agreements regarding off-sale privileges and for registering as an alcohol delivery contractor, and established new fees specifically authorized under A.R.S. §§ 4-203.06(B)(1), 4-203.07(B)(2), 4-205.13(B), and 4-209.

Statute that generally authorizes the agency to make rules: A.R.S. § 4-112(A)(2) and (B)(1)

1. Specific statute authorizing the rule:

   R19-1-801. Leasing Off-sale Privileges: Preliminary Considerations: A.R.S. §§ 4-203.06 and 4-203.07

   R19-1-802. Leasing an Off-sale Privilege Regarding Mixed Cocktails: A.R.S. § 4-203.06

   R19-1-803. Leasing an Off-sale Privilege Regarding Spirituous Liquor other than Mixed Cocktails: A.R.S. § 4-203.07

   R19-1-804. Registration of an Alcohol Delivery Contractor: A.R.S. §§ 4-203(T) and 4-205.13

2. Objective of the rule:

   R19-1-801. Leasing Off-sale Privileges: Preliminary Considerations: The objective of this rule is to specify provisions that apply to all leases of off-sale privileges.

   R19-1-802. Leasing an Off-sale Privilege Regarding Mixed Cocktails: The objective of this rule is to specify the responsibilities of an applicant, the Director, and an approved restaurant licensee when the restaurant licensee enters a lease agreement regarding the off-sale privilege of a bar or liquor store regarding mixed cocktails.

   R19-1-803. Leasing an Off-sale Privilege Regarding Spirituous Liquor other than Mixed Cocktails: The objective of this rule is to specify the responsibilities of an applicant, the Director, and an approved restaurant licensee when the restaurant licensee enters a lease agreement with a bar, beer and wine bar, or liquor store licensee. The lease agreement allows the restaurant licensee to exercise the off-sale privilege of the bar, beer and wine bar, or liquor store licensee regarding spirituous liquor other than mixed cocktails.

   R19-1-804. Registration of an Alcohol Delivery Contractor: The objective of this rule is to specify the procedures for registering as an alcohol delivery contractor. The rule also specifies the operational limits regarding delivery of spirituous liquor.

3. Is the rule effective in achieving its objective? Yes

4. Were there written criticisms of the rule, including written analyses questioning whether the rule is based on valid scientific or reliable principles or methods? No

5. Is the rule consistent with other rules and statutes? Yes

6. Is the rule enforced as written? Yes

The Department enforces R19-1-801 through R19-1-804 as written. Specifically, R19-1-804 specifies the procedures for individuals to register as an alcohol delivery contractor. To date, the only entities that have applied for registration as contractors are delivery companies, such as Uber Eats and Doordash. This is permitted as A.R.S. § 4-101.33 defines a "registered alcohol delivery contractor," in part, as a "person who delivers spirituous liquor to a consumer." Further, § 4-101.31 includes within the definition of "person" partnerships, LLC's, associations or companies. The companies who have applied for registration have followed all other steps for registration found in the rule.

R19-1-804 also applies to actual individual persons, however, to date, no individual person has sought to register.

7. Is the rule clear, concise, and understandable? Mostly

There has been no difficulty enforcing R19-1-804 and the Department has not received any complaints or concerns about it. However, the exclusive use of the word individual, and the cross reference to R19-1-201, which delineates between individuals, and various corporate entities, has the potential for causing confusion in the future. Although not a matter of immediate concern, an amendment to R19-1-804 to include "individuals or entities" may help provide clarity the next time the Department amends these rules.

8. Estimated economic, small business, and consumer impact of the rule:

Laws 2022, Chapter 282, Sec. 12, exempted the Department from all rulemaking requirements in A.R.S. Title 41, Chapter 6. The exemption included the requirement to provide an economic, small business, and consumer impact statement.

The Department estimated that most of the economic impact for licensees would result from the statutory change allowing for the lease of certain off-sale privileges and from creating a new kind of registration rather than this rulemaking. All licensees who incur the economic costs and benefits of entering a lease agreement do so voluntarily. The economic impact of the rulemaking results from establishing several new fees that are specifically authorized by statute.

Since the rules went into effect on October 13, 2022, forty two (42) restaurant licensees have applied for and forty (40) have entered agreements to lease the privilege of a bar or liquor store licensee to sell mixed cocktails for consumption off the licensed premises; the other two (2) have not been issued as of this date. As a result of the applications, the Department collected $8,400 in non-refundable

application fees. The Director established an average lease amount of $1,000 for these agreements. Of the restaurant licensees who applied but were not approved to enter a lease agreement, the primary reason was N/A.

Since the rules went into effect on October 13, 2022, two (2) restaurant licensees have applied for and two (2) have entered agreements to lease the privilege of a bar, beer and wine bar, or liquor store licensee to sell spirituous liquor other than mixed cocktails for consumption off the licensed premises. As a result of the applications, the Department collected $400 in non-refundable application fees. The parties to these lease agreements agreed to an average lease amount of $3,250. Of the restaurant licensees who applied but were not approved to enter a lease agreement, the primary reason was N/A.

There are currently three (3) registered alcohol delivery contractors in Arizona. Since the rules were approved, 3 companies applied to be a registered alcohol delivery contractor. As a result of the applications, the Department collected $75 in non-refundable application fees. Of those who applied, the Director denied zero (0).

All application fees collected were deposited in the liquor licenses fund in accordance with A.R.S. § 4-115.

9. Has the agency received any business competitiveness analyses of the rule? No

10. If applicable, whether the agency completed additional processes required by law: NA

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

    The Department determined the probable benefits of the rules outweigh the costs and impose the least burden necessary to achieve the regulatory objective of the rules, which is to facilitate the leasing of a licensee's off-sale privilege regarding spirituous liquor while protecting public health and safety. Licensees that enter these lease agreements do so voluntarily because they too have determined the probable benefits of the rules outweigh the costs.

A restaurant licensee that wishes to lease the off-sale privilege of a bar, beer and wine bar, or liquor store licensee is required to complete an application and pay a non-refundable application fee. A restaurant licensee whose application is approved has to pay the lease amount and comply with all applicable statutes and rules.

A bar or liquor store licensee whose off-sale privilege regarding mixed cocktails is leased has to do nothing other than accept payment for the lease. The bar or liquor store licensee may opt out of leasing the off-sale privilege regarding mixed cocktails but does not have to opt in.

To lease a bar, beer and wine bar, or liquor store licensee's off-sale privilege regarding spirituous liquor other than mixed cocktails, the restaurant licensee and the bar, beer and wine bar, or liquor store licensee are required to enter a lease agreement and the bar, beer and wine bar, or liquor store licensee is required to cease operating under the off-sale privilege, which is transferred to the restaurant licensee.

The off-sale privilege leasing program imposes new responsibilities on the Department including acting as a third-party facilitator of lease amounts to ensure payment is made to the leasing bar, beer and wine bar, or liquor store licensee.

To register as an alcohol delivery contractor, a person is required to submit an application and pay a non-refundable application fee. A registered alcohol delivery contractor is required to comply with the specified operational limits for delivery of spirituous liquor.

12. Is the rule more stringent than corresponding federal laws? No

Federal law is applicable to the subject of the rules (See 27 CFR, Chapter 1, Subchapter A). The rules are no more stringent than federal law.

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

Under A.R.S. § 41-1037(A)(2), the registration of an alcohol delivery contractor under A.R.S. § 4-205.13 is not a general permit. A.R.S. § 4-205.13(E) requires the Department to review a person's qualifications before registering the person.

ARTICLE 8. LEASING OFF-SALE PRIVILEGES

R19-1-801. Leasing Off-sale Privileges: Preliminary Considerations

A. Only a restaurant licensee may enter an agreement to lease the off-sale privileges of another licensee.

B. A restaurant licensee may enter an agreement with only a bar or liquor store licensee to lease the bar or liquor store licensee's privilege to sell mixed cocktails, as defined at A.R.S. § 4-101, for consumption off the licensed premises.

C. A restaurant licensee may enter an agreement with only a bar, beer and wine bar, or liquor store licensee to lease the bar, beer and wine bar, or liquor store licensee's privilege to sell spirituous liquor other than mixed cocktails for consumption off the licensed premises.

D. When the Director approves an agreement under subsection (B), the bar or liquor store licensee retains the bar or liquor store licensee's privilege to sell mixed cocktails for consumption off the licensed premises during the term of the lease.

E. When the Director approves an agreement under subsection (C), the Director transfers the off-sale privilege of the bar, beer and wine bar, or liquor store regarding spirituous liquor other than mixed cocktails to the restaurant licensee for the term of the lease and the bar, beer and wine bar, or liquor store licensee shall stop the off-sale of spirituous liquor other than mixed cocktails.

F. A restaurant licensee that wishes to enter a privileges lease agreement under subsection (B) or (C) shall apply to the Department under R19-1-802 or R19-1-803 and obtain the Director's approval.

G. This Section is authorized by A.R.S. §§ 4-203.06 and 4-203.07.

Historical Note

New Section made by final exempt rulemaking at 28 A.A.R. 3436 (November 4, 2022), with an immediate effective date of October 13, 2022 (Supp. 22-4).

R19-1-802. Leasing an Off-sale Privilege Regarding Mixed Cocktails

A. Applicant responsibilities. To apply under A.R.S. § 4-203.06 to lease the privilege of a bar or liquor store licensee to sell mixed cocktails for consumption off the licensed premises, a restaurant licensee shall submit to the Department:

1. An application form that is available from the Department at its office or on the Department's website;
2. A non-refundable application fee of $200; and
3. A privileges lease form, which is available from the Department at its office or on the Department's website, signed and dated by the restaurant licensee.

B. Director responsibilities. The Director shall:

1. Within 30 days after receiving an application under subsection (A), approve or deny the application based on the location or history of the applicant. If the Director denies the application, the Director shall provide to the restaurant licensee the notice required under R19-1-209(H);
2. Randomly select a bar or liquor store licensee to enter a privileges lease agreement with the approved restaurant licensee to lease the bar or liquor store licensee's privilege to sell mixed cocktails for consumption off the licensed premises. A bar or liquor store licensee is not required to opt-in but may opt-out of being selected by the Director. The bar or liquor store licensee selected may be located in the same or a different county from the county of the restaurant licensee;
3. Establish a lease amount to be paid by the restaurant licensee that fairly recognizes and is derived from the commercial value of the privilege being leased; and
4. Act as a third-party facilitator of the funds paid under subsection (C)(1) to ensure the lease payment is made to the bar or liquor store licensee.

C. Restaurant licensee responsibilities. A restaurant licensee whose application is approved under subsection (B)(1) shall:

1. Pay in full to the Department the lease amount established under subsection (B)(3) when the application is approved under subsection (B)(1);
2. Comply with all Department statutes and rules including:
   a. A.R.S. § 4-203(S)(5) regarding the sale of menu food items, as defined at A.R.S. § 4-101;
   b. A.R.S. § 4-205.02(M) regarding the percentage of gross revenue derived from the sale of food; and
   c. A.R.S. § 4-206.01(G) regarding the percentage of spirituous liquor sales derived under the privileges lease agreement; and
3. If desired, apply to the Department for renewal of the privileges lease agreement. To renew the privileges lease agreement, a restaurant licensee shall:
   a. Submit to the Department a renewal application form that is available from the Department at its office or on the Department's website;

b. Pay a renewal fee that includes renewal of the restaurant license and is specified on the Department's website; and
c. Pay in full the lease amount established under subsection (B)(3).

D. This Section is authorized by A.R.S. § 4-203.06. Under A.R.S. § 4-203.06(A), this Section is not applicable on and after January 1, 2026.

Historical Note

New Section made by final exempt rulemaking at 28 A.A.R. 3436 (November 4, 2022), with an immediate effective date of October 13, 2022 (Supp. 22-4).

R19-1-803. Leasing an Off-sale Privilege Regarding Spirituous Liquor other than Mixed Cocktails

A. Applicant responsibilities. To apply under A.R.S. § 4-203.07 to lease the privilege of a bar, beer and wine bar, or liquor store licensee to sell spirituous liquor other than mixed cocktails for consumption off the licensed premises, a restaurant licensee shall submit to the Department within one of the lease windows established by the Department:
1. An application form that is available from the Department at its office or on the Department's website;
2. A non-refundable application fee of $200; and
3. A privileges lease form that is available from the Department at its office or on the Department's website; and:
   a. Is signed and dated by both the restaurant licensee and the bar, beer and wine bar, or liquor store licensee, both of which are located in the same county; and
   b. Specifies the lease amount to which the parties agree, which may be the amount determined by the Department under A.R.S. § 4-203.07(C).

B. Director responsibilities. The Director shall:
1. Establish and make available on the Department's website:
   a. At least four windows throughout a calendar year during which leases may be made;
   b. Suggested lease amounts under the terms specified at A.R.S. § 4-203.07(C).
2. Within 30 days after receiving an application under subsection (A), approve or deny the application:
   a. If the Director denies the application, the Director shall provide to the restaurant licensee the notice required under R19-1-209(H) and
   b. If the Director approves the application, the Director shall transfer to the restaurant licensee the privilege of the bar, beer and wine bar, or liquor store licensee to sell spirituous liquor other than mixed cocktails for consumption off the licensed premises; and
3. Act as a third-party facilitator of the funds paid under subsection (C)(1) to ensure the lease payment is made to the bar, beer and wine bar, or liquor store licensee.

C. Restaurant licensee responsibilities. A restaurant licensee whose application is approved under subsection (B)(2) shall:
1. Pay in full to the Department the lease amount established under subsection (A)(3)(b) when the privileges lease agreement is made;
2. Comply with all Department statutes and rules including:
   a. A.R.S. § 4-205.02(M) regarding the percentage of gross revenue derived from the sale of food, and
   b. A.R.S. § 4-206.01(G) regarding the percentage of spirituous liquor sales derived under the privileges lease agreement; and
3. If desired, apply to the Department for renewal of the privileges lease agreement. To renew the privileges lease agreement, a restaurant licensee shall:
   a. Submit to the Department a renewal application form that is available from the Department at its office or on the Department's website;
   b. Submit to the Department an updated privileges lease form that is signed and dated by both the restaurant licensee and the bar, beer and wine bar, or liquor store licensee and specifies the lease amount to which the parties agree;
   c. Pay a renewal fee that includes renewal of the restaurant license and is specified on the Department's website; and
   d. Pay in full the lease amount established under subsection (C)(3)(b).

D. This Section is authorized by A.R.S. § 4-203.07.

Historical Note

New Section made by final exempt rulemaking at 28 A.A.R. 3436 (November 4, 2022), with an immediate effective date of October 13, 2022 (Supp. 22-4).

R19-1-804. Registration of an Alcohol Delivery Contractor

A. To register as an alcohol delivery contractor, as defined at A.R.S. § 4-101, an individual who is qualified under R19-1-201 shall submit to the Department:

1. An application form that is available from the Department at its office or on the Department's website;
2. Documentation, as described in A.R.S. § 41-1080(A), of U.S. citizenship or alien status indicating presence in the U.S. is authorized under federal law; and
3. A non-refundable application fee of $100.

B. Within 30 days after receiving an application under subsection (A), the Director shall approve or deny the application. If the Director denies the application for good cause, the Director shall provide the notice required under R19-1-209(H).

C. If required by the Director, a newly registered alcohol delivery contractor shall complete an approved training course regarding knowledge of liquor law and pass any required examination.

D. Operational limits for delivery of spirituous liquor. A registered alcohol delivery contractor shall ensure that delivery of spirituous liquor as authorized under A.R.S. § 4-203(T):
1. Is made only to an individual who is at least 21 years old;
2. Is made only after an inspection of identification that complies with A.R.S. § 4-241(K) shows the individual accepting delivery of the spirituous liquor is of legal drinking age;
3. Is made on the same business day, as defined at A.R.S. § 4-203(T), as the order for delivery of spirituous liquor is placed;
4. Is not made to an intoxicated or disorderly individual; and
5. Is not made to the licensed premises of a licensed retailer.

E. A registered alcohol delivery contractor shall refuse to complete a delivery if the registered alcohol delivery contractor believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.

F. To renew a registration as an alcohol delivery contractor, the registered alcohol delivery contractor shall, by April 30 of each year:
1. Submit to the Department a renewal application form that is available from the Department at its office or on the Department's website; and
2. Pay the renewal fee of $25.

G. This Section is authorized by A.R.S. §§ 4-203(T) and 4-205.13.

Historical Note

New Section made by final exempt rulemaking at 28 A.A.R. 3436 (November 4, 2022), with an immediate effective date of October 13, 2022 (Supp. 22-4).

4-112. Powers and duties of board and director of department of liquor licenses and control; investigations; county and municipal regulation; definition

A. The board shall:

1. Grant and deny applications in accordance with the provisions of this title.

2. Adopt rules in order to carry out the provisions of this section.

3. Hear appeals and hold hearings as provided in this section.

B. Except as provided in subsection A of this section, the director shall administer the provisions of this title, including:

1. Adopting rules:

(a) For carrying out the provisions of this title.

(b) For the proper conduct of the business to be carried on under each specific type of spirituous liquor license.

(c) To enable and assist state officials and political subdivisions to collect taxes levied or imposed in connection with spirituous liquors.

(d) For the issuance and revocation of certificates of registration of retail agents, including provisions governing the shipping, storage and delivery of spirituous liquors by registered retail agents, the keeping of records and the filing of reports by registered retail agents.

(e) To establish requirements for licensees under section 4-209, subsection B, paragraph 12.

2. Subject to title 41, chapter 4, article 4, employing necessary personnel and fixing their compensation pursuant to section 38-611.

3. Keeping an index record that is a public record open to public inspection and that contains the name and address of each licensee and the name and address of any person having an interest, either legal or equitable, in each license as shown by any written document that is placed on file in the office of the board.

4. Providing the board with supplies and personnel as directed by the board.

5. Responding in writing to any law enforcement agency that submits an investigative report to the department relating to a violation of this title, setting forth what action, if any, the department has taken or intends to take on the report and, if the report lacks sufficient information or is otherwise defective for use by the department, what the agency must do to remedy the report.

6. Taking steps that are necessary to maintain effective liaison with the department of public safety and all local law enforcement agencies in the enforcement of this title including the laws of this state against the consumption of spirituous liquor by persons under the legal drinking age.

7. Providing training to law enforcement agencies in the proper investigation and reporting of violations of this title.

C. The director shall establish within the department a separate investigations unit that has as its sole responsibility the investigation of compliance with this title including the investigation of licensees alleged to have sold or distributed spirituous liquor in any form to persons under the legal drinking age. Investigations conducted by this unit may include covert undercover investigations.

D. All employees of the department of liquor licenses and control, except members of the state liquor board and the director of the department, shall be employed by the department in the manner prescribed by the department of administration.

E. The director may enter into a contract or agreement with any public agency for any joint or cooperative action as provided for by title 11, chapter 7, article 3.

F. The board or the director may take evidence, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses, cause depositions to be taken and require by subpoena duces tecum the production of books, papers and other documents that are necessary for the enforcement of this title. Proceedings held during the course of a confidential investigation are exempt from title 38, chapter 3, article 3.1. If a person refuses to obey a subpoena or fails to answer questions as provided by this subsection, the board or the director may apply to the superior court in the manner provided in section 12-2212. The board or director may serve subpoenas by personal service or certified mail, return receipt requested.

G. The director may:

1. Examine books, records and papers of a licensee.

2. Require applicants, licensees, employees who serve, sell or furnish spirituous liquors to retail customers, managers and managing agents to take training courses approved by the director in spirituous liquor handling and spirituous liquor laws and rules. The director shall adopt rules that set standards for approving training courses. The director may suspend or revoke the previous approval of trainers who do not adhere to course administration requirements prescribed by the department or who do not meet course standards. If the director suspends or revokes the previous approval of a trainer pursuant to this paragraph, the trainer may appeal to the board pursuant to section 4-210.02 as if the suspension or revocation was a sanction against a licensee. After January 1, 2019, the rules for on-sale retailer basic training and on-sale retailer management training shall include security procedures for security personnel assigned to monitor admission of patrons, interaction with patrons, calls to law enforcement and strategies for use of force and for the use of de-escalation techniques. If the retailer uses a registered security guard, the retailer shall attempt to verify the validity and status of the security guard's registration certificate. The department's licensed investigators may participate and receive compensation as lecturers at approved training courses within this state's jurisdiction that are conducted by other entities but shall not participate in in-house training programs for licensees.

3. Delegate to employees of the department authority to exercise powers of the director in order to administer the department.

4. Regulate signs that advertise a spirituous liquor product at licensed retail premises.

5. Cause to be removed from the marketplace spirituous liquor that may be contaminated.

6. Regulate the age and conduct of erotic entertainers at licensed premises. The age limitation governing these erotic entertainers may be different from other employees of the licensee.

7. Issue and enforce cease and desist orders against any person or entity that sells beer, wine or spirituous liquor without an appropriate license or permit.

8. Confiscate wines carrying a label including a reference to Arizona or any Arizona city, town or place unless at least seventy-five percent by volume of the grapes used in making the wine were grown in this state.

9. Accept and expend private grants of monies, gifts and devises for conducting educational programs for parents and students on the repercussions of underage alcohol consumption. State general fund monies shall not be expended for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are nonlapsing and do not revert to the state general fund at the close of the fiscal year.

10. Procure fingerprint scanning equipment and provide fingerprint services to license applicants and licensees. The department may charge a fee for providing these services.

11. Accept electronic signatures on all department and licensee forms and documents and applications. The director may adopt requirements that would require facsimile signatures to be followed by original signatures within a specified time period.

12. For use after January 1, 2019, adopt a form that is required to be used by all on-sale retailers that hire or designate employees to serve as security personnel. All security personnel job applicants and employees for on-sale retailers shall complete the form, which shall be notarized, before assignment to a security role. The form shall require the applicant or other person to disclose whether in the previous five years the person has been a registered sex offender or pled guilty, pled no contest or been convicted of any offense that constitutes assault, homicide, domestic violence, sexual misconduct, misconduct involving a deadly weapon or a drug violation that constitutes the illegal sale, manufacturing, cultivation or transportation for sale of marijuana, a dangerous drug or a narcotic drug. A licensee may not hire or assign to a role as security personnel any person who fails to complete the form or if the form discloses one of the listed offenses within the previous five years. The licensee shall maintain on file affidavits of all security personnel hired or designated by the licensee. The form may not be required for a peace officer who is certified by the Arizona peace officer standards and training board or other security personnel who hold a current security guard registration certificate or armed security guard registration certificate issued pursuant to title 32, chapter 26.

H. A county or municipality may enact and enforce ordinances regulating the age and conduct of erotic entertainers at licensed premises in a manner at least as restrictive as rules adopted by the director.

I. For the purposes of this section, "security personnel" includes individuals whose primary assigned responsibilities include the security and safety of employees and patrons of an on-sale retailer premises. Security personnel does not include a person whose primary responsibilities include checking the identification cards of patrons to determine compliance with age requirements.

4-203. Licenses; issuance; transfer; reversion to state

A. A spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of wholesaler, producer, government or club licenses, that the public convenience requires and that the best interest of

the community will be substantially served by the issuance. If an application is filed for the issuance of a transferable or nontransferable license, other than for a craft distiller license, a microbrewery license or a farm winery license, for a location that on the date the application is filed has a valid license of the same series, or in the case of a restaurant license application filed for a location with a valid hotel-motel license, issued at that location, there shall be a rebuttable presumption that the public convenience and best interest of the community at that location was established at the time the location was previously licensed. The presumption may be rebutted by competent contrary evidence. The presumption shall not apply once the licensed location has not been in use for more than one hundred eighty days and the presumption shall not extend to the personal qualifications of the applicant.

B. The license shall be to manufacture, sell or deal in spirituous liquors only at the place and in the manner provided in the license. A separate license shall be issued for each specific business, and each shall specify:

1. The particular spirituous liquors that the licensee is authorized to manufacture, sell or deal in.

2. The place of business for which issued.

3. The purpose for which the liquors may be manufactured or sold.

C. A spirituous liquor license issued to a bar, a liquor store or a beer and wine bar shall be transferable as to any permitted location within the same county, if the transfer meets the requirements of an original application. A spirituous liquor license may be transferred to a person qualified to be a licensee, if the transfer is pursuant to either judicial decree, nonjudicial foreclosure of a legal or equitable lien, including security interests held by financial institutions pursuant to section 4-205.05, a sale of the license, a bona fide sale of the entire business and stock in trade, or other bona fide transactions that are provided for by rule. Any change in ownership of the business of a licensee, directly or indirectly, as defined by rule is deemed a transfer, except that there is no transfer if a new artificial person is added to the ownership of a licensee's business but the controlling persons remain identical to the controlling persons that have been previously disclosed to the director as part of the licensee's existing ownership.

D. All applications for a new license pursuant to section 4-201 or for a transfer to a new location pursuant to subsection C of this section shall be filed with and determined by the director, except when the governing body of the city or town or the board of supervisors receiving an application pursuant to section 4-201 orders disapproval of the application or when the director, the state liquor board or any aggrieved party requests a hearing. The application shall then be presented to the state liquor board, and the new license or transfer shall not become effective unless approved by the state liquor board.

E. A person who assigns, surrenders, transfers or sells control of a liquor license or business that has a spirituous liquor license shall notify the director within thirty business days after the assignment, surrender, transfer or sale. A spirituous liquor license shall not be leased or subleased. A concession agreement entered into under section 4-205.03 is not considered a lease or sublease in violation of this section.

F. If a person other than those persons originally licensed acquires control over a license or licensee, the person shall file notice of the acquisition with the director within thirty business days after the acquisition of control and a list of officers, directors or other controlling persons on a form prescribed by the director. There is no acquisition of control if a new person is added to the ownership of a licensee's business but the controlling persons remain identical to the

controlling persons that have been previously disclosed to the director as part of the licensee's existing ownership. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed by this title. On request, the director shall conduct a preinvestigation before the assignment, sale or transfer of control of a license or licensee, the reasonable costs of which, not more than $1,000, shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this title are met. On receipt of notice of an acquisition of control or request of a preinvestigation, the director, within fifteen days after receipt, shall forward the notice of the acquisition of control to the local governing body of the city or town, if the licensed premises is in an incorporated area, or the county, if the licensed premises is in an unincorporated area. The director shall include in the notice to the local governing body written instructions on how the local governing body may examine, free of charge, the results of the department's investigation regarding the capabilities, qualifications and reliability of all officers, directors or other controlling persons listed in the application for acquisition of control. The local governing body, or the governing body's designee, may provide the director with a recommendation, either in favor of or against the acquisition of control, within sixty days after the director mails the notice, but section 4-201 does not apply to the acquisition of control provided for in this section. A local governing body may charge not more than one fee, regardless of the number of licenses held by the applicant, for review of one or more applications for acquisition of control submitted to the department at the same time and for the same entity. Within one hundred five days after filing the notice of the acquisition of control, the director shall determine whether the applicant is qualified, capable and reliable for licensure. A recommendation by the local governing body, or the governing body's designee, against the acquisition of control or denial by the director shall be set for a hearing before the board. The person who has acquired control of a license or licensee has the burden of an original application at the hearing, and the board shall make its determination pursuant to section 4-202 and this section with respect to capability, reliability and qualification.

G. A licensee who holds a license in nonuse status for more than five months shall be required to pay a $100 surcharge for each month thereafter. The surcharge shall be paid at the time the license is returned to active status. A license automatically reverts to the state after being held in continuous nonuse for more than thirty-six months. The director may waive the surcharge and may extend the time period provided in this subsection for good cause if the licensee files a written request for an extension of time to place the license in active status before the date of the automatic reversion. Unless the reverted license of the licensee has been subsequently reissued, the director shall relieve a licensee or its legal representative from a prior license reversion under this section if the request for such relief is filed in writing not later than two years after the date of reversion. A license shall not be deemed to have gone into active status if the license is transferred to a location that at the time of or immediately before the transfer had an active license of the same type, unless the licenses are under common ownership or control.

H. A restructuring of a licensee's business is not an acquisition of control, a transfer of a spirituous liquor license or the issuance of a new spirituous liquor license if both of the following apply:

1. All of the controlling persons of the licensee and the new business entity are identical.

2. There is no change in control or beneficial ownership.

I. If subsection H of this section applies, the licensee's history of violations of this title is the history of the new business entity. The director may prescribe a form and shall require the applicant to provide the necessary information to ensure compliance with this subsection and subsections F and G of this section.

J. Notwithstanding subsection B of this section, the holder of a retail license in this state having off-sale privileges, except a bar, beer and wine bar or restaurant licensee, may take orders by telephone, mail, fax or catalog, through the internet or by other means for the sale and delivery of spirituous liquor off of the licensed premises to a person in this state in connection with the sale of spirituous liquor. Notwithstanding the definition of "sell" prescribed in section 4-101, the placement of an order and payment pursuant to this section is not a sale until delivery has been made. At the time that the order is placed, the licensee shall inform the purchaser that state law requires a purchaser of spirituous liquor to be at least twenty-one years of age and that the person accepting delivery of the spirituous liquor is required to comply with this state's age identification requirements as prescribed in section 4-241, subsections A and K. The licensee may maintain a delivery service and may contract with one or more independent contractors, that may also contract with one or more independent contractors, or may contract with a common carrier for delivery of spirituous liquor if the spirituous liquor is loaded for delivery at the premises of the retail licensee in this state and delivered in this state. Except if the person delivering the order has personally retrieved and bagged or otherwise packaged the container of spirituous liquor for delivery and the licensee records, or requires to be recorded electronically, the identification information for each delivery, all containers of spirituous liquor delivered pursuant to this subsection shall be conspicuously labeled with the words "contains alcohol, signature of person who is twenty-one years of age or older is required for delivery". The licensee is responsible for any violation of this title or any rule adopted pursuant to this title that is committed in connection with any sale or delivery of spirituous liquor. Delivery must be made by an employee of the licensee or other authorized person as provided by this section who is at least twenty-one years of age to a customer who is at least twenty-one years of age and who displays an identification at the time of delivery that complies with section 4-241, subsection K. The retail licensee shall collect payment for the full price of the spirituous liquor from the purchaser before the product leaves the licensed premises. The director shall adopt rules that set operational limits for the delivery of spirituous liquors by the holder of a retail license having off-sale privileges. With respect to the delivery of spirituous liquor, for any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's employee or other authorized person, the mitigation provision of section 4-210, subsection G applies, with the exception of the training requirement. For the purposes of this subsection and notwithstanding the definition of "sell" prescribed in section 4-101, section 4-241, subsections A and K apply only at the time of delivery. For the purposes of compliance with this subsection, an independent contractor, a subcontractor of an independent contractor, the employee of an independent contractor or the employee of a subcontractor is deemed to be acting on behalf of the licensee when making a delivery of spirituous liquor for the licensee.

K. Except as provided in subsection J of this section, Arizona licensees may transport spirituous liquors for themselves in vehicles owned, leased or rented by the licensee.

L. Notwithstanding subsection B of this section, an off-sale retail licensee may provide consumer tasting of wines off of the licensed premises subject to all applicable provisions of section 4-206.01.

M. The director may adopt reasonable rules to protect the public interest and prevent abuse by licensees of the activities permitted such licensees by subsections J and L of this section.

N. Failure to pay any surcharge prescribed by subsection G of this section or failure to report the period of nonuse of a license shall be grounds for revocation of the license or grounds for any other sanction provided by this title. The director may consider extenuating circumstances if control of the license is acquired by another party in determining whether or not to impose any sanctions under this subsection.

O. If a licensed location has not been in use for three years, the location must requalify for a license pursuant to subsection A of this section and shall meet the same qualifications required for issuance of a new license except when the director deems that the nonuse of the location was due to circumstances beyond the licensee's control and an extension of time has been granted pursuant to subsection G of this section.

P. If the licensee's interest is forfeited pursuant to section 4-210, subsection L, the location shall requalify for a license pursuant to subsection A of this section and shall meet the same qualifications required for issuance of a new license except when a bona fide lienholder demonstrates mitigation pursuant to section 4-210, subsection K.

Q. The director may implement a procedure for the issuance of a license with a licensing period of two years.

R. For any sale of a farm winery or craft distiller or change in ownership of a farm winery or craft distiller directly or indirectly, the business, stock-in-trade and spirituous liquor may be transferred with the ownership, in compliance with the applicable requirements of this title.

S. Notwithstanding subsection B of this section, bar, beer and wine bar, liquor store, beer and wine store or restaurant licensees in this state may take orders by telephone, mail, fax or catalog, through the internet or by other means for the sale and delivery of spirituous liquor off the licensed premises as follows:

1. Bar licensees for beer, wine, distilled spirits and mixed cocktails.

2. Beer and wine bar licensees for beer and wine.

3. Liquor store licensees for beer, wine, distilled spirits and mixed cocktails.

4. Beer and wine store licensees for beer and wine.

5. Restaurant licensees for any of the following:

(a) Mixed cocktails, with the sale of menu food items for consumption on or off the licensed premises, if the restaurant holds a permit issued pursuant to section 4-203.07 and section 4-205.02, subsection K or a lease pursuant to section 4-203.06.

(b) Beer if the restaurant holds a permit issued pursuant to section 4-205.02, subsection H.

(c) Beer, wine and distilled spirits if the restaurant holds an off-sale privileges lease with a bar or liquor store pursuant to section 4-203.07.

(d) Beer and wine if the restaurant holds an off-sale privileges lease with a beer and wine bar pursuant to section 4-203.07.

T. Notwithstanding the definition of "sell" prescribed in section 4-101, placing an order and paying for that order pursuant to subsection S of this section is not a sale until delivery has been made. At the time that the order is placed, the licensee shall inform the purchaser that state law requires a purchaser of spirituous liquor to be at least twenty-one years of age and that the person accepting delivery of the spirituous liquor is required to comply with this state's age identification requirements as prescribed in section 4-241, subsections A and K. The licensee may maintain a delivery service and may contract with one or more alcohol delivery contractors registered pursuant to section 4-205.13 for delivery of spirituous liquor if the spirituous liquor is packaged and tamperproof sealed by the bar, beer and wine bar, liquor store, beer and wine

store or restaurant licensee or the licensee's employee and is loaded for delivery at the premises of the restaurant, beer and wine bar, liquor store, beer and wine store or bar licensee in this state and delivered in this state on the same business day. A liquor store or beer and wine store licensee may contract with one or more independent contractors as provided in subsection J of this section for delivery of spirituous liquor if the spirituous liquor is loaded for delivery at the premises of the liquor store or beer and wine store licensee in this state and delivered in this state on the same business day. All containers of spirituous liquor delivered pursuant to subsection S of this section shall be tamperproof sealed and conspicuously labeled with the words "contains alcohol, signature of person who is twenty-one years of age or older is required for delivery". The licensee is responsible for any violation of this title or any rule adopted pursuant to this title that is committed in connection with any sale or delivery of spirituous liquor. Delivery must be made by an employee of the licensee or an employee or authorized independent contractor of a registered alcohol delivery contractor as provided by this section who is at least twenty-one years of age and delivery must be made to a customer who is at least twenty-one years of age and who displays an identification at the time of delivery that complies with section 4-241, subsection K. The restaurant, beer and wine bar, liquor store, beer and wine store or bar licensee shall collect payment for the full price of the spirituous liquor from the purchaser before the product leaves the licensed premises. The director shall adopt rules that set operational limits for the delivery of spirituous liquor pursuant to this subsection and subsection S of this section with respect to the delivery of spirituous liquor. For any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's employee or a registered alcohol delivery contractor, the mitigation provision of section 4-210, subsection G applies, with the exception of the training requirement. For the purposes of this subsection and notwithstanding the definition of "sell" prescribed in section 4-101, section 4-241, subsections A and K apply only at the time of delivery. An alcohol delivery contractor, a subcontractor of an alcohol delivery contractor, an employee of an alcohol delivery contractor or an employee of a subcontractor is deemed to be acting on behalf of the licensee when making a delivery of spirituous liquor for the licensee. For the purposes of this subsection, "business day" means between the hours of 6:00 a.m. of one day and 2:00 a.m. of the next day.

4-203.06. Mixed cocktails; off-sale privileges; leases; fees

(Rpld. 1/1/26)

A. Notwithstanding section 4-203, subsection E and section 4-210, subsection A, paragraph 6, through December 31, 2025, bar and liquor store licensees, through the department, shall lease to restaurant licensees the privilege of selling mixed cocktails for consumption off the licensed premises in accordance with section 4-244, paragraph 32, subdivision (d). The lease shall be for a period of one year and shall be renewable for successive terms of one year. The department shall establish a lease amount that fairly recognizes, and is derived from, the commercial value of the privilege to sell mixed cocktails for consumption off the licensed premises.

B. Leases made pursuant to subsection A of this section are subject to the following conditions:

1. A restaurant licensee may apply to the department on a form prescribed and provided by the department for a lease pursuant to this section. The department may establish and charge an application fee for administrative and enforcement costs associated with this section.

2. On the director approving the application of a restaurant licensee, the director shall randomly select a bar or liquor store license for the lease of the bar or liquor store licensee's mixed cocktail off-sale privileges to the restaurant licensee through the department.

3. The department shall establish a process to facilitate and approve the lease conveyance and to govern the leases, including the following:

(a) A standard form of lease.

(b) The term of the lease, which shall be one year except for the first year of the lease. During the first year of the lease, the director may set a lease term that is less than a year in order to align the lease renewal date with the renewal date of the restaurant license. The lease payment amount for the first year may be prorated.

(c) The amount of the lease established by the director pursuant to subsection A of this section.

(d) The responsibilities of the lessor and lessee.

(e) The lease may be transferred to another restaurant licensee if a new restaurant licensee purchases the business of the original lessee during the term of the lease.

(f) The privileges conveyed to the lessee during the term of the lease will continue if the bar or liquor store lessor has its license suspended or revoked.

(g) If the bar or liquor store lessor sells its license during the term of the lease, the purchaser of the bar or liquor store license becomes the new lessor.

(h) This title and rules adopted pursuant to this title apply to both the lessor and lessee.

(i) During the term of the lease, all violations and liability for liquor service under the lease shall be attributed only to the restaurant licensee leasing the mixed cocktail off-sale privilege. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

4. The director may deny approval of a lease based on the proposed location or history of the proposed lessee.

5. The restaurant licensee shall pay to the department all lease payments in full in advance.

6. The department of liquor licenses and control may adopt a procedure to pay the lease amount to the lessor and may use the department of administration to facilitate the payments.

7. During the term of the lease, all violations and liability for the liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. Pursuant to section 4-210, the director may immediately suspend a lease for any violation of this title or any rule adopted pursuant to this title by the restaurant licensee. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

8. During the term of the lease, a bar or liquor store lessor may continue to sell spirituous liquor as authorized by the bar or liquor store license and mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d).

9. The restaurant licensee leasing the off-sale privilege is subject to the limit on off-sale use by the restaurant licensee's total spirituous liquor sales as prescribed in section 4-206.01, subsection G.

C. If a restaurant licensee does not renew a lease, the director shall return the bar or liquor store lessor to the random selection process pursuant to subsection B, paragraph 2 of this section.

D. If a bar or liquor store lessor has its license suspended or revoked, the director shall transfer the lease to another bar or liquor store licensee at the end of the lease term pursuant to subsection B, paragraph 2 of this section.

4-203.07. Off-sale privileges; leases; mixed cocktails; permits; fees

A. Notwithstanding section 4-203, subsection E and section 4-210, subsection A, paragraph 6, a bar, beer and wine bar and liquor store licensee may lease the off-sale privileges associated with the licensee's license, except the privilege to sell mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d), to a restaurant licensee. The lease shall be for a period of one year and may be renewable for successive terms of one year. The off-sale privileges of a bar, beer and wine bar or liquor store license that are held in nonuse status may also be leased pursuant to this section.

B. Leases made pursuant to this section are subject to the following conditions:

1. The department shall establish a minimum of four lease windows throughout the calendar year during which a lease may be agreed to between a bar, beer and wine bar or liquor store licensee and a restaurant licensee for the lease of off-sale privileges.

2. A restaurant licensee may apply to the department for approval of a lease at least thirty days before the end of the lease window. The restaurant licensee shall provide a completed lease agreement signed by both the lessor and lessee. The department may establish and charge an application fee for administrative and enforcement costs associated with this section.

3. On the director approving the lease, the director shall transfer the lessor's off-sale privileges, except the privilege to sell mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d), to the restaurant lessee for the term of the lease.

4. The department shall establish a process to facilitate and approve the lease conveyance and to govern the leases, including the following:

(a) A standard form of lease.

(b) The term of the lease shall be one year except for the first year of the lease. During the first year of the lease, the director may establish a lease term that is less than a year in order to align the lease renewal date with the renewal date of the restaurant license.

(c) The responsibilities of the lessor and lessee.

(d) The lease may be transferred to another restaurant licensee if the new restaurant licensee purchases the business of the original lessee during the term of the lease.

(e) The privileges conveyed to the lessee during the term of the lease will continue if the bar, beer and wine bar or liquor store lessor has its license suspended or revoked.

(f) If the bar, beer and wine bar or liquor store lessor sells its license during the term of the lease, the purchaser of the bar, beer and wine bar or liquor store license becomes the new lessor.

(g) This title and rules adopted pursuant to this title apply to both the lessor and lessee.

(h) During the term of the lease, all violations and liability for liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

5. The restaurant licensee shall pay to the department all lease payments in full in advance.

6. The department of liquor licenses and control may adopt a procedure to pay the lease amount to the lessor and may use the department of administration to facilitate the payments.

7. During the term of the lease, all violations and liability for the liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. Pursuant to section 4-210, the director may immediately suspend a lease for any violation of this title or any rule adopted pursuant to this title by the restaurant licensee. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

8. During the term of the lease, a bar, beer and wine bar or liquor store lessor may not sell spirituous liquor for off-premises consumption, except a bar or liquor store licensee may sell mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d).

9. The restaurant licensee leasing the off-sale privilege is subject to the limit on off-sale use by the restaurant licensee's total spirituous liquor sales as prescribed in section 4-206.01, subsection G.

10. A lessor may lease its off-sale privileges only to a restaurant licensee located in the same county.

C. The director shall publish a lease amount for leases made pursuant to this section. The department shall establish a lease amount that fairly recognizes, and is derived from, the commercial value of selling spirituous liquor for consumption off the licensed premises. The department may establish separate lease amounts for urban and rural counties and may designate counties in this state for each amount. The lease amount applies unless the lessor and lessee agree to a different lease amount.

D. Beginning January 1, 2026, the director shall make available for restaurant licensees to purchase from the department permits to sell mixed cocktails pursuant to section 4-244, paragraph 32, subdivision (d) equal in number to the number of total bar and liquor store licenses. The director may set the application and annual renewal fee for a mixed cocktail permit to be used for administrative and enforcement costs associated with the permit.

4-205.02. Restaurant license; issuance; regulatory provisions; expiration; off-sale leases and permits; fee; definitions

A. The director may issue a restaurant license to any restaurant in this state that is regularly open for serving food to guests for compensation and that has suitable kitchen facilities connected with the restaurant for keeping, cooking and preparing foods required for ordinary meals.

B. The director shall issue the license in the name of the restaurant on application for the license by the owner or lessee of the restaurant, if the applicant is otherwise qualified to hold a spirituous liquor license. The holder of such a license is subject to the penalties prescribed for any violation of the law relating to alcoholic beverages.

C. The holder of a restaurant license may sell and serve spirituous liquors solely for consumption on the licensed premises. For the purpose of this subsection, "licensed premises" may include rooms, areas or locations in which the restaurant normally sells or serves spirituous liquors pursuant to regular operating procedures and practices and that are contiguous to the restaurant or a noncontiguous patio pursuant to section 4-101, paragraph 31. For the purposes of this subsection, a restaurant licensee must submit proof of tenancy or permission from the landowner or lessor for all property to be included in the licensed premises.

D. In addition to other grounds prescribed in this title on which a license may be revoked, the director may require the holder of a restaurant license issued pursuant to this section to surrender the license in any case in which the licensee ceases to operate as a restaurant, as prescribed in subsection A of this section. The surrender of a license pursuant to this subsection does not prevent the director from revoking the license for other grounds prescribed in this title or for making deliberate material misrepresentations to the department regarding the licensee's equipment, service or entertainment items or seating capacity in applying for the restaurant license.

E. Neither the director nor the board may initially issue a restaurant license if either finds that there is sufficient evidence that the operation will not satisfy the criteria adopted by the director for issuing a restaurant license described in section 4-209, subsection B, paragraph 12. The director shall issue a restaurant license only if the applicant has submitted a plan for the operation of the restaurant. The plan shall be completed on forms provided by the department and shall include listings of all restaurant equipment and service items, the restaurant seating capacity and other information requested by the department to substantiate that the restaurant will operate in compliance with this section.

F. The holder of the license described in section 4-209, subsection B, paragraph 12 who intends to alter the seating capacity or dimensions of a restaurant facility shall notify the department in advance on forms provided by the department.

G. The director may charge a fee for site inspections conducted before the issuance of a restaurant license.

H. A restaurant applicant or licensee may apply for a permit allowing for the sale of beer for consumption off the licensed premises pursuant to section 4-244, paragraph 32, subdivision (c) on a form prescribed and furnished by the director. The department shall not issue a permit to a restaurant applicant or licensee that does not meet the requirements in section 4-207, subsection A. Section 4-207, subsection B does not apply to this subsection. The permit shall be issued only after the director has determined that the public convenience requires and that the best interest of the community will be substantially served by the issuance of the permit, considering the same criteria adopted by the director for issuing a restaurant license described in section 4-209, subsection B, paragraph 12. The amount of beer sold under the permit shall not exceed ten percent of gross revenue of spirituous liquor sold by the establishment. After the permit has been issued, the permit shall be noted on the license itself and in the records of the department. The director may charge a fee for processing the application for the permit and a renewal fee.

I. Notwithstanding any rule adopted by the department, business establishments that relied on a form issued by the department that provides for a small restaurant exemption for fifty or fewer seats before January 31, 2019 are allowed to continue to maintain the capacity of fifty or fewer seats for the duration of the business. The rights of a business establishment subject to this section are not transferable.

J. Notwithstanding section 4-203, subsection E, section 4-207 and section 4-210, subsection A, paragraph 6, through December 31, 2025, a restaurant applicant or licensee may apply to the department for a lease for the privilege of selling mixed cocktails for consumption off the licensed premises pursuant to section 4-203.06 and section 4-244, paragraph 32, subdivision (d).

K. Notwithstanding section 4-207, beginning January 1, 2026, a restaurant applicant or licensee may apply for a permit to allow the sale of mixed cocktails for consumption off the licensed premises pursuant to section 4-203.07 and section 4-244, paragraph 32, subdivision (d), on a form prescribed and furnished by the director. The sale of mixed cocktails for consumption off the licensed premises must be accompanied by the sale of menu food items for consumption on or off the licensed premises. The department shall issue the permit only after the director has determined that the public convenience requires and that the best interest of the community will be substantially served by issuing the permit. All permit holders and their employees, managers and agents must complete alcohol training pursuant to section 4-112, subsection G, paragraph 2. After the department issues the permit, the permit shall be noted on the license itself and in the records of the department. The director may establish and charge a fee for processing the permit application and a renewal fee.

L. A restaurant licensee shall cease selling spirituous liquor, including mixed cocktails, for off-premises consumption when the licensee ceases regular kitchen service for food.

M. For the purposes of this section:

1. "Gross revenue":

(a) Means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether the sales of spirituous liquor are made under a restaurant license issued pursuant to this section or under any other license that has been issued for the premises pursuant to this article.

(b) Includes revenue derived from spirituous liquor sold for off-sale consumption.

2. "Restaurant" means an establishment that derives at least forty percent of its gross revenue from the sale of food, including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed fifteen percent of all gross revenue of the restaurant.

4-205.13. Registered alcohol delivery contractor; issuance; fee; regulatory provisions

A. The director may register any person in this state as an alcohol delivery contractor for the purposes of delivering spirituous liquor from a bar, beer and wine bar, liquor store, beer and wine store or restaurant licensee to a consumer in this state pursuant to section 4-203, subsections S and T.

B. A person shall apply to be a registered alcohol delivery contractor on a form prescribed by the director. The director shall require an applicant to provide the controlling person's

identification and any background information deemed necessary to identify the person and to demonstrate proof of the person's authority to conduct business in this state, including copies of any required state or local business licenses or permits. The director may establish and charge a registration fee and a renewal fee to be used for administrative and enforcement costs associated with alcohol delivery contractors.

C. The department shall maintain a list of registered alcohol delivery contractors that are not otherwise in penalty status pursuant to subsection G of this section.

D. The department may require new registered alcohol delivery contractors to complete an approved training course in accordance with section 4-112, subsection G, paragraph 2. A registered alcohol delivery contractor is subject to examinations conducted pursuant to section 4-112, subsection G, paragraph 1.

E. The director may refuse to register a person as an alcohol delivery contractor for good cause and may not register any person as an alcohol delivery contractor if the person has been convicted of a felony in this state or any other state within five years immediately preceding the application.

F. A registered alcohol delivery contractor may deliver spirituous liquor to a consumer in this state on behalf of a bar, beer and wine bar, liquor store, beer and wine store or restaurant in this state pursuant to section 4-203, subsections S and T, if the registered alcohol delivery contractor complies with this title. A registered alcohol delivery contractor may contract with one or more independent subcontractors for the delivery of spirituous liquor to a consumer in this state on behalf of a bar, beer and wine bar, liquor store, beer and wine store or restaurant in this state pursuant to section 4-203, subsections S and T. An alcohol delivery contractor, a subcontractor of an alcohol delivery contractor, an employee of an alcohol delivery contractor or an employee of a subcontractor is deemed to be acting on behalf of the licensee when making a delivery of spirituous liquor for the licensee.

G. In addition to all other action that may be taken by the director for a violation of this title or the rules adopted pursuant to this title by a registered alcohol delivery contractor and its employees or subcontractors and employees of subcontractors, the department may limit the right of the registered alcohol delivery contractor to deliver spirituous liquor on behalf of a licensee for a period of up to one year, after which the alcohol delivery contractor shall register with the department to resume delivery of spirituous liquor. Any penalty issued pursuant to this subsection may be appealed to the board pursuant to section 4-210.02.

4-209. Fees for license, application, issuance, renewal and transfer; late renewal penalty; seasonal operation; surcharges

A. A fee shall accompany an application for an original license or transfer of a license, or in case of renewal, shall be paid in advance. Every license expires annually, except that a license may be renewed for a two-year period pursuant to subsection M of this section if no compliance penalties have been issued to that location during the year before the renewal. A licensee who fails to renew the license on or before the due date shall pay a penalty of $150, which the licensee shall pay with the renewal fee. A license renewal that is deposited, properly addressed and postage prepaid in an official depository of the United States mail on or before the due date shall be deemed filed and received by the department on the date shown by the postmark or other official mark of the United States postal service stamped on the envelope. If the due date falls on a Saturday, Sunday or other legal holiday, the renewal shall be considered timely if it is received by the department on the next business day. The director may waive a late renewal

penalty if good cause is shown by the licensee. A licensee who fails to renew the license on or before the due date may not sell, purchase or otherwise deal in spirituous liquor until the license is renewed. A license that is not renewed within sixty days after the due date is deemed terminated. The director may renew the terminated license if good cause is shown by the licensee. Except an application fee for a permit pursuant to section 4-203.07 and section 4-205.02, subsection K and leases pursuant to sections 4-203.06 and 4-203.07, an application fee for an original license or the transfer of a license shall be $100, which shall be retained by this state.

B. Issuance fees for original licenses shall be:

1. For an in-state producer's license to manufacture or produce spirituous liquor in this state, $1,500.

2. Except as provided in paragraph 15 of this subsection, for an out-of-state producer's, exporter's, importer's or rectifier's license, $200.

3. For a microbrewery license, $300.

4. For a wholesaler's license to sell spirituous liquors, $1,500.

5. For a government license issued in the name of a state agency, state commission, state board, county, city, town, community college or state university or the national guard, $100.

6. For a bar license, which is an on-sale retailer's license to sell all spirituous liquors primarily by individual portions and in the original containers, $1,500.

7. For a beer and wine bar license, which is an on-sale retailer's license to sell beer and wine primarily by individual portions and in the original containers, $1,500.

8. For a conveyance license issued to an operating railroad company, to sell all spirituous liquors in individual portions or in the original containers on all passenger trains operated by the railroad company, or to an operating airline company, to sell or serve spirituous liquors solely in individual portions on all passenger planes operated by the airline company, or to a boat operating in the waters of this state, to sell all spirituous liquors in individual portions or in the original containers for consumption on the boat, $1,500.

9. For a liquor store license, which is an off-sale retailer's license to sell all spirituous liquors, $1,500.

10. For a beer and wine store license, which is an off-sale retailer's license to sell beer and wine, $1,500.

11. For a hotel-motel license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel, $1,500.

12. For a restaurant license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant, $1,500. For a permit issued under section 4-205.02, subsection H allowing for the sale of beer for the consumption off the licensed premises pursuant to section 4-244, paragraph 32, subdivision (c), the director may charge a fee. For an application for a permit pursuant to section 4-203.07 and section 4-205.02, subsection K, the director may charge a fee. The director may establish and charge fees for lease applications pursuant to sections 4-203.06 and 4-203.07.

13. For a farm winery license, $100. The director may charge a licensed farm winery a fee pursuant to section 4-205.04, subsection K.

14. For a club license issued in the name of a bona fide club qualified under this title to sell all spirituous liquors on-sale, $1,000.

15. For an out-of-state winery that sells not more than two hundred forty gallons of wine in this state in a calendar year, $25.

16. The department may charge a fee for a craft distiller license.

17. The department may charge a fee for registering an alcohol delivery contractor pursuant to section 4-205.13.

C. The department may issue licenses with staggered renewal dates to distribute the renewal workload as uniformly as practicable throughout the twelve months of the calendar year. If a license is issued less than six months before the scheduled renewal date of the license, as provided by the department's staggered license renewal system, one-half of the annual license fee shall be charged.

D. The annual fees for licenses shall be:

1. For an in-state producer's license to manufacture or produce spirituous liquors in this state, $350.

2. Except as provided in paragraph 15 of this subsection, for an out-of-state producer's, exporter's, importer's or rectifier's license, $50.

3. For a microbrewery license, $300.

4. For a wholesaler's license, to sell spirituous liquors, $250.

5. For a government license issued to a county, city or town, community college or state university or the national guard, $100.

6. For a bar license, which is an on-sale retailer's license to sell all spirituous liquors primarily by individual portions and in the original containers, $150.

7. For a beer and wine bar license, which is an on-sale retailer's license to sell beer and wine primarily by individual portions and in the original containers, $75.

8. For a conveyance license issued to an operating railroad company, to sell all spirituous liquors in individual portions or in the original containers on all passenger trains operated by the railroad company, or to an operating airline company, to sell or serve spirituous liquors solely in individual portions on all passenger planes operated by the airline company, or to a boat operating in the waters of this state, to sell all spirituous liquor in individual portions or in the original containers for consumption on the boat, $225.

9. For a liquor store license, which is an off-sale retailer's license to sell all spirituous liquors, $50.

10. For a beer and wine store license, which is an off-sale retailer's license to sell beer and wine, $50.

11. For a hotel-motel license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel, $500.

12. For a restaurant license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant, $500, and for a restaurant license that is allowed to continue operating as a restaurant pursuant to section 4-213, subsection E, an additional amount established by the director. The department shall transfer this amount to the state treasurer for deposit in the state general fund. The director may establish an annual fee for a permit pursuant to section 4-203.07 and section 4-205.02, subsection K. The director may charge annual lease amounts pursuant to sections 4-203.06 and 4-203.07.

13. For a farm winery license, $100. The director may charge a licensed farm winery an annual fee pursuant to section 4-205.04, subsection K.

14. For a club license issued in the name of a bona fide club qualified under this title to sell all spirituous liquors on-sale, $150.

15. For an out-of-state winery that sells not more than two hundred forty gallons of wine in this state in a calendar year, $25.

16. The director may charge a fee for the annual renewal of a craft distiller license.

17. The department may charge a fee for the annual registration renewal of a registered alcohol delivery contractor pursuant to section 4-205.13.

E. Where the business of an on-sale retail licensee is seasonal, not extending over periods of more than six months in any calendar year, the licensee may designate the periods of operation and a license may be granted for those periods only, on payment of one-half of the fee prescribed in subsection D of this section.

F. Transfer fees from person to person for licenses transferred pursuant to section 4-203, subsection C shall be $300.

G. Transfer fees from location to location, as provided for in section 4-203, shall be $100.

H. Assignment fees for a change of agent, as provided for in section 4-202, subsection A, an acquisition of control, as provided for in section 4-203, subsection F, or a restructuring, as provided for in section 4-203, subsection H, shall be $100, except that where a licensee holds multiple licenses and requests multiple, simultaneous changes, the change of agent, acquisition of control or restructuring fee for the first license shall be $100 and the fee for all remaining licenses shall be $50 each, except that the aggregate fees shall not exceed $1,000 for all change of agents, $1,000 for all acquisitions of control and $1,000 for all restructurings.

I. No fee shall be charged by the department for an assignment of a liquor license in probate or an assignment pursuant to the provisions of a will or pursuant to a judicial decree in a domestic relations proceeding that assigns ownership of a business that includes a spirituous liquor license to one of the parties in the proceeding. In the case of nontransferable licenses, no fee shall be charged by the department for the issuance of a license for a licensed business pursuant to a transfer of the business in probate or pursuant to the provisions of a will or pursuant to a judicial decree in a domestic relations proceeding that assigns ownership of the business to one of the parties in the proceeding.

J. The director shall assess a surcharge of $30 on all licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section. Monies from the surcharge shall be used by the department exclusively for the costs of an auditor and support staff to review compliance by applicants and licensees with the requirements of section 4-205.02, subsection E. The department shall assess the surcharge as part of the annual license renewal fee.

K. The director shall assess a surcharge of $35 on all licenses prescribed in this section. Monies from the surcharge shall be used by the department exclusively for the costs of an enforcement program to investigate licensees who have been the subject of multiple complaints to the department. The enforcement program shall respond to complaints against licensees by neighborhood associations, by neighborhood civic groups and from municipal and county governments. The department shall assess the surcharge as part of the annual license renewal fee.

L. The director shall assess a surcharge of $20 on all licenses prescribed in subsection D, paragraphs 11 and 12 of this section and $35 on all other licenses prescribed in this section. Monies from the surcharge and from surcharges imposed pursuant to subsection K of this section shall be used by the department exclusively for the costs of a neighborhood association interaction and liquor enforcement management unit. The unit shall respond to complaints from neighborhood associations, neighborhood civic groups and local governing authorities regarding liquor violations. The director shall report the unit's activities and the use of monies from the surcharge or surcharges imposed pursuant to subsection K of this section to the board at each board meeting or as the board may direct.

M. Licenses may be renewed every two years with payment of license fees that are twice the amount designated in subsection D of this section and other applicable fees. Licensees renewing every two years must comply with annual reporting requirements. The director may adopt reasonable rules to allow licensees to renew every two years.

N. The department shall use all monies received from application fees for permits issued pursuant to section 4-205.02, subsection K, leases pursuant to sections 4-203.06 and 4-203.07 and registrations pursuant to section 4-205.13 for administrative costs associated with the permit, registration or lease and enforcement of this chapter.

4-244. Unlawful acts; definition

It is unlawful:

1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board, except that the director may issue a temporary permit of any series pursuant to section 4-205.05 to a trustee in bankruptcy to acquire and dispose of the spirituous liquor of a debtor.

2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title.

3. For a distiller, vintner, brewer or wholesaler knowingly to sell, dispose of or give spirituous liquor to any person other than a licensee except in sampling wares as may be necessary in the ordinary course of business, except in donating spirituous liquor to a nonprofit organization that has obtained a special event license for the purpose of charitable fundraising activities or except in donating spirituous liquor with a cost to the distiller, brewer or wholesaler of up to $500 in a calendar year to an organization that is exempt from federal income taxes under section 501(c)(3), (4), (6) or (7) of the internal revenue code and not licensed under this title.

4. For a distiller, vintner or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted to the wholesaler by the distiller, vintner or brewer.

5. For a distiller, vintner or brewer to use a vehicle for trucking or transporting spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of the person's license in letters not less than three and one-half inches in height.

6. For a person to take or solicit orders for spirituous liquors unless the person is a salesman or solicitor of a licensed wholesaler, a salesman or solicitor of a distiller, brewer, vintner, importer or broker or a registered retail agent.

7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed in this state.

8. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in the wholesaler's business, or in a license with respect to the premises of the wholesaler.

9. Except as provided in paragraphs 10 and 11 of this section, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age or for a person under the legal drinking age to buy, receive, have in the person's possession or consume spirituous liquor. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

10. For a licensee to employ a person under eighteen years of age to manufacture, sell or dispose of spirituous liquors. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

11. For an on-sale retailer to employ a person under eighteen years of age in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under eighteen years of age who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.

12. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or for a licensee or on-duty employee to be on or about the licensed premises while in an intoxicated or disorderly condition.

13. For an employee of a retail licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for the employee or consume spirituous liquor, except that:

(a) An employee of a licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may give spirituous liquor to or purchase spirituous liquor for any other person.

(b) An employee of an on-sale retail licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine of not more than four ounces per day or distilled spirits of not more than two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of the sampling.

(c) An employee of an on-sale retail licensee, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits of not more than two ounces per educational session or beer or wine of not more than four ounces per educational session, and provided that a licensee does not have more than two educational sessions in any thirty-day period.

(d) An unpaid volunteer who is a bona fide member of a club and who is not engaged in waiting on or serving spirituous liquor to customers may purchase for himself and consume spirituous liquor while participating in a scheduled event at the club. An unpaid participant in a food competition may purchase for himself and consume spirituous liquor while participating in the food competition.

(e) An unpaid volunteer of a special event licensee under section 4-203.02 may purchase and consume spirituous liquor while not engaged in waiting on or serving spirituous liquor to customers at the special event. This subdivision does not apply to an unpaid volunteer whose responsibilities include verification of a person's legal drinking age, security or the operation of any vehicle or heavy machinery.

(f) A representative of a producer or wholesaler participating at a special event under section 4-203.02 may consume small amounts of the products of the producer or wholesaler on the premises of the special event for the purpose of quality control.

14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for not more than thirty minutes after the state of obvious intoxication is known or should be known to the licensee for a nonintoxicated person to transport the obviously intoxicated person from the premises. For the purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

15. For an on-sale or off-sale retailer or an employee of such retailer or an alcohol delivery contractor to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2:00 a.m. and 6:00 a.m., except that:

(a) A retailer with off-sale privileges may receive and process orders, accept payment or package, load or otherwise prepare spirituous liquor for delivery at any time, if the actual deliveries to customers are made between the hours of 6:00 a.m. and 2:00 a.m., at which time section 4-241, subsections A and K apply.

(b) The governor, in consultation with the governor's office of highway safety and the public safety community in this state, may issue an executive order that extends the closing time until 3:00 a.m. for spirituous liquor sales in connection with a professional or collegiate national sporting championship event held in this state.

16. For a licensee or employee to knowingly allow any person on or about the licensed premises to give or furnish any spirituous liquor to any person under twenty-one years of age or knowingly allow any person under twenty-one years of age to have in the person's possession spirituous liquor on the licensed premises.

17. For an on-sale retailer or an employee of such retailer to allow a person to consume or possess spirituous liquors on the premises between the hours of 2:30 a.m. and 6:00 a.m., except that if the governor extends the closing time for a day for spirituous liquor sales pursuant to paragraph 15 of this section it is unlawful for an on-sale retailer or an employee of such retailer on that day to allow a person to consume or possess spirituous liquor on the premises between the hours of 3:30 a.m. and 6:00 a.m.

18. For an on-sale retailer to allow an employee or for an employee to solicit or encourage others, directly or indirectly, to buy the employee drinks or anything of value in the licensed premises during the employee's working hours. An on-sale retailer shall not serve employees or allow a patron of the establishment to give spirituous liquor to, purchase liquor for or drink liquor with any employee during the employee's working hours.

19. For an off-sale retailer or employee to sell spirituous liquor except in the original unbroken container, to allow spirituous liquor to be consumed on the premises or to knowingly allow spirituous liquor to be consumed on adjacent property under the licensee's exclusive control.

20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee allowing a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retailer. This paragraph also does not apply to a person consuming beer or wine from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property or to a person consuming beer or wine from a broken package in a public recreation area as part of a special event or festival that is conducted under a license secured pursuant to section 4-203.02 or 4-203.03.

21. For a person to possess or to transport spirituous liquor that is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and this state. Any property used in transporting such spirituous liquor shall be forfeited to the state and shall be seized and disposed of as provided in section 4-221.

22. For an on-sale retailer or employee to allow a person under the legal drinking age to remain in an area on the licensed premises during those hours in which its primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. An on-sale retailer may designate an area of the licensed premises as an area in which spirituous liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical barrier and at no time will underage persons have access to the area in which spirituous liquor is sold or consumed. A licensee or an employee of a licensee may require a person who intends to enter a licensed premises or a portion of a licensed premises where persons under the legal drinking age are prohibited under this section to exhibit an instrument of identification that is acceptable under section 4-241 as a condition of entry or may use a biometric identity verification device to determine the person's age as a condition of entry. The director, or a municipality, may adopt rules to regulate the presence of underage persons on licensed premises provided the rules adopted by a municipality are more stringent than those adopted by the director. The rules adopted by the

municipality shall be adopted by local ordinance and shall not interfere with the licensee's ability to comply with this paragraph. This paragraph does not apply:

(a) If the person under the legal drinking age is accompanied by a spouse, parent, grandparent or legal guardian of legal drinking age or is an on-duty employee of the licensee.

(b) If the owner, lessee or occupant of the premises is a club as defined in section 4-101, paragraph 8, subdivision (a) and the person under the legal drinking age is any of the following:

(i) An active duty military service member.

(ii) A veteran.

(iii) A member of the United States army national guard or the United States air national guard.

(iv) A member of the United States military reserve forces.

(c) To the area of the premises used primarily for serving food during the hours when food is served.

23. For an on-sale retailer or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of spirituous liquor beverages during any set period of time for a fixed price, to deliver more than fifty ounces of beer, one liter of wine or four ounces of distilled spirits in any spirituous liquor drink to one person at one time for that person's consumption or to advertise any practice prohibited by this paragraph. This paragraph does not prohibit an on-sale retailer or employee from selling and delivering an opened, original container of distilled spirits if:

(a) Service or pouring of the spirituous liquor is provided by an employee of the on-sale retailer. A licensee shall not be charged for a violation of this paragraph if a customer, without the knowledge of the retailer, removes or tampers with a locking device on a bottle delivered to the customer for bottle service and the customer pours the customer's own drink from the bottle, if when the licensee becomes aware of the removal or tampering of the locking device the licensee immediately installs a functioning locking device on the bottle or removes the bottle and lock from bottle service.

(b) The employee of the on-sale retailer monitors consumption to ensure compliance with this paragraph. Locking devices may be used, but are not required.

24. For a licensee or employee to knowingly allow the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises. For the purposes of this paragraph, "dangerous drug" has the same meaning prescribed in section 13-3401.

25. For a licensee or employee to knowingly allow prostitution or the solicitation of prostitution on the premises.

26. For a licensee or employee to knowingly allow unlawful gambling on the premises.

27. For a licensee or employee to knowingly allow trafficking or attempted trafficking in stolen property on the premises.

28. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination as provided in this title or to comply with a lawful subpoena issued under this title.

29. For any person other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retailer. This paragraph does not include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume or possess spirituous liquor. This paragraph does not apply to:

(a) Hotel or motel guest room accommodations.

(b) Exhibiting or displaying a firearm in conjunction with a meeting, show, class or similar event.

(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.

30. For a licensee or employee to knowingly allow a person in possession of a firearm other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retailer. It is a defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such person. This paragraph does not apply to:

(a) Hotel or motel guest room accommodations.

(b) Exhibiting or displaying a firearm in conjunction with a meeting, show, class or similar event.

(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.

31. For any person in possession of a firearm while on the licensed premises of an on-sale retailer to consume spirituous liquor. This paragraph does not prohibit the consumption of small amounts of spirituous liquor by an undercover peace officer on assignment to investigate the licensed establishment.

32. For a licensee or employee to knowingly allow spirituous liquor to be removed from the licensed premises, except in the original unbroken package. This paragraph does not apply to any of the following:

(a) A person who removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

(b) A person who is in licensed premises that have noncontiguous portions that are separated by a public or private walkway or driveway and who takes spirituous liquor from one portion of the licensed premises across the public or private walkway or driveway directly to the other portion of the licensed premises.

(c) A licensee of a bar, beer and wine bar, liquor store, beer and wine store, microbrewery or restaurant that has a permit pursuant to section 4-205.02, subsection H that dispenses beer only in a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed one gallon and not for consumption on the premises if:

(i) The licensee or the licensee's employee fills the container at the tap at the time of sale.

(ii) The container is sealed and displays a government warning label.

(d) A bar or liquor store licensee that prepares a mixed cocktail or a restaurant licensee that leases the privilege to sell mixed cocktails for consumption off the licensed premises pursuant to section 4-203.06 or holds a permit pursuant to section 4-203.07 and section 4-205.02, subsection K and that prepares a mixed cocktail and transfers it to a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed thirty-two ounces and not for consumption on the premises if all of the following apply:

(i) The licensee or licensee's employee fills the container with the mixed cocktail on the licensed premises of the bar, liquor store or restaurant.

(ii) The container is tamperproof sealed by the licensee or the licensee's employee and displays a government warning label.

(iii) The container clearly displays the bar's, liquor store's or restaurant's logo or name.

(iv) For a restaurant licensee licensed pursuant to section 4-205.02, the sale of mixed cocktails for consumption off the licensed premises is accompanied by the sale of menu food items for consumption on or off the licensed premises.

33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on licensed premises.

34. For a person who is under twenty-one years of age to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.

35. For a person who is under twenty-one years of age to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body. For the purposes of this paragraph, "underway" has the same meaning prescribed in section 5-301.

36. For a licensee, manager, employee or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.

37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.

38. For a licensee to use a vending machine for the purpose of dispensing spirituous liquor.

39. For a licensee to offer for sale a wine carrying a label including a reference to Arizona or any Arizona city, town or geographic location unless at least seventy-five percent by volume of the grapes used in making the wine were grown in Arizona.

40. For a retailer to knowingly allow a customer to bring spirituous liquor onto the licensed premises, except that an on-sale retailer may allow a wine and food club to bring wine onto the premises for consumption by the club's members and guests of the club's members in conjunction with meals purchased at a meeting of the club that is conducted on the premises and that at least seven members attend. An on-sale retailer that allows wine and food clubs to bring wine onto its premises under this paragraph shall comply with all applicable provisions of this title and any rules adopted pursuant to this title to the same extent as if the on-sale retailer had sold the wine to the members of the club and their guests. For the purposes of this paragraph, "wine and food club" means an association that has more than twenty bona fide members paying at least $6 per year in dues and that has been in existence for at least one year.

41. For a person who is under twenty-one years of age to have in the person's body any spirituous liquor. In a prosecution for a violation of this paragraph:

(a) Pursuant to section 4-249, it is a defense that the spirituous liquor was consumed in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise and in a manner not dangerous to public health or safety.

(b) Pursuant to section 4-226, it is a defense that the spirituous liquor was consumed for a bona fide medicinal purpose and in a manner not dangerous to public health or safety.

42. For an employee of a licensee to accept any gratuity, compensation, remuneration or consideration of any kind to either:

(a) Allow a person who is under twenty-one years of age to enter any portion of the premises where that person is prohibited from entering pursuant to paragraph 22 of this section.

(b) Sell, furnish, dispose of or give spirituous liquor to a person who is under twenty-one years of age.

43. For a person to purchase, offer for sale or use any device, machine or process that mixes spirituous liquor with pure oxygen or another gas to produce a vaporized product for the purpose of consumption by inhalation or to allow patrons to use any item for the consumption of vaporized spirituous liquor.

44. For a retail licensee or an employee of a retail licensee to sell spirituous liquor to a person if the retail licensee or employee knows the person intends to resell the spirituous liquor.

45. Except as authorized by paragraph 32, subdivision (c) of this section, for a person to reuse a bottle or other container authorized for use by the laws of the United States or any agency of the United States for the packaging of distilled spirits or for a person to increase the original contents or a portion of the original contents remaining in a liquor bottle or other authorized container by adding any substance.

46. For a direct shipment licensee, a farm winery licensee or an employee of those licensees to sell, dispose of, deliver or give spirituous liquor to an individual purchaser between the hours of 2:00 a.m. and 6:00 a.m., except that a direct shipment licensee or a farm winery licensee may receive and process orders, accept payment, package, load or otherwise prepare wine for

delivery at any time without complying with section 4-241, subsections A and K, if the actual deliveries to individual purchasers are made between the hours of 6:00 a.m. and 2:00 a.m. and in accordance with section 4-203.04 for direct shipment licensees and section 4-205.04 for farm winery licensees.

47. For a supplier to coerce or attempt to coerce a wholesaler to accept delivery of beer or any other commodity that has not been ordered by the wholesaler or for which the order was canceled. A supplier may impose reasonable inventory requirements on a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated wholesalers that have an agreement with the supplier.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25, Article 7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: November 15, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 25, Article 7

Summary

This One-Year Review Report (1YRR) from the Department of Health Services (Department) relates to one (1) rule in Title 9, Chapter 25, Article 7 regarding Air Ambulance Service Licensing. Laws 2022, Ch. 314 permitted the Department to address air ambulance service medical staffing through exempt rulemaking. Rule R9-25-706 was amended by exempt rulemaking effective November 8,2022. Specifically, R9-25-706(A)(1) was revised to add additional staff options for critical care interfacility transport and critical care emergency medical services transport. Also, R9-25-706(A)(4) was amended to correct a grammatical error, and add additional staff options for advanced life support transport for interracialities and emergency medical services. The Department states the revised rules for air ambulance staffing allow for more flexibility of staff providing emergency air ambulance services, for example, paramedic-to-nurse and nurse-to-nurse responses during staffing shortages.

Pursuant to A.R.S. § 41-1095, "for an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rule has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rule adopted under the rulemaking exemption should be amended or repealed." Furthermore, "the agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons

and any proposed course of action." *Id.* The Department submits this 1YRR for the Council's consideration in compliance with A.R.S. § 41-1095.

Proposed Action

The Department indicates it believes that the changes adopted in the rulemaking effective November 8, 2022, make the rules more effective to ensure safety of the public. The Department does not plan to amend the rules in R9-25-706, unless substantive issues arise that would necessitate rulemaking.

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

The Department cites both general and specific statutory authority for the rules under review. The session law authorizing a one-time exemption from the Administrative Procedures Act is Laws 2022, Ch. 314. A copy of the session law is included in the final materials for the Council's reference

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

The Department was not required to provide an economic, small business, and consumer impact statement as part of this exempt rulemaking. The Department estimates the costs and benefits related to this rulemaking provide a significant benefit to stakeholders. Stakeholders affected by these rules include the Department, air ambulances, personnel members, patients, families of the patients, and the general public. The rule clarifications have been necessary to ensure appropriate and adequate staffing of air ambulances.

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 was not required to provide an economic, small business, and consumer impact statement as part of this exempt rulemaking.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Department indicates it has not received any written criticisms of the rules since they were adopted.

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

The Department indicates the rules under review are clear, concise, and understandable.

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

The Department indicates the rules under review 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 under review 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 are no corresponding federal laws.

10. Has the agency completed any additional process required by law?

Not applicable.

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

Not applicable. The rules reviewed do not require a permit, license, or agency authorization.

12. Conclusion

Council staff finds that the Department submitted an adequate report that meets the requirements of A.R.S. § 41-1095. As indicated above, Laws 2022, Ch. 314 granted the Department a one-time exemption from the rulemaking requirements of that Administrative Procedures Act to adopt rules to address air ambulance service medical staffing. Rule R9-25-706 was amended by exempt rulemaking effective November 8,2022. Specifically, R9-25-706(A)(1) was revised to add additional staff options for critical care interfacility transport and critical care emergency medical services transport. Also, R9-25-706(A)(4) was amended to correct a grammatical error, and add additional staff options for advanced life support transport for interracialities and emergency medical services. The Department states the revised rules for air ambulance staffing allow for more flexibility of staff providing emergency air ambulance services, for example, paramedic-to-nurse and nurse-to-nurse responses during staffing shortages.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

September 15, 2023

VIA: E-MAIL: grrc@azdoa.gov
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100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADHS, A.A.C. Title 9, Chapter 25, Article 7 One-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the One-Year-Review Report from the Arizona Department of Health Services (Department) for A.A.C. Title 9, Chapter 25 Emergency Medical Services, Article 7 Air Ambulance Service Licensing-Minimum Standards for Mission Staffing, which is due on November 8, 2023.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 25, Article 7 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
Digitally signed by Stacie Gravito
Date: 2023.09.15 09:53:50 -07'00'

Stacie Gravito
Director's Designee

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

One-Year-Review Report

Title 9. Health Services

Chapter 25. Department of Health Services – Emergency Medical Services

Article 7. Air Ambulance Service Licensing

September 2023

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

Authorizing statutes: A.R.S. §§ 36-136(G) and 36-2202(A)(3) and (4), 36-2209(A)(2)

Implementing statutes: A.R.S. §§ 36-2213

Statute or session law authorizing exempt rulemaking: Laws 2022, Ch. 314

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

Rule	Objective
R9-25-706	To establish minimum standards for mission staffing in air ambulance services.

3. **Are the rules effective in achieving their objectives?** Yes _√_ No ___

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

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes _√__ No ___

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

Rule	Explanation

5. **Are the rules enforced as written?** Yes _√__ No ___

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

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes _√_ No ___

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

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last year?** Yes ___ No _√_

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

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

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. The Department has adopted rules to implement these statutes in 9 A.A.C. 25. The rules in 9 A.A.C. 25, Article 7 establish requirements for licensing air ambulance services to ensure the health and safety of patients being transported.

The rules in R9-25-706 were amended by exempt rulemaking at 28 A.A.R. 3681, effective November 8, 2022. Laws 2022, Ch. 314 permits the Department to address air ambulance service medical staffing and provides the Department exempt rulemaking. R9-25-706(A)(1) was revised to add additional staff options for critical care interfacility transport and critical care emergency medical services transport. R9-25-706(A)(4) was amended to correct a grammatical error, and add additional staff options for advanced life support transport for interracialities and emergency medical services. The revised rules for air ambulance staffing allow for more flexibility of staff providing emergency air ambulance services, for example, a paramedic-to-nurse and nurse-to-nurse responses during staffing shortages. The Department was not required to provide an economic, small business, and consumer impact statement (EIS) as part of this exempt rulemaking. The Department estimates the costs and benefits related to this rulemaking provide a significant benefit to stakeholders. Stakeholders affected by these rules include the Department, air ambulances, personnel members, patients, families of the patients, and the general public. The rule clarifications have been necessary to ensure appropriate and adequate staffing of air ambulances.

The Department has not completed any additional rulemakings regarding R9-25-706, and believes that the costs of the amended rules continue to be minimal and provide a significant benefit to air ambulances, staffing, and safety of the public. 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.

Not applicable, as this review of new rules is in response to a one-time rulemaking exemption.

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:

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 R9-25-706.

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.

14. Proposed course of action:

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

The Department believes that the changes adopted in the rulemaking effective November 8, 2022, make the rules more effective to ensure safety of the public. The Department does not plan to amend the rules in R9-25-706, unless substantive issues arise that would necessitate rulemaking.

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 314

HOUSE BILL 2863

AN ACT

AMENDING TITLE 36, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2175; AMENDING SECTIONS 36-2901 AND 36-2907, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-177; AMENDING TITLE 41, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-703.01; REPEALING SECTION 41-703.01, ARIZONA REVISED STATUTES; AMENDING LAWS 2020, CHAPTER 54, SECTION 2; AMENDING LAWS 2021, CHAPTER 390, SECTIONS 33, 37, 39, 42 AND 43; AMENDING LAWS 2021, CHAPTER 409, SECTION 23; APPROPRIATING MONIES; RELATING TO HEALTH CARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 36, chapter 21, article 1, Arizona Revised Statutes, is amended by adding section 36-2175, to read:

36-2175. Behavioral health care provider loan repayment program; purpose; eligibility; default; use of monies

A. THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM IS ESTABLISHED IN THE DEPARTMENT TO PAY OFF PORTIONS OF EDUCATIONAL LOANS TAKEN OUT BY BEHAVIORAL HEALTH CARE PROVIDERS AND NURSES, INCLUDING BEHAVIORAL HEALTH TECHNICIANS, BEHAVIORAL HEALTH NURSE PRACTITIONERS, PSYCHIATRIC NURSE PRACTITIONERS AND LICENSED PRACTICAL NURSES, PHYSICIANS, PSYCHIATRISTS, AND PSYCHOLOGISTS WHO SERVE IN BEHAVIORAL HEALTH FACILITIES, INCLUDING THE ARIZONA STATE HOSPITAL, BEHAVIORAL HEALTH RESIDENTIAL FACILITIES AND SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITIES.

B. THE DEPARTMENT SHALL PRESCRIBE APPLICATION AND ELIGIBILITY REQUIREMENTS. TO BE ELIGIBLE TO PARTICIPATE IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM, AN APPLICANT SHALL MEET AT LEAST THE FOLLOWING REQUIREMENTS:

1. HAVE COMPLETED THE FINAL YEAR OF A COURSE OF STUDY OR PROGRAM APPROVED BY RECOGNIZED ACCREDITING AGENCIES FOR HIGHER EDUCATION IN A HEALTH PROFESSION LICENSED PURSUANT TO TITLE 32 OR HOLD AN ACTIVE LICENSE IN A HEALTH PROFESSION LICENSED PURSUANT TO TITLE 32.

2. DEMONSTRATE CURRENT EMPLOYMENT PROVIDING DIRECT PATIENT CARE WITH A PUBLIC OR NONPROFIT ENTITY LOCATED AND PROVIDING SERVICES IN A BEHAVIORAL HEALTH HOSPITAL, A BEHAVIORAL HEALTH RESIDENTIAL FACILITY OR A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY IN THIS STATE.

3. DEMONSTRATE THAT THE CURRENT EMPLOYER IS CONTRACTED WITH THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM TO PROVIDE SERVICES.

4. NOT BE PARTICIPATING IN ANY OTHER LOAN REPAYMENT PROGRAM ESTABLISHED BY THIS ARTICLE.

C. IN ADDITION TO THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION, AN APPLICANT WHO IS A PHYSICIAN SHALL HAVE COMPLETED A PROFESSIONAL RESIDENCY OR CERTIFICATION PROGRAM IN BEHAVIORAL HEALTH CARE.

D. A BEHAVIORAL HEALTH CARE PROVIDER OR NURSE WHO PARTICIPATES IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM SHALL INITIALLY CONTRACT WITH THE DEPARTMENT TO PROVIDE SERVICES PURSUANT TO THIS SECTION FOR AT LEAST TWO YEARS.

E. IN MAKING RECOMMENDATIONS FOR THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM, THE DEPARTMENT SHALL GIVE PRIORITY TO APPLICANTS WHO INTEND TO PRACTICE IN THE ARIZONA STATE HOSPITAL, A BEHAVIORAL HEALTH RESIDENTIAL FACILITY OR A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY IN THIS STATE.

F. ALL LOAN REPAYMENT CONTRACT OBLIGATIONS ARE SUBJECT TO THE AVAILABILITY OF MONIES AND LEGISLATIVE APPROPRIATION. THE DEPARTMENT MAY CANCEL OR SUSPEND A LOAN REPAYMENT CONTRACT BASED ON UNAVAILABILITY OF MONIES FOR THE PROGRAM. THE DEPARTMENT IS NOT LIABLE FOR ANY CLAIMS, ACTUAL DAMAGES OR CONSEQUENTIAL DAMAGES ARISING OUT OF A CANCELLATION OR SUSPENSION OF A CONTRACT.

G. THIS SECTION DOES NOT PREVENT THE DEPARTMENT FROM ENCUMBERING AN AMOUNT THAT IS SUFFICIENT TO ENSURE PAYMENT OF EACH BEHAVIORAL HEALTH CARE PROVIDER LOAN FOR THE SERVICES RENDERED DURING A CONTRACT PERIOD.

H. THE DEPARTMENT SHALL ISSUE PROGRAM MONIES TO PAY BEHAVIORAL HEALTH CARE PROVIDER LOANS THAT ARE LIMITED TO THE AMOUNT OF PRINCIPAL, INTEREST AND RELATED EXPENSES OF EDUCATIONAL LOANS, NOT TO EXCEED THE BEHAVIORAL HEALTH CARE PROVIDER'S OR NURSE'S TOTAL STUDENT LOAN INDEBTEDNESS, ACCORDING TO THE FOLLOWING SCHEDULE:

1. FOR THE FIRST TWO YEARS OF SERVICE, A MAXIMUM OF $50,000.

2. FOR SUBSEQUENT YEARS, A MAXIMUM OF $25,000.

I. A PARTICIPANT IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM WHO BREACHES THE LOAN REPAYMENT CONTRACT BY FAILING TO BEGIN OR TO COMPLETE THE OBLIGATED SERVICES IS LIABLE FOR LIQUIDATED DAMAGES IN AN AMOUNT EQUIVALENT TO THE AMOUNT THAT WOULD BE OWED FOR DEFAULT AS DETERMINED AND AUTHORIZED BY THE DEPARTMENT. THE DEPARTMENT MAY WAIVE THE LIQUIDATED DAMAGES PROVISIONS OF THIS SUBSECTION IF IT DETERMINES THAT DEATH OR PERMANENT PHYSICAL DISABILITY ACCOUNTED FOR THE FAILURE OF THE PARTICIPANT TO FULFILL THE CONTRACT. THE DEPARTMENT MAY PRESCRIBE ADDITIONAL CONDITIONS FOR DEFAULT, CANCELLATION, WAIVER OR SUSPENSION.

J. NOTWITHSTANDING SECTION 41-192, THE DEPARTMENT MAY RETAIN LEGAL COUNSEL AND COMMENCE ACTIONS THAT ARE NECESSARY TO COLLECT LOAN PAYMENTS AND CHARGES IF THERE IS A DEFAULT OR A BREACH OF A CONTRACT ENTERED INTO PURSUANT TO THIS SECTION.

K. THE DEPARTMENT MAY USE MONIES TO DEVELOP PROGRAMS SUCH AS RESIDENT-TO-SERVICE LOAN REPAYMENT AND EMPLOYER RECRUITMENT ASSISTANCE TO INCREASE PARTICIPATION IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM. THE DEPARTMENT MAY USE PRIVATE DONATIONS, GRANTS AND FEDERAL MONIES TO IMPLEMENT, SUPPORT, PROMOTE OR MAINTAIN THE PROGRAM.

Sec. 2. Section 36-2901, Arizona Revised Statutes, is amended to read:

36-2901. Definitions

In this article, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.

2. "Administrator" means the administrator of the Arizona health care cost containment system.

3. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 or chapter 34 of this title to provide health care to members under this article or persons under chapter 34 of this title either directly or through subcontracts with providers.

4. "Department" means the department of economic security.

5. "Director" means the director of the Arizona health care cost containment system administration.

6. "Eligible person" means any person who is:

(a) Any of the following:

(i) Defined as mandatorily or optionally eligible pursuant to title XIX of the social security act as authorized by the state plan.

(ii) Defined in title XIX of the social security act as an eligible pregnant woman OR A WOMAN WHO IS LESS THAN ONE YEAR POSTPARTUM with a family income that does not exceed one hundred fifty percent of the federal poverty guidelines, as a child under the age of six years and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines or as children who have not attained nineteen years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines.

(iii) Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.

(iv) Defined as eligible pursuant to section 36-2901.01.

(v) Defined as eligible pursuant to section 36-2901.04.

(vi) Defined as eligible pursuant to section 36-2901.07.

(b) A full-time officer or employee of this state or of a city, town or school district of this state or other person who is eligible for hospitalization and medical care under title 38, chapter 4, article 4.

(c) A full-time officer or employee of any county in this state or other persons authorized by the county to participate in county medical care and hospitalization programs if the county in which such officer or employee is employed has authorized participation in the system by resolution of the county board of supervisors.

(d) An employee of a business within this state.

(e) A dependent of an officer or employee who is participating in the system.

(f) Not enrolled in the Arizona long-term care system pursuant to article 2 of this chapter.

(g) Defined as eligible pursuant to section 1902(a)(10)(A)(ii)(XV) and (XVI) of title XIX of the social security act and who meets the income requirements of section 36-2929.

7. "Graduate medical education" means a program, including an approved fellowship, that prepares a physician for the independent practice of medicine by providing didactic and clinical education in a

medical discipline to a medical student who has completed a recognized undergraduate medical education program.

8. "Malice" means evil intent and outrageous, oppressive or intolerable conduct that creates a substantial risk of tremendous harm to others.

9. "Member" means an eligible person who enrolls in the system.

10. "Modified adjusted gross income" has the same meaning prescribed in 42 United States Code section 1396a(e)(14).

11. "Noncontracting provider" means a person who provides health care to members pursuant to this article but not pursuant to a subcontract with a contractor.

12. "Physician" means a person WHO IS licensed pursuant to title 32, chapter 13 or 17.

13. "Prepaid capitated" means a mode of payment by which a health care contractor directly delivers health care services for the duration of a contract to a maximum specified number of members based on a fixed rate per member notwithstanding:

(a) The actual number of members who receive care from the contractor.

(b) The amount of health care services provided to any member.

14. "Primary care physician" means a physician who is a family practitioner, general practitioner, pediatrician, general internist, or obstetrician or gynecologist.

15. "Primary care practitioner" means a nurse practitioner OR CERTIFIED NURSE MIDWIFE WHO IS certified pursuant to title 32, chapter 15 or a physician assistant ~~certified~~ WHO IS LICENSED pursuant to title 32, chapter 25. This paragraph does not expand the scope of practice for nurse practitioners OR CERTIFIED NURSE MIDWIVES as defined pursuant to title 32, chapter 15~~,~~ or for physician assistants as defined pursuant to title 32, chapter 25.

16. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

17. "Section 1115 waiver" means the research and demonstration waiver granted by the United States department of health and human services.

18. "Special health care district" means a special health care district organized pursuant to title 48, chapter 31.

19. "State plan" has the same meaning prescribed in section 36-2931.

20. "System" means the Arizona health care cost containment system established by this article.

Sec. 3. Section 36-2907, Arizona Revised Statutes, is amended to read:

36-2907. Covered health and medical services; modifications; rules; related delivery of service requirements; definition

A. Subject to the ~~limitations~~ LIMITS and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital ~~for the~~ TO care and ~~treatment of~~ TREAT inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.

2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.

3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.

4. Medications that are ordered on prescription by a physician or a dentist WHO IS licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.

5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.

6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.

7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.

8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with

another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.

9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.

10. Nonexperimental transplants approved for title XIX reimbursement.

11. Dental services as follows:

(a) Except as provided in subdivision (b) of this paragraph, for persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than $1,000 per member.

(b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that ~~are in excess of~~ EXCEED the limit prescribed in subdivision (a) of this paragraph.

12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.

13. Hospice care.

14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

15. SUBJECT TO APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, MEDICALLY NECESSARY CHIROPRACTIC SERVICES THAT ARE PERFORMED BY A CHIROPRACTOR WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 8 AND THAT ARE ORDERED BY A PRIMARY CARE PHYSICIAN OR PRIMARY CARE PRACTITIONER PURSUANT TO RULES ADOPTED BY THE ADMINISTRATION. THE PRIMARY CARE PHYSICIAN OR PRIMARY CARE PRACTITIONER MAY INITIALLY ORDER UP TO TWENTY VISITS ANNUALLY THAT INCLUDE TREATMENT AND MAY REQUEST AUTHORIZATION FOR ADDITIONAL CHIROPRACTIC SERVICES IN THAT SAME YEAR IF ADDITIONAL CHIROPRACTIC SERVICES ARE MEDICALLY NECESSARY.

B. The ~~limitations~~ LIMITS and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to $12,500 per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum ~~limitations~~ LIMITS for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules providing for transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may allow the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state that are similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

K. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not

limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

L. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for transferring patients and medical records and initiating medical care.

M. NOTWITHSTANDING SECTION 36-2901.08, MONIES FROM THE HOSPITAL ASSESSMENT FUND ESTABLISHED BY SECTION 36-2901.09 MAY NOT BE USED TO PROVIDE CHIROPRACTIC SERVICES AS PRESCRIBED IN SUBSECTION A, PARAGRAPH 15 OF THIS SECTION.

~~M.~~ N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

Sec. 4. Title 41, chapter 1, article 4, Arizona Revised Statutes, is amended by adding section 41-177, to read:

41-177. Arizona health innovation trust fund; purpose; annual report

A. THE ARIZONA HEALTH INNOVATION TRUST FUND IS ESTABLISHED. THE STATE TREASURER SHALL ADMINISTER THE TRUST FUND AS TRUSTEE.

B. THE TRUST FUND IS A PERMANENT ENDOWMENT FUND THAT CONSISTS OF MONIES APPROPRIATED BY THE LEGISLATURE, EARNINGS FROM THE FUND AND GIFTS OR GRANTS DONATED OR GIVEN TO THE FUND.

C. MONIES IN THE TRUST FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

D. THE STATE TREASURER SHALL ACCEPT, SEPARATELY ACCOUNT FOR AND HOLD IN TRUST ANY TRUST FUND MONIES DEPOSITED PURSUANT TO THIS SECTION IN THE STATE TREASURY, WHICH ARE CONSIDERED TO BE TRUST MONIES AS DEFINED IN SECTION 35-310 AND WHICH MAY NOT BE COMMINGLED WITH ANY OTHER MONIES IN THE STATE TREASURY EXCEPT FOR INVESTMENT PURPOSES. THE STATE TREASURER SHALL INVEST AND DIVEST, AS PROVIDED BY SECTIONS 35-313 AND 35-314.03, ANY TRUST FUND MONIES DEPOSITED IN THE STATE TREASURY, AND MONIES EARNED FROM INTEREST AND INVESTMENT INCOME SHALL BE CREDITED TO THE TRUST FUND.

E. THE STATE TREASURER SHALL ANNUALLY ALLOCATE FOUR PERCENT OF THE MONIES IN THE TRUST FUND TO AN ENTITY THAT SATISFIES ALL OF THE FOLLOWING REQUIREMENTS:

1. IS A CHARITABLE ORGANIZATION THAT IS QUALIFIED UNDER SECTION 501(c)(3) OF THE UNITED STATES INTERNAL REVENUE CODE FOR FEDERAL INCOME TAX PURPOSES.

2. PROVIDES ENTREPRENEURIAL EDUCATION, MENTORING AND SUPPORT TO PERSONS IN THE HEALTH INNOVATION AND HEALTH CARE DELIVERY SECTORS IN THIS STATE.

3. PROVIDES WORKFORCE DEVELOPMENT PROGRAMS DESIGNED TO SUPPORT THE TALENT REQUIREMENTS OF EMPLOYERS IN THE HEALTH INNOVATION AND HEALTH CARE DELIVERY SECTORS IN THIS STATE.

4. PROVIDES PROGRAMS THAT SUPPORT THE DEVELOPMENT AND COMMERCIALIZATION OF HEALTH INNOVATION BY BUSINESSES THAT ARE BASED IN THIS STATE AND THAT EMPLOY NOT MORE THAN ONE HUNDRED EMPLOYEES.

5. HAS ENTERED INTO AN ENDOWMENT AGREEMENT WITH THE STATE TREASURER THAT INCLUDES INVESTMENT PROCEDURES, MATURITY TIMELINES AND OTHER REQUIREMENTS ESTABLISHED BY THE STATE TREASURER AND ENTITY REPORTING REQUIREMENTS, WHICH MUST INCLUDE HOW DISTRIBUTIONS FROM THE TRUST FUND ARE USED AND THE SOCIAL AND ECONOMIC IMPACT OF THE USE.

F. ON OR BEFORE DECEMBER 31 OF EACH YEAR, THE ENTITY SHALL SUBMIT THE REPORT AS PRESCRIBED BY THE TREASURER TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE STATE TREASURER AND SHALL PROVIDE A COPY OF THIS REPORT TO THE SECRETARY OF STATE.

Sec. 5. Title 41, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 41-703.01, to read:

41-703.01. Competitive grant program; technology solution; patient continuity of care; hospital interconnectivity; annual report; definitions

A. THE DEPARTMENT SHALL ADMINISTER A THREE-YEAR COMPETITIVE GRANT PROGRAM THAT PROVIDES AN INTEROPERABILITY SOFTWARE TECHNOLOGY SOLUTION TO SUPPORT RURAL HOSPITALS, HEALTH CARE PROVIDERS AND URBAN TRAUMA CENTERS TO FURTHER TREATMENT CARE COORDINATION WITH A FOCUS ON REDUCING PUBLIC AND PRIVATE HEALTH CARE COSTS AND UNNECESSARY TRANSPORTATION COSTS. THE DEPARTMENT SHALL AWARD THE FIRST GRANT UNDER THIS PROGRAM NOT LATER THAN DECEMBER 31, 2022.

B. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM SHALL WORK WITH THE DEPARTMENT TO SUPPLEMENT THE GRANT MONIES BY IDENTIFYING AND APPLYING TO RECEIVE FEDERAL MATCHING MONIES.

C. THE GRANT PROGRAM SHALL ENABLE THE IMPLEMENTATION OF AN INTEROPERABILITY SOFTWARE TECHNOLOGY SOLUTION THAT IS SHARED BY HOSPITALS AND HEALTH CARE PROVIDERS TO BENEFIT PATIENTS BEFORE AND AFTER A PATIENT IS DISCHARGED FROM THE PROVIDER'S CARE.

D. THE SOFTWARE SHALL BE MADE AVAILABLE TO RURAL HOSPITALS, HEALTH CARE PROVIDERS AND URBAN TRAUMA CENTERS THAT WISH TO PARTICIPATE BY ENABLING A HOSPITAL'S ELECTRONIC MEDICAL RECORDS SYSTEM TO INTERFACE WITH OTHER ELECTRONIC MEDICAL RECORDS SYSTEMS AND PROVIDERS TO PROMOTE CONNECTIVITY BETWEEN HOSPITAL SYSTEMS AND FACILITATE INCREASED COMMUNICATION BETWEEN HOSPITAL STAFF AND PROVIDERS THAT USE DIFFERENT OR DISTINCTIVE ONLINE PLATFORMS AND INFORMATION SYSTEMS WHEN TREATING PATIENTS. THE DEPARTMENT SHALL AWARD GRANTS FOR AN INTEROPERABILITY SOFTWARE TECHNOLOGY SOLUTION THAT, AT A MINIMUM:

1. COMPLIES WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E).

2. CAPTURES AND FORWARDS CLINICAL DATA, INCLUDING LABORATORY RESULTS AND IMAGES, AND PROVIDES SYNCHRONOUS PATIENT CLINICAL DATA TO HEALTH CARE PROVIDERS REGARDLESS OF GEOGRAPHIC LOCATION.

3. PROVIDES A SYNCHRONOUS DATA EXCHANGE THAT IS NOT BATCHED OR DELAYED, AT THE POINT THE CLINICAL DATA IS CAPTURED AND AVAILABLE IN THE HOSPITAL'S ELECTRONIC RECORD SYSTEM.

4. IS CAPABLE OF PROVIDING PROACTIVE ALERTS TO HEALTH CARE PROVIDERS.

5. ALLOWS BOTH SYNCHRONOUS AND ASYNCHRONOUS COMMUNICATION.

6. HAS PATIENT-CENTRIC COMMUNICATION AND IS TRACKED WITH DATE AND TIME STAMPING.

7. IS CONNECTED TO THE APPROPRIATE PHYSICIAN RESOURCES.

8. PROVIDES DATA TO UPDATE COST REPORTS TO ENHANCE EMERGENCY TRIAGE AND TO TREAT AND TRANSPORT PATIENTS.

E. EACH GRANT RECIPIENT SHALL DEMONSTRATE PROOF OF VETERAN EMPLOYMENT.

F. FOR EACH YEAR OF THE GRANT PROGRAM, EACH GRANT RECIPIENT SHALL PROVIDE TO THE DEPARTMENT OF ADMINISTRATION A REPORT THAT PROVIDES METRICS AND QUANTIFIES COST AND TIME SAVINGS FOR USING AN INTEROPERABLE SOFTWARE SOLUTION IN HEALTH CARE THAT COMPLIES WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E). ON OR BEFORE JULY 1 OF EACH FISCAL YEAR OF THE GRANT PROGRAM, THE DEPARTMENT OF ADMINISTRATION IN COORDINATION WITH THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM SHALL PROVIDE TO THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE CHAIRPERSONS OF THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND THE DIRECTORS OF THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING A REPORT ON THE ALLOCATION OF GRANT FUNDING AND A COMPILED ANALYSIS OF THE REPORTS PROVIDED BY THE GRANT RECIPIENTS.

G. FOR THE PURPOSES OF THIS SECTION:

1. "RURAL" MEAN A COUNTY WITH A POPULATION OF LESS THAN NINE HUNDRED THOUSAND PERSONS.

2. "VETERAN EMPLOYMENT" MEANS A BUSINESS ORGANIZATION THAT EMPLOYS AN INDIVIDUAL OR HAS A COMPANY OFFICER WHO SERVED AND WHO WAS HONORABLY DISCHARGED FROM OR RELEASED UNDER HONORABLE CONDITIONS FROM SERVICE IN THE ARMED FORCES.

Sec. 6. Delayed repeal

Section 41-703.01, Arizona Revised Statutes, as added by this act, is repealed from and after June 30, 2026.

Sec. 7. Laws 2020, chapter 54, section 2 is amended to read:

Sec. 2. AHCCCS; disproportionate share payments; fiscal year 2020-2021

A. Disproportionate share payments for fiscal year 2020-2021 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, include:

1. $113,818,500 for a qualifying nonstate operated public hospital. The Maricopa county special health care district shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the Arizona health care cost containment system administration on or before May 1, 2021 for all state plan years as required by the Arizona health care cost containment system ~~section 1115 waiver standard terms and conditions~~ STATE PLAN. The administration shall assist the district in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Maricopa county special health care district, if the certification is equal to or less than $113,818,500 and the administration determines that the revised amount is correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives, shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit the balance of the federal financial participation in the state general fund. If the certification provided is for an amount less than $113,818,500 and the administration determines that the revised amount is not correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the total amount of the federal financial participation in the state general fund. If the certification provided is for an amount greater than $113,818,500, the administration shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit $75,812,100 of the federal financial participation in the state general fund. The administration may make additional disproportionate share hospital payments to the Maricopa county special health care district pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, and subsection B of this section.

2. $28,474,900 for the Arizona state hospital. The Arizona state hospital shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the administration on or before March 31, 2021. The administration shall assist the Arizona state hospital in determining the amount of qualifying disproportionate share hospital expenditures. Once

the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Arizona state hospital, the administration shall deposit the entire amount of federal financial participation in the state general fund. If the certification provided is for an amount less than $28,474,900, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the entire amount of federal financial participation in the state general fund. The certified public expense form provided by the Arizona state hospital must contain both the total amount of qualifying disproportionate share hospital expenditures and the amount limited by section 1923(g) of the social security act.

3. $884,800 for private qualifying disproportionate share hospitals. The Arizona health care cost containment system administration shall make payments to hospitals consistent with this appropriation and the terms of the ~~section 1115 waiver~~ STATE PLAN, but payments are limited to those hospitals that either:

(a) Meet the mandatory definition of disproportionate share qualifying hospitals under section 1923 of the social security act.

(b) Are located in Yuma county and contain at least three hundred beds.

B. After the distributions made pursuant to subsection A of this section, the allocations of disproportionate share hospital payments made pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, shall be made available ~~first~~ IN THE FOLLOWING ORDER to qualifying private hospitals ~~located outside the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area before being made available to qualifying hospitals within the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area.~~ THAT ARE:

1. LOCATED IN A COUNTY WITH A POPULATION OF FEWER THAN FOUR HUNDRED THOUSAND PERSONS.

2. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST FOUR HUNDRED THOUSAND PERSONS BUT FEWER THAN NINE HUNDRED THOUSAND PERSONS.

3. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST NINE HUNDRED THOUSAND PERSONS.

Sec. 8. Laws 2021, chapter 390, section 33 is amended to read:

Sec. 33. Delayed repeal

Title 31, chapter 4, Arizona Revised Statutes, is repealed from and after ~~June 30, 2023~~ DECEMBER 31, 2022.

Sec. 9. Laws 2021, chapter 390, section 37 is amended to read:

Sec. 37. Delayed repeal

Section 36-220, Arizona Revised Statutes, ~~as added by this act,~~ is repealed from and after ~~June 30, 2023~~ DECEMBER 31, 2022.

Sec. 10. Laws 2021, chapter 390, section 39 is amended to read:

Sec. 39. Delayed repeal

Section 41-3028.11, Arizona Revised Statutes, is repealed from and after ~~June 30, 2023~~ DECEMBER 31, 2022.

Sec. 11. Laws 2021, chapter 390, section 42 is amended to read:

Sec. 42. Transfer of jurisdiction of psychiatric security review board powers and duties

A. Beginning from and after ~~June 30, 2023~~ DECEMBER 31, 2022, the superior court shall have exclusive supervisory jurisdiction over all persons who are under the supervision of the psychiatric security review board on ~~July~~ JANUARY 1, 2023.

B. The superior court is vested with the powers and duties of the psychiatric security review board as they existed before ~~July~~ JANUARY 1, 2023 to carry out the provisions of title 13, chapter 38, article 14.

Sec. 12. Laws 2021, chapter 390, section 43 is amended to read:

Sec. 43. Effective date

The following sections are effective from and after ~~June 30, 2023~~ DECEMBER 31, 2022:

1. Section 12-820.02, Arizona Revised Statutes, as amended by ~~this act~~ LAWS 2021, CHAPTER 390.

2. Section 13-502, Arizona Revised Statutes, as amended by ~~section 5 of this act~~ LAWS 2021, CHAPTER 390.

3. Section 13-3991, Arizona Revised Statutes, as amended by ~~section 10 of this act~~ LAWS 2021, CHAPTER 390.

4. Section 13-3992, Arizona Revised Statutes, as amended by ~~section 12 of this act~~ LAWS 2021, CHAPTER 390.

5. Section 13-3994, Arizona Revised Statutes, as amended by ~~section 15 of this act~~ LAWS 2021, CHAPTER 390.

6. Section 13-3995, Arizona Revised Statutes, as amended by ~~section 17 of this act~~ LAWS 2021, CHAPTER 390.

7. Section 13-3996, Arizona Revised Statutes, as amended by ~~section 19 of this act~~ LAWS 2021, CHAPTER 390.

8. Section 13-3997, Arizona Revised Statutes, as amended by ~~section 21 of this act~~ LAWS 2021, CHAPTER 390.

9. Section 13-3998, Arizona Revised Statutes, as amended by ~~section 23 of this act~~ LAWS 2021, CHAPTER 390.

10. Section 13-3999, Arizona Revised Statutes, as amended by ~~section 25 of this act~~ LAWS 2021, CHAPTER 390.

11. Section 13-4000, Arizona Revised Statutes, as amended by ~~section 27 of this act~~ LAWS 2021, CHAPTER 390.

Sec. 13. Laws 2021, chapter 409, section 23 is amended to read:

Sec. 23. AHCCCS; disproportionate share payments; fiscal year 2021-2022

A. Disproportionate share payments for fiscal year 2021-2022 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, include:

1. $113,818,500 for a qualifying nonstate operated public hospital. The Maricopa county special health care district shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the Arizona health care cost containment system administration on or before May 1, 2022 for all state plan years as required by the Arizona health care cost containment system state plan ~~standard terms and conditions~~. The administration shall assist the district in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Maricopa county special health care district, if the certification is equal to or less than $113,818,500 and the administration determines that the revised amount is correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives, shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit the balance of the federal financial participation in the state general fund. If the certification provided is for an amount less than $113,818,500 and the administration determines that the revised amount is not correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the total amount of the federal financial participation in the state general fund. If the certification provided is for an amount greater than $113,818,500, the administration shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit $75,482,000 of the federal financial participation in the state general fund. The administration may make additional disproportionate share hospital payments to the Maricopa county special health care district pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, and subsection B of this section.

2. $28,474,900 for the Arizona state hospital. The Arizona state hospital shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the administration on or before March 31, 2022. The administration shall assist the Arizona state hospital in determining the amount of qualifying disproportionate share hospital expenditures. Once

the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Arizona state hospital, the administration shall deposit the entire amount of federal financial participation in the state general fund. If the certification provided is for an amount less than $28,474,900, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the entire amount of federal financial participation in the state general fund. The certified public expense form provided by the Arizona state hospital must contain both the total amount of qualifying disproportionate share hospital expenditures and the amount limited by section 1923(g) of the social security act.

3. $884,800 for private qualifying disproportionate share hospitals. The Arizona health care cost containment system administration shall make payments to hospitals consistent with this appropriation and the terms of the state plan, but payments are limited to those hospitals that either:

(a) Meet the mandatory definition of disproportionate share qualifying hospitals under section 1923 of the social security act.

(b) Are located in Yuma county and contain at least three hundred beds.

B. After the distributions made pursuant to subsection A of this section, the allocations of disproportionate share hospital payments made pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, shall be made available ~~first~~ IN THE FOLLOWING ORDER to qualifying private hospitals ~~located outside the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area before being made available to qualifying hospitals within the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area.~~ THAT ARE:

1. LOCATED IN A COUNTY WITH A POPULATION OF FEWER THAN FOUR HUNDRED THOUSAND PERSONS.

2. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST FOUR HUNDRED THOUSAND PERSONS BUT FEWER THAN NINE HUNDRED THOUSAND PERSONS.

3. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST NINE HUNDRED THOUSAND PERSONS.

Sec. 14. ALTCS; county contributions; fiscal year 2022-2023

A. Notwithstanding section 11-292, Arizona Revised Statutes, county contributions for the Arizona long-term care system for fiscal year 2022-2023 are as follows:

1.	Apache	$ 860,500
2.	Cochise	$ 6,320,300
3.	Coconino	$ 2,583,200
4.	Gila	$ 2,855,600
5.	Graham	$ 1,258,800
6.	Greenlee	$ 0

7.	La Paz	$ 653,700
8.	Maricopa	$229,265,800
9.	Mohave	$ 10,473,800
10.	Navajo	$ 3,561,400
11.	Pima	$ 54,350,500
12.	Pinal	$ 17,427,100
13.	Santa Cruz	$ 2,775,000
14.	Yavapai	$ 9,429,000
15.	Yuma	$ 10,883,000

B. If the overall cost for the Arizona long-term care system exceeds the amount specified in the general appropriations act for fiscal year 2022-2023, the state treasurer shall collect from the counties the difference between the amount specified in subsection A of this section and the counties' share of the state's actual contribution. The counties' share of the state's contribution must comply with any federal maintenance of effort requirements. The director of the Arizona health care cost containment system administration shall notify the state treasurer of the counties' share of the state's contribution and report the amount to the director of the joint legislative budget committee. The state treasurer shall withhold from any other monies payable to a county from whatever state funding source is available an amount necessary to fulfill that county's requirement specified in this subsection. The state treasurer may not withhold distributions from the Arizona highway user revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised Statutes. The state treasurer shall deposit the amounts withheld pursuant to this subsection and amounts paid pursuant to subsection A of this section in the long-term care system fund established by section 36-2913, Arizona Revised Statutes.

Sec. 15. AHCCCS; disproportionate share payments; fiscal year 2022-2023

A. Disproportionate share payments for fiscal year 2022-2023 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, include:

1. $113,818,500 for a qualifying nonstate operated public hospital. The Maricopa county special health care district shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the Arizona health care cost containment system administration on or before May 1, 2023 for all state plan years as required by the Arizona health care cost containment system state plan. The administration shall assist the district in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Maricopa county special health care district, if the certification is equal to or less than $113,818,500 and the

administration determines that the revised amount is correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives, shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit the balance of the federal financial participation in the state general fund. If the certification provided is for an amount less than $113,818,500 and the administration determines that the revised amount is not correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the total amount of the federal financial participation in the state general fund. If the certification provided is for an amount greater than $113,818,500, the administration shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit $74,696,800 of the federal financial participation in the state general fund. The administration may make additional disproportionate share hospital payments to the Maricopa county special health care district pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, and subsection B of this section.

2. $28,474,900 for the Arizona state hospital. The Arizona state hospital shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the administration on or before March 31, 2023. The administration shall assist the Arizona state hospital in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Arizona state hospital, the administration shall deposit the entire amount of federal financial participation in the state general fund. If the certification provided is for an amount less than $28,474,900, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the entire amount of federal financial participation in the state general fund. The certified public expense form provided by the Arizona state hospital must contain both the total amount of qualifying disproportionate share hospital expenditures and the amount limited by section 1923(g) of the social security act.

3. $884,800 for private qualifying disproportionate share hospitals. The Arizona health care cost containment system administration shall make payments to hospitals consistent with this appropriation and the terms of the state plan, but payments are limited to those hospitals that either:

(a) Meet the mandatory definition of disproportionate share qualifying hospitals under section 1923 of the social security act.

(b) Are located in Yuma county and contain at least three hundred beds.

B. After the distributions made pursuant to subsection A of this section, the allocations of disproportionate share hospital payments made pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, shall be made available in the following order to qualifying private hospitals that are:

1. Located in a county with a population of fewer than four hundred thousand persons.

2. Located in a county with a population of at least four hundred thousand persons but fewer than nine hundred thousand persons.

3. Located in a county with a population of at least nine hundred thousand persons.

Sec. 16. AHCCCS transfer; counties; federal monies; fiscal year 2022-2023

On or before December 31, 2023, notwithstanding any other law, for fiscal year 2022-2023 the Arizona health care cost containment system administration shall transfer to the counties the portion, if any, as may be necessary to comply with section 10201(c)(6) of the patient protection and affordable care act (P.L. 111-148), regarding the counties' proportional share of this state's contribution.

Sec. 17. County acute care contributions; fiscal year 2022-2023; intent

A. Notwithstanding section 11-292, Arizona Revised Statutes, for fiscal year 2022-2023 for the provision of hospitalization and medical care, the counties shall contribute the following amounts:

1.	Apache	$ 268,800
2.	Cochise	$ 2,214,800
3.	Coconino	$ 742,900
4.	Gila	$ 1,413,200
5.	Graham	$ 536,200
6.	Greenlee	$ 190,700
7.	La Paz	$ 212,100
8.	Maricopa	$16,887,200
9.	Mohave	$ 1,237,700
10.	Navajo	$ 310,800
11.	Pima	$14,951,800
12.	Pinal	$ 2,715,600
13.	Santa Cruz	$ 482,800
14.	Yavapai	$ 1,427,800
15.	Yuma	$ 1,325,100

B. If a county does not provide funding as specified in subsection A of this section, the state treasurer shall subtract the amount owed by the county to the Arizona health care cost containment system fund and the long-term care system fund established by section 36-2913, Arizona Revised Statutes, from any payments required to be made by the state treasurer to that county pursuant to section 42-5029, subsection D, paragraph 2, Arizona Revised Statutes, plus interest on that amount pursuant to section 44-1201, Arizona Revised Statutes, retroactive to the first day the funding was due. If the monies the state treasurer withholds are insufficient to meet that county's funding requirements as specified in subsection A of this section, the state treasurer shall withhold from any other monies payable to that county from whatever state funding source is available an amount necessary to fulfill that county's requirement. The state treasurer may not withhold distributions from the Arizona highway user revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised Statutes.

C. Payment of an amount equal to one-twelfth of the total amount determined pursuant to subsection A of this section shall be made to the state treasurer on or before the fifth day of each month. On request from the director of the Arizona health care cost containment system administration, the state treasurer shall require that up to three months' payments be made in advance, if necessary.

D. The state treasurer shall deposit the amounts paid pursuant to subsection C of this section and amounts withheld pursuant to subsection B of this section in the Arizona health care cost containment system fund and the long-term care system fund established by section 36-2913, Arizona Revised Statutes.

E. If payments made pursuant to subsection C of this section exceed the amount required to meet the costs incurred by the Arizona health care cost containment system for the hospitalization and medical care of those persons defined as an eligible person pursuant to section 36-2901, paragraph 6, subdivisions (a), (b) and (c), Arizona Revised Statutes, as amended by this act, the director of the Arizona health care cost containment system administration may instruct the state treasurer either to reduce remaining payments to be paid pursuant to this section by a specified amount or to provide to the counties specified amounts from the Arizona health care cost containment system fund and the long-term care system fund established by section 36-2913, Arizona Revised Statutes.

F. The legislature intends that the Maricopa county contribution pursuant to subsection A of this section be reduced in each subsequent year according to the changes in the GDP price deflator. For the purposes of this subsection, "GDP price deflator" has the same meaning prescribed in section 41-563, Arizona Revised Statutes.

Sec. 18. Accelerated nursing programs; distribution; annual report; delayed repeal

A. Of the amount appropriated in the general appropriations act in fiscal year 2022-2023 for accelerated nursing programs, the department of health services shall distribute $6,000,000 to a private university with a health sciences campus located in Phoenix, Arizona that offers a twelve-month accelerated nursing program. Monies distributed to the university shall be used for capital costs associated with adding a new cohort of accelerated nursing students.

B. Of the amount appropriated in the general appropriations act in fiscal year 2022-2023 for accelerated nursing programs, the department of health services shall distribute $44,000,000 to public and private universities and community colleges located in this state that offer accelerated nursing programs for the purpose of expanding program capacity. Priority shall be given to universities and community colleges that offer twelve-month accelerated nursing programs, but accelerated nursing programs up to eighteen months in length are also eligible. Each university that receives monies must demonstrate that all of the following occurs:

1. At least eighty percent of the monies received are used for the costs of providing scholarships and not more than twenty percent of the monies received are used for administrative expenses, including the costs of hiring faculty and purchasing equipment necessary to expand the accelerated nursing program. Monies may not be used for capital expansion costs.

2. Students receiving scholarships are enrolled in an accelerated nursing program that takes not more than eighteen months to complete.

3. Students receiving scholarships are required to enter into a contract to practice nursing in this state for at least four years after completing an accelerated nursing degree. The contract shall stipulate that if a student does not successfully complete an accelerated nursing program in good academic standing or does not fulfill the service commitment outlined in the contract, the student shall reimburse the university for all scholarship costs.

4. Any scholarship reimbursements received by the university will be used to provide scholarship awards to accelerated nursing students enrolled in newly added accelerated nursing program seats.

5. Scholarships awarded to accelerated nursing students are provided after all other financial gifts, aid or grants received by the student and do not exceed the actual cost of tuition and fees.

6. Monies received to provide scholarships do not supplant other institutional financial aid sources.

C. On or before September 1 of each year, each university that receives monies pursuant to subsection B of this section shall submit a report on the number of students who have received a scholarship, the

number of nurses who are currently completing the four-year service commitment and the number of students who have reimbursed the university to the department of health services. On or before October 1 of each year, the department of health services shall compile the information and transmit a report to the joint legislative budget committee and the governor's office of strategic planning and budgeting that includes the total funding distributions by each university.

D. This section is repealed from and after December 31, 2030.

Sec. 19. Proposition 204 administration; exclusion; county expenditure limitations

County contributions for the administrative costs of implementing sections 36-2901.01 and 36-2901.04, Arizona Revised Statutes, that are made pursuant to section 11-292, subsection O, Arizona Revised Statutes, are excluded from the county expenditure limitations.

Sec. 20. Competency restoration; exclusion; county expenditure limitations

County contributions made pursuant to section 13-4512, Arizona Revised Statutes, are excluded from the county expenditure limitations.

Sec. 21. AHCCCS; risk contingency rate setting

Notwithstanding any other law, for the contract year beginning October 1, 2022 and ending September 30, 2023, the Arizona health care cost containment system administration may continue the risk contingency rate setting for all managed care organizations and the funding for all managed care organizations administrative funding levels that were imposed for the contract year beginning October 1, 2010 and ending September 30, 2011.

Sec. 22. Health services lottery monies fund; use; fiscal year 2022-2023

Notwithstanding sections 5-572 and 36-108.01, Arizona Revised Statutes, monies in the health services lottery monies fund established by section 36-108.01, Arizona Revised Statutes, may be used for the purposes specified in the fiscal year 2022-2023 general appropriations act.

Sec. 23. Arizona health care cost containment system administration; rulemaking exemption; hospital assessment

Notwithstanding any other law, for the purposes of implementing the hospital assessment pursuant to section 36-2999.72, Arizona Revised Statutes, the Arizona health care cost containment system administration is exempt from the rulemaking requirements in title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this section, except that the administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the hospital assessment.

Sec. 24. Chiropractic services; AHCCCS; report; delayed repeal

A. Subject to approval by the centers for medicare and medicaid services, the Arizona health care cost containment system administration and its contractors may provide medically necessary chiropractic services authorized by section 36-2907, subsection A, paragraph 15, Arizona Revised Statutes, as added by this act.

B. The Arizona health care cost containment system administration shall:

1. Prescribe the qualifying conditions under which the chiropractic services prescribed in section 36-2907, subsection A, paragraph 15, Arizona Revised Statutes, as added by this act, may be used.

2. Prescribe provider qualifications for chiropractic services.

3. Report on chiropractic service utilization and any identified cost savings.

C. On or before January 21, 2027, the Arizona health care cost containment system administration shall submit a report of its findings regarding the provision of chiropractic services to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of the report to the secretary of state.

D. This section is repealed from and after June 30, 2027.

Sec. 25. Department of health services; rulemaking exemption; air ambulance service

Notwithstanding any other law, for the purposes of addressing air ambulance service medical staffing pursuant to title 36, chapter 21.1, article 1, Arizona Revised Statutes, the department of health services is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for fiscal year 2022-2023.

Sec. 26. Legislative intent; implementation of program

The legislature intends that for fiscal year 2022-2023 the Arizona health care cost containment system administration implement a program within the available appropriation.

Sec. 27. Conditional enactment; notice

A. Section 36-2901, Arizona Revised Statutes, as amended by this act, does not become effective unless on or before July 1, 2023 the centers for medicare and medicaid services authorizes the Arizona health care cost containment system administration to either redetermine the eligibility of members who are less than one year postpartum and are under one hundred thirty-three percent of the federal poverty level or use another methodology that enables the administration to provide coverage for eligible postpartum women pursuant to section 36-2901, Arizona Revised Statutes, as amended by this act, within the existing appropriation.

B. The director of the Arizona health care cost containment system shall notify the director of the Arizona legislative council in writing on or before July 1, 2023 either:

1. Of the date on which the condition was met.

2. That the condition was not met.

APPROVED BY THE GOVERNOR JUNE 28, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2022.

B. An air ambulance service may transport a patient for whom the air ambulance does not have the resources to provide appropriate medical care:
1. In a rescue situation in which:
   a. An individual's life, limb, or health is imminently threatened;
   b. The threat may be reduced or eliminated by removing the individual from the situation to a location in which medical services may be provided; and
   c. There is no other practical means of transport, including another air ambulance service, available; or
2. For an interfacility transport of a patient if:
   a. The sending health care institution provides medically appropriate life support measures, staff, and equipment to sustain the patient during the interfacility transport; and
   b. Each staff member provided by the sending health care institution has completed training in the subject areas listed in R9-25-707(A) before participating in the interfacility transport.

C. If an air ambulance service completes a mission under subsection (B) for which the air ambulance service does not have the resources to provide appropriate medical care, the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(8),
2. The manner in which the air ambulance service deviated from subsection (A)(5), and
3. The justification for operating under subsection (B).

D. If an air ambulance service uses a single-member medical team as authorized under R9-25-706(B) and (C), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(9),
2. The name and qualifications of the individual comprising the single-member medical team, and
3. The justification for using a single-member medical team.

E. If an air ambulance service completes a critical care interfacility transport mission under conditions permitted in R9-25-802(F), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(9),
2. A description of the life-support equipment used on the mission,
3. A list of the equipment and supplies required in R9-25-802(C) that were removed from the air ambulance for the mission, and
4. The justification for conducting the mission as permitted under R9-25-802(F).

F. A licensee shall ensure that an individual does not serve on the medical team for an interfacility maternal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(2).

G. A licensee shall ensure that an individual does not serve on the medical team for an interfacility neonatal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(3).

H. A licensee shall ensure that the air ambulance service:
1. Retains each document required to be created or maintained under this Article or Article 2 or 8 of this Chapter for at least three years after the last event recorded in the document, and
2. Produces each document for Department review upon request.

I. A licensee shall ensure that, while on a mission, two-way voice communication is available:
1. Between and among personnel on the air ambulance, including the pilot; and
2. Between personnel on the air ambulance and the following persons on the ground:
   a. Personnel;
   b. Physicians providing on-line medical direction or on-line medical guidance to medical team members; and
   c. For a rotor-wing air ambulance mission:
      i. Emergency medical services providers, and
      ii. Law enforcement agencies.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 656, effective April 8, 2006 (Supp. 06-1). R9-25-705 repealed; new Section R9-25-705 renumbered from R9-25-710 and amended by final rulemaking at 28 A.A.R. 842 (April 29, 2022), effective June 5, 2022 (Supp. 22-2). Amended by final expedited rulemaking 29 A.A.R. 1461 (June 30, 2023), with an immediate effective date of June 6, 2023 (Supp. 23-2).

R9-25-706. Minimum Standards for Mission Staffing (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

A. A licensee shall ensure that, except as provided in subsection (B):
1. Each critical care mission is staffed by a medical team of at least two individuals with the following qualifications:
   a. For a critical care interfacility transport mission:
      i. A physician or registered nurse; and
      ii. Another physician, another registered nurse, a Paramedic, or a licensed respiratory care practitioner; and
   b. For a critical care mission that is an emergency medical services transport:
      i. A physician or registered nurse; and
      ii. A Paramedic or another registered nurse;
2. Each interfacility maternal transport mission is staffed by a medical team that:
   a. Complies with the requirements for a critical care mission medical team in subsection (A)(1); and
   b. Has the following additional qualifications:
      i. Proficiency in advanced emergency cardiac life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
      ii. Proficiency in neonatal resuscitation; and
      iii. Proficiency in stabilization and transport of the pregnant patient;
3. Each interfacility neonatal transport mission is staffed by a medical team that:
   a. Complies with the requirements for a critical care mission medical team in subsection (A)(1); and
   b. Has the following additional qualifications:
      i. Proficiency in pediatric advanced emergency life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association; and

ii. Proficiency in neonatal resuscitation and stabilization of the neonatal patient; and

4. Each advanced life support mission is staffed by a medical team of at least two individuals with the following qualifications:
   a. For an advanced life support mission that is an emergency medical services transport:
      i. A physician, registered nurse, or Paramedic; and
      ii. Another Paramedic or another registered nurse;
   b. For an advanced life support interfacility transport mission:
      i. A physician, registered nurse, or Paramedic; and
      ii. Another Paramedic, a licensed respiratory care practitioner, or another registered nurse.

B. If the pilot on a mission using a rotor-wing air ambulance determines, in accordance with the air ambulance service's written guidelines required under subsection (C)(1), that the weight of a second medical team member could potentially compromise the performance of the rotor-wing air ambulance and the safety of the mission, and the use of a single-member medical team is consistent with the on-line medical direction or on-line medical guidance received as required under subsection (C)(2), an air ambulance service may use a single-member medical team consisting of an individual with the following qualification:
1. For a critical care mission, a physician or registered nurse; and
2. For an advanced life support mission, a physician, registered nurse, or Paramedic.

C. A licensee shall ensure that:
1. Each air ambulance service rotor-wing pilot is provided with written guidelines to use in determining when the weight of a second medical team member could potentially compromise the performance of a rotor-wing air ambulance and the safety of a mission, including the conditions of density altitude and weight that warrant the use of a single-member medical team;
2. The following are done, without delay, after an air ambulance service rotor-wing pilot determines that the weight of a second medical team member could potentially compromise the performance of a rotor-wing air ambulance and the safety of a mission:
   a. The pilot communicates that information to the medical team,
   b. The medical team obtains on-line medical direction or on-line medical guidance regarding the use of a single-member medical team, and
   c. The medical team proceeds in compliance with the on-line medical direction or on-line medical guidance;
3. A single-member medical team has the knowledge and medical equipment to perform one-person cardiopulmonary resuscitation;
4. The patient care provided by each single-member medical team, including consideration of each patient's status upon arrival at the destination health care institution, is reviewed through the quality improvement processes in R9-25-705(A)(11)(b) and (c); and
5. A single-member medical team is used only when no other transport team is available that would be more appropriate for delivering the level of care that a patient requires.

D. A licensee shall ensure that the air ambulance service creates and maintains for each personnel member a file containing documentation of the personnel member's qualifications, including, as applicable, licenses, certifications, and training records.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 656, effective April 8, 2006 (Supp. 06-1). R9-25-706 renumbered to R9-25-710; new Section R9-25-706 renumbered from R9-25-711 and amended by final rulemaking at 28 A.A.R. 842 (April 29, 2022), effective June 5, 2022 (Supp. 22-2). Amended by exempt rulemaking at 28 A.A.R. 3681 (December 2, 2022), with an immediate effective date of November 8, 2022 (Supp. 22-4).

R9-25-707. Minimum Standards for Training (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)

A. A licensee shall ensure that each medical team member completes training in the following subjects before serving on a mission:
1. Aviation terminology;
2. Physiological aspects of flight;
3. Patient loading and unloading;
4. Safety in and around the aircraft;
5. In-flight communications;
6. Use, removal, replacement, and storage of the medical equipment installed on the aircraft;
7. In-flight emergency procedures;
8. Emergency landing procedures; and
9. Emergency evacuation procedures.

B. A licensee shall ensure that the air ambulance service documents each medical team member's completion of the training required under subsection (A), including the name of the medical team member, each training component completed, and the date of completion.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 656, effective April 8, 2006 (Supp. 06-1). R9-25-707 renumbered to R9-25-709; new Section R9-25-707 renumbered from R9-25-713 and amended by final rulemaking at 28 A.A.R. 842 (April 29, 2022), effective June 5, 2022 (Supp. 22-2).

R9-25-708. Minimum Standards for Medical Control (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

A. A licensee shall ensure that:
1. The air ambulance service has an administrative medical director who:
   a. Meets the qualifications in subsection (B);
   b. Supervises and evaluates the quality of medical care provided by medical team members;
   c. Ensures the competency and current qualifications of all medical team members;
   d. Except as provided in subsections (A)(3) and (4), ensures that:
      i. Each EMCT medical team member receives medical direction as required under Article 2 of this Chapter; and
      ii. Each non-EMCT medical team member receives medical guidance through written treatment protocols and according to subsection (C); and
   e. Approves, ensures implementation of, and annually reviews treatment protocols to be followed by medical team members;
2. The administrative medical director reviews data related to patient care and transport services provided, documentation, and patient status upon arrival at destination that are collected through the quality management program in R9-25-705(A)(11);
3. For an interfacility maternal transport mission, on-line medical direction or on-line medical guidance provided

Authorizing Statutes

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property

related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the

label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or

pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

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

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

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

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

(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.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.

2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.

3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.

4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.

2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.

3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies, materials and services necessary in the administration of this chapter.

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

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

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

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

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

36-2213. Regulation of air ambulance services

The director shall adopt rules to establish minimum standards for the operation of air ambulance services that are necessary to assure the public health and safety. The director may use the current standards adopted by the commission on accreditation of air medical services. Each rule shall reference the specific authority from this chapter under which the rule was formulated. The rules shall provide for the department to do the following:

1. Establish standards and requirements relating to at least the following:

(a) Medical control plans. These plans shall conform to the standards adopted pursuant to section 36-2204, paragraph 9.

(b) Qualifications of the medical director of the air ambulance services.

(c) Operation of only those air ambulances registered pursuant to section 36-2212 and licensed pursuant to title 28, chapter 25.

2. Establish response times and operation times to assure that the health and safety needs of the public are met.

3. Establish standards for emergency medical dispatch training, including prearrival instruction. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.

4. Require the filing of run log information.

5. Issue, transfer, suspend or revoke air ambulance service licenses under terms and conditions consistent with this chapter. These rules shall be consistent for all ambulance services.

6. Investigate the operation of an air ambulance service including a person operating an ambulance that has not been issued a certificate of registration and conduct on-site investigations of facilities communications equipment, vehicles, procedures, materials and equipment.

7. Prescribe the terms of the air ambulance service license.

8. Prescribe the criteria for the air ambulance service license inspection process and for determining an air ambulance service's compliance with licensure requirements. The director shall accept proof that an air ambulance service is accredited by the commission on accreditation of air medical services in lieu of all licensing inspections required if the director receives a copy of the air ambulance service's accreditation report.

ARIZONA DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 18, Articles 1-5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 15, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION**
Title 2, Chapter 18, Articles 1-5

Summary

This Five-Year Review Report (5YRR) from Arizona Strategic Enterprise Technology (ASET), a division within the Arizona Department of Administration (Department), relates to seven (7) rules in Title 2, Chapter 18, Articles 1-5 regarding Government Information Technology. Specifically, this review covers the following Articles:

- Article 1. General Provisions
- Article 2. Information Technology Projects
- Article 3. Information Technology Planning
- Article 4. Appeals of Decisions
- Article 5. Alternative Access to Electronic or Information Technology

These rules outline the procedures for agencies to follow to obtain approval of information technology projects, to prepare annual information technology plans, and when information technology plans have been disapproved by the Department. Furthermore, the rules also state how the agencies should proceed if compliance with accessibility standards imposes an undue burden, provide the ability for an individual to file a complaint regarding accessibility standards for electronic or information technology, and outlines the procedure for appealing complaints of agency's decisions.

The Department indicates it completed its proposed course of action from its previous report by rulemaking that was adopted on June 7, 2019.

Proposed Action

In the current report, the Department indicates, due to a statutory change in 2021, there is a minor difference between the deadline to submit the budget units strategic plan used in statute and the deadline in rule R2-18-301(A). A.R.S. § 18-104(f) specifies that the budget units strategic plan must be submitted on or before May 15 while R2-18-301(A) states the deadline is September 1. The Department indicates it anticipates submitting a rulemaking package to the Council to address this issue by this month, November 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 states that the rules 18-2-101 through 18-2-401 continue to present no economic burden to the general public or small businesses. As the Federal accessibility regulations require the same or greater level of compliance, rules 18-2-501 through R2-18-503 rules do not create an additional burden to the general public or small business. Stakeholders include the Department, State 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 believes 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 agencies are efficient, cost effective and necessary to achieving the regulatory objective.

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?

As outlined above, the Department indicates, due to a statutory change in 2021, there is inconsistency between the deadline to submit the budget units strategic plan used in statute and the deadline in rule R2-18-301(A). A.R.S. § 18-104(f) specifies that the budget units strategic plan must be submitted on or before May 15 while R2-18-301(A) states the deadline is September 1.

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 mostly enforced as written except as related to the deadline to submit budget units strategic plan pursuant to rule R2-18-301(A), which is inconsistent with recent statutory changes to the deadline in A.R.S. § 18-104(f). The Department enforces the statutory deadline rather than the deadline outlined in the rule.

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

The Department indicates there are no corresponding federal laws related to these rules, other than those in Article 5. The Department indicates Section 508 of the Rehabilitation Act (29 U.S.C. § 794d) is applicable to rules R2-18-501 through 503. However, the Department states these rules are equivalent or less burdensome than the corresponding federal laws and clarify processes to meet the corresponding federal laws.

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

Not applicable. The Department indicates none of these rules require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department, relates to seven (7) rules in Title 2, Chapter 18, Articles 1-5 regarding Government Information Technology. These rules outline the procedures for agencies to follow to obtain approval of information technology projects, to prepare annual information technology plans, and when information technology plans have been disapproved by the Department. Furthermore, the rules also state how the agencies should proceed if compliance with accessibility standards imposes an undue burden, provide the ability for an individual to file a complaint regarding accessibility standards for electronic or information technology, and outlines the procedure for appealing complaints of agency's decisions.

The Department indicates the rules are clear, concise, understandable, and effective. However, the Department indicates rule R2-18-301 is not consistent with statute and is not enforced as written. he Department indicates, due to a statutory change in 2021, there is a minor difference between the deadline to submit the budget units strategic plan used in statute and the deadline in rule R2-18-301(A). A.R.S. § 18-104(f) specifies that the budget units strategic plan must be submitted on or before May 15 while R2-18-301(A) states the deadline is September 1. The Department indicates it anticipates submitting a rulemaking package to the Council to address this issue by this month, November 2023.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Elizabeth Alvarado-Thorson
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

ARIZONA STRATEGIC ENTERPRISE TECHNOLOGY OFFICE
100 NORTH FIFTEENTH AVENUE • SUITE 302
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(602) 542-2250

Via EMail to grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADOA ASET, Title 2, Chapter 18, Articles 1 through 5 - Five Year Review Report

Dear Chair Sornsin:

Please find attached the Five Year Review Report of ADOA ASET for Title 2, Chapter 18, Articles 1 through 5 which is due on July 31, 2023.

ADOA ASET hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact me or Lisa Meyerson Marshall at lisa.meyerson@azdoa.gov or 602-284-3186.

Sincerely,

DocuSigned by:
J.R. Sloan
9AF7C2A7FCFB49C...

J.R. Sloan
State Chief Information Officer (CIO)
State of Arizona
o: 602.364.4788 | m: 602.281.0394

Cc: Lisa Meyerson Marshall

Arizona Department of Administration
Arizona Strategic Enterprise Technology (ASET)

5 YEAR REVIEW REPORT

Title 2, Chapter 18, Articles 1 through 5

Jul 25, 2023

1. Authorization of the rule by existing statutes

A.R.S. § 18-101, 18-104, 18-121, 18-132, and 18-305 (D) Provides specific authority for the rules

2. The objective of each rule:

Rule	Objective
R2-18-101. Definitions	This rule defines the meaning of words and phrases contained within Chapter 18, Government Information Technology Agency. The rule was adopted so that agencies understood specific terminology used throughout the rules and prevent misunderstanding of their application and meaning. Definitions were added to the Rule when Rules regarding Accessibility were added in 2019 (R2-18-501 to R2-18-503).
R2-18-201. Information Technology Project Justification and Monitoring	This rule outlines the procedures for agencies to follow in order to obtain approval of information technology projects. The rule was established to ensure agencies followed common standards, centralized planning documents, consistent quality assurance and project management processes to reduce risk of project failure, increase project quality, and on-time and on budget completions in order to prevent unneeded, overpriced or incompatible IT systems being purchased or developed.
R2-18-301. Information Technology Planning	This rule outlines the procedures for agencies to follow in order to prepare annual information technology plans. This rule was established to guide agencies in putting together centralized planning documents needed for annual information technology plans. The rule prevents agencies from deviating from common standards and consistent quality assurance processes to reduce risk of project failure, increase project quality, and on-time and on-budget completions.

R2-18-401. Appeals to ITAC	This rule outlines the procedures for agencies to use when an information technology plan or project has been disapproved by the Department. The rule was established so that agencies have clear procedures to follow in appealing the decision of the Department. In addition, prevents an unfair process for the agencies seeking an appeal.
R2-18-501. Accessibility Standards	The rule was established to provide comparable access to state agencies and resources and to require agencies to designate an Accessibility Compliance Representative. Further, the rules state how the agencies should proceed if compliance with accessibility standards imposes an undue burden. This rule was effective June 7, 2019 (Supp. 19-2).
R2-18-502. Complaints	The rule was established to provide the ability for an individual to file a complaint regarding accessibility standards for electronic or information technology. The rule specifies the process used by the agencies to evaluate such complaints.
R2-18-503. Complaint Review Process	This rule outlines the procedure for appealing complaints of agency's decisions regarding complaints through the previous rule, R2-18-502.

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

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

Due to a statutory change in 2021, there is a minor difference between the date used in Statute and the Administrative Rule where the Statute specifies that the budget units strategic plan must be submitted on or before May 15, A.R.S 18-104(f), the Administrative rule still states September, R2-18-301(A).

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

The Department enforces R2-18-201, R2-18-401, R2-18-501, R2-18-502 and R2-18-503 .
R2-18-101 is "definitions" and is not directly enforced.
Rule R2-18-301 is not enforced as written, specifically as it relates to the deadline.

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

All of the rules are generally 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 regarding any of the rules during the last five years.

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

The rules 18-2-101 through 18-2-401 continue to present no economic burden to the general public or small businesses. As the Federal accessibility regulations require the same or greater level of compliance, Rules 18-2-501 through R2-18-503 rules do not create an additional burden to the general public or small businesses.

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?

Yes, rules updates were completed as previously requested. These rules were adopted on June 7, 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 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 agencies are efficient, cost effective and necessary to achieving the regulatory objectives.

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

No for rules 18-2-101 through 18-2-401, there are no corresponding Federal laws to these rules.

For rules 18-2-501 through 18-2-503 these rules are equivalent or less burdensome than the corresponding Federal laws, Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and clarify processes to meet the corresponding federal laws.
Reference: https://www.section508.gov/manage/laws-and-policies/

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:
No, there are no rules that require compliance with the general permit requirements of A.R.S. §41-1037.

14. Proposed course of action

We will be submitting a rules package for the date change of September to May for IT Plan submission as described in paragraph 4. We anticipate submitting this rules package in November, 2023.

2 A.A.C. 18 Supp. 19-2

www.azsos.gov

Arizona Administrative CODE

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2019 through June 30, 2019

Title 2

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 2. ADMINISTRATION

CHAPTER 18. GOVERNMENT INFORMATION TECHNOLOGY

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.

Questions about these rules? Contact:

Department: Department of Administration
Name: Lisa Meyerson Marshall
Address: 100 N. 15th Ave., Suite 400
Phoenix, AZ 85007
Telephone: (602) 364-4780
E-mail: lisa.meyerson@azdoa.gov
Website: https://aset.az.gov/

The release of this Chapter in Supp. 19-2 replaces Supp. 04-4, 1-2 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).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, 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

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 2. ADMINISTRATION

CHAPTER 18. GOVERNMENT INFORMATION TECHNOLOGY

Authorizing Statute: A.R.S. § 18-104(A)(12)

Editor's Note: The name of this Chapter was changed to Government Information Technology effective June 7, 2019 (Supp. 19-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R2-18-101, adopted effective July 9, 1998 (Supp. 98-3).

Section

ARTICLE 2. INFORMATION TECHNOLOGY PROJECTS

Article 2, consisting of Section R2-18-201, adopted effective July 9, 1998 (Supp. 98-3).

Section

ARTICLE 3. INFORMATION TECHNOLOGY PLANNING

Article 3, consisting of Section R2-18-301, adopted effective July 9, 1998 (Supp. 98-3).

Section

ARTICLE 4. APPEALS OF DECISIONS

Article 4, consisting of Section R2-18-401, adopted effective July 9, 1998 (Supp. 98-3).

Section

ARTICLE 5. ALTERNATIVE ACCESS TO ELECTRONIC OR INFORMATION TECHNOLOGY

Article 5, consisting of Sections R2-18-501 through R2-18-503, made by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

Section

CHAPTER 18. GOVERNMENT INFORMATION TECHNOLOGY

ARTICLE 1. GENERAL PROVISIONS

R2-18-101. Definitions

Unless the context requires otherwise, the following definitions apply:

"Accessibility Compliance Representative" is the budget unit's designated representative for Section 508 compliance matters to receive, investigate and process complaints that allege the budget unit's failure to comply with accessibility standards.

"Accessibility Standards" means the statewide accessibility standards adopted by the Department to address compliance with Section 508 in developing, procuring, maintaining or using electronic or information technology.

"Appeal" means a written request filed with the Information Technology Authorization Committee (ITAC) by a budget unit challenging a decision by the Arizona Department of Administration to reject the budget unit's proposed IT Plan or project.

"Comparable Access" means alternative means of access that allows the individual to use the information and data in accordance with applicable state and federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

"Critical information technology project," as used in A.R.S. Title 18, Chapter 1, means an IT project having total costs greater than $25,000 and requires monitoring, with monitoring frequency and duration left to the sole discretion of the Department.

"Department" means the Arizona Department of Administration.

"Disapprove" means reject.

"Expenditure and Activity Report" means a standard project status summary that is used by a budget unit to report progress and costs on IT projects.

"Information technology plan" or "IT Plan," as used in A.R.S. Title 18, Chapter 1, means a documented strategy for information technology resources and practices to support business direction over a specific period of time.

"Information technology project or "IT Project," as used in A.R.S. Title 18, Chapter 1, means a series of activities, events, and investments to develop and implement new or enhanced IT over a prescribed period of time.

"ITAC" means Information Technology Authorization Committee, which is established under A.R.S. § 18-121.

"Major information technology project," as used in A.R.S. Title 18, Chapter 1, means an IT project that has total costs greater than $1 million.

"PIJ" means project investment justification.

"PIJ template" means a standard set of forms and reporting formats to be prepared by a budget unit and submitted to the Department to describe an IT project and to identify resources, technologies, benefits, costs, goals, risks, financials, and other key factors, to establish specific milestones for development and implementation of the project.

"Quality assurance," as used in A.R.S. Title 18, Chapter 1, means a budget unit's process of evaluating IT goals, objectives, and activities to promote successful implementation.

"Section 508" means Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended.

"Standards" as used in A.R.S. Title 18, Chapter 1 means requirements associated with development, maintenance, use, and access to IT based on generalized industry benchmarks and best practices.

"Telecommunications," as used in A.R.S. § 18-101(6), does not include land mobile radio services.

"Temporarily suspend the expenditure of monies," as used in A.R.S. Title 18, Chapter 1, means an order from the Department to a budget unit to immediately cease expenditures of monies and related project activities.

"Total project costs" or "total costs," as used in A.R.S. Title 18, Chapter 1, means the IT development and implementation costs associated with an information technology project.

Historical Note

Adopted effective July 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 4449, effective December 4, 2004 (04-4). Amended by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

ARTICLE 2. INFORMATION TECHNOLOGY PROJECTS

R2-18-201. Information Technology Project Justification and Monitoring

A. If an IT project requires Department or ITAC approval, under A.R.S. Title 41, Chapter 23 and Title 18 Chapter 1, a budget unit shall not commit or spend funds on the project and shall not enter into a project-specific contract or vendor agreement until the budget unit receives written Department or ITAC approval or unless the contract or vendor agreement is contingent upon receipt of such approval.

1. A budget unit shall submit a PIJ describing the value to the public and the state for the IT project, consistent with the approved budget unit IT Plan submitted to the Department under R2-18-301. The budget unit shall use the current PIJ template and submit the completed PIJ to the Department.
2. If the PIJ is incomplete, the Department shall identify deficiencies and either request additional information or return the PIJ to the budget unit for completion and resubmission.
3. The Department or ITAC shall use the following general criteria to review each completed PIJ within its authority:
   a. Whether the proposed solution addresses the stated problem or situation;
   b. Whether the budget unit is competent to carry out the project successfully;
   c. Whether sufficient sponsorship and support by budget unit leadership exists;
   d. Whether cost estimates provided are accurate;
   e. Whether the proposed project aligns with the budget unit's Strategic IT Plan; and
   f. Whether the proposed solution complies with statewide IT standards.
4. Based on the review, the Department or ITAC shall take one of the following actions:
   a. Approve,
   b. Conditionally approve, or
   c. Disapprove.
5. The Department shall inform the budget unit of the review decision in writing.
6. If the Department or ITAC conditionally approves the IT project, it shall identify the conditions the budget unit shall satisfy to proceed with the project. Unless otherwise stated in the Department's communication to the budget unit, the budget unit may begin the IT project, with

Department monitoring, while the identified conditions are in the process of being satisfied by the budget unit.

7. If the Department or ITAC disapproves the IT project, the budget unit shall not begin the IT project, nor commit or spend any funds nor enter into any project-specific contract or vendor agreement.

B. If the Department determines that an IT project is at risk of failing to achieve its intended results or does not comply with A.R.S. Title 18, Chapter 1, the Department shall temporarily suspend the expenditure of monies and related activities for the IT project or recommend to ITAC that ITAC temporarily suspend the expenditure of monies and related activities for the IT project.

C. Any temporary suspension under subsection (B) shall only be lifted by the Department or ITAC, as applicable, once the cause for the suspension has been adequately rectified as determined in the sole discretion of the Department or ITAC.

Historical Note
Adopted effective July 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 4449, effective December 4, 2004 (04-4). Amended by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

ARTICLE 3. INFORMATION TECHNOLOGY PLANNING

R2-18-301. Information Technology Planning

A. Under A.R.S. Title 18, Chapter 1, each budget unit shall annually develop and submit to the Department an IT Plan containing goals, challenges, and plans, on or before September 1 each year.

B. The Department shall review the proposed budget unit IT Plan to determine whether:

1. Outcomes are measurable,
2. Quality assurance plan is included,
3. Disaster recovery plan is included, and
4. IT goals align with statewide IT standards.

C. The Department shall either approve or disapprove the IT Plan and shall notify the budget unit of its decision. An approved budget unit IT Plan remains in effect until the end of the fiscal year for which it is submitted.

Historical Note
Adopted effective July 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 4449, effective December 4, 2004 (04-4). Amended by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

ARTICLE 4. APPEALS OF DECISIONS

R2-18-401. Appeals to ITAC

A. A budget unit, which appeals a decision by the Department regarding the disapproval of a budget unit IT Plan or a budget unit IT project, shall file a written appeal with ITAC within 30 days from receipt of notice of the Department decision being appealed.

B. An appeal shall include:

1. The decision being appealed,
2. The specific facts on which the appeal is based,
3. The associated errors in the Department's decision, and
4. The action requested of ITAC.

C. An appealed decision shall remain in effect during the appeal. An appealing budget unit shall not resume or initiate any project activity or expense unless instructed otherwise by the Director of the Department. ITAC shall inform a budget unit regarding its decision on any appeal within 90 days of receipt of the appeal and if ITAC does not do so, the appeal will be considered denied.

Historical Note
Adopted effective July 9, 1998 (Supp. 98-2). Amended by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

ARTICLE 5. ALTERNATIVE ACCESS TO ELECTRONIC OR INFORMATION TECHNOLOGY

R2-18-501. Accessibility Standards

A. The Department shall prescribe electronic or information technology accessibility standards as authorized by A.R.S. §§ 18-104 and 18-105. Electronic or information technology products covered by these standards shall comply with all applicable provisions. The Arizona Strategic Enterprise Technology (ASET) Office of the Department shall maintain the accessibility standards and make them available to the public.

B. Each budget unit shall designate an Accessibility Compliance Representative and ensure that their products comply with accessibility standards, unless an undue burden would be imposed on the budget unit. When a budget unit determines compliance with these standards imposes an undue burden, budget units shall provide individuals with disabilities the information and data involved that allows the individual comparable access.

C. Each budget unit shall evaluate the accessibility of any proposed electronic or information technology system prior to the expenditure of State funds. The budget unit shall include the results of the accessibility evaluation in a written report maintained with the solution documentation. If applicable, the report shall include a declaration that the budget unit has determined that an undue burden or exception exists along with an explanation of the undue burden and how it was determined.

Historical Note
Section R2-18-501 made by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

R2-18-502. Complaints

A. Any individual may file a complaint alleging that a budget unit does not comply with accessibility standards in regard to its electronic or information technology with the Accessibility Compliance Representative of the budget unit. The written complaint must:

1. State the name and contact information for the complainant;
2. Identify the electronic or information technology in question; and,
3. Describe the non-conformance with the accessibility standards in sufficient detail as to enable a review.

B. Upon receipt of a complaint, the Accessibility Compliance Representative will review the complaint to respond to and make a good faith effort to resolve any complaint by determining whether the electronic or information technology listed in the complaint is subject to accessibility standards. The representative will conduct a review within 60 days from receipt of the written complaint.

C. Upon completion of the review, the budget unit shall provide written notice of the results of the review to the complainant and Department of Administration, which shall include at least one of the following:

1. Documentation that the technology conforms to all applicable accessibility standards;
2. A documented explanation that any non-conformance with accessibility standards was exempted due to an undue burden; or
3. An agreement in part or in whole with the written complaint that includes a plan with reasonable timelines for conforming to applicable accessibility standards.

Historical Note
Section R2-18-502 made by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

R2-18-503. Complaint Review Process

A. If a complainant is not satisfied with the complaint response issued by a budget unit, the complaint and the budget unit response can be filed within 30 days of issuance with the Director of the Department.

B. The Director or the Department's representative or representatives shall evaluate the complaint and budget unit response and may gather additional information as necessary to render an independent decision within 60 days of receipt of the complaint.

1. If it is determined the technology does not comply with accessibility standards, a written notice shall be sent to the budget unit, with a copy to complainant, of such findings and a requirement for a plan of resolution to be sent within 60 days to the Department and the complainant.
2. If it is determined the technology does comply with accessibility standards or that an undue burden does exist and is therefore exempt from compliance, a written notice shall be sent to complainant, with a copy to the budget unit, of such findings.

Historical Note
Section R2-18-503 made by final rulemaking at 25 A.A.R. 1133, effective June 7, 2019 (Supp. 19-2).

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.

18-104. Powers and duties of the department; violation; classification

A. The department shall:

1. Develop, implement and maintain a coordinated statewide plan for information technology. This includes:

(a) Adopting statewide technical and coordination standards for information technology.

(b) Serving as statewide coordinator for information technology resources.

(c) Developing a statewide disaster recovery plan, identifying risks in each budget unit and directing agencies to adopt risk mitigation strategies, methods and procedures to minimize the risks.

(d) Developing a list of approved department projects by priority category.

(e) Developing a detailed list of information technology assets that are owned, leased or employed by this state.

(f) Evaluating and either approving or disapproving budget unit information technology plans. Budget units shall submit information technology plans that include quality assurance plans and disaster recovery plans to the department each year on or before May 15. The legislative and judicial departments of state government shall submit information technology plans on or before September 1 for information purposes.

(g) Evaluating specific information technology projects relating to the approved budget unit and statewide information technology plans in consultation with the statewide information security and privacy office in the Arizona department of homeland security. The department shall approve or reject projects with total costs of at least $25,000 but not more than $1,000,000 and may establish conditional approval criteria, including procurement purchase authority. If the total project costs exceed $1,000,000, the department shall evaluate the project and make recommendations to the information technology authorization committee. If the total project costs exceed $5,000,000, the department shall require the budget unit to contract with an independent third party to review and guide the technology approach, scope, estimated cost, timeline for completion and overall feasibility of the project before making recommendations to the information technology authorization committee. On or before the thirtieth day following the last day of each calendar quarter, the budget unit shall submit a report from the independent third party to the information technology authorization committee and the joint legislative budget committee regarding the progress of each ongoing project. As part of a budget request for an information technology project that has total costs of at least $25,000, a budget unit shall indicate the status of review by the department. Projects shall not be artificially divided to avoid review by the department.

2. Require that budget units incorporate a life-cycle analysis into the information technology planning, budgeting and procurement processes.

3. Require that budget units demonstrate expertise to carry out information technology plans, either by employing staff or contracting for outside services.

4. Monitor information technology projects that the department considers to be major or critical, including expenditure and activity reports and periodic review.

5. Temporarily suspend the expenditure of monies if the department determines that the information technology project is at risk of failing to achieve its intended results or does not comply with the requirements of this section.

6. Continuously study emergent technology and evaluate its impact on this state's system.

7. Advise each budget unit as necessary and report to the committee on an annual basis.

8. Provide to budget units information technology consulting services it deems necessary, either directly or by procuring outside consulting services.

9. Maintain all otherwise confidential information received from a budget unit pursuant to this section as confidential.

10. Provide staff support to the committee.

11. Subject to section 35-149, accept, spend and account for grants, monies and direct payments from public or private sources and other grants of monies or property to conduct programs that it deems consistent with the government information technology purposes and objectives of the department.

12. Adopt rules it deems necessary or desirable to further the government information technology objectives and programs of the department.

13. Formulate policies, plans and programs to effectuate the government information technology purposes of the department.

14. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

15. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any public or private party.

16. Have an official seal that shall be judicially noticed.

17. Establish an interactive online directory of codes, rules, ordinances, if available electronically, and statutes to assist individuals and businesses with regulatory requirements and obligations. As provided in this paragraph, counties, municipalities and budget units shall submit information in a manner and format prescribed by the agency.

18. Manage enterprise-level information technology infrastructure, except that the information security and privacy office in the Arizona department of homeland security shall manage the information security aspects of the infrastructure.

19. Develop strategies to protect the information technology infrastructure of this state and the data that is stored on or transmitted by the infrastructure.

20. Temporarily suspend access to information technology infrastructure when directed by the Arizona department of homeland security and consult with the Arizona department of homeland security regarding security policies, standards and procedures.

B. The department shall advise the judicial and legislative branches of state government concerning information technology.

C. The department may examine all books, papers, records and documents in the office of any budget unit and may require any state officer of the budget unit to furnish information or statements necessary to carry out this chapter.

D. The director, any member of the director's staff or any employee who knowingly divulges or makes known in any manner not permitted by law any particulars of any confidential record, document or information is guilty of a class 5 felony.

18-121. Information technology authorization committee; members; terms; duties; compensation; definition

A. The information technology authorization committee is established consisting of the following members:

1. One member of the house of representatives who is appointed by the speaker of the house of representatives and who shall serve as an advisory member.

2. One member of the senate who is appointed by the president of the senate and who shall serve as an advisory member.

3. Four members from private industry who are appointed by the governor pursuant to section 38-211, or their designees, and who are knowledgeable in information technology.

4. One local government member and one federal government member who are appointed by the governor and who shall serve as advisory members.

5. Two members who are directors of state agencies and who are appointed by the governor, or their designees.

6. The administrative director of the courts or the director's designee.

7. The director of the department of administration or the director's designee, who shall be the chairperson of the committee but for all other purposes shall serve as an advisory member.

8. Two members from either private industry or state government who are appointed by the governor, or their designees.

9. The staff director of the joint legislative budget committee, or the staff director's designee, who shall serve as an advisory member.

10. The statewide chief information security officer or the officer's designee.

B. Committee members who are from private industry serve two-year terms. The other members serve at the pleasure of their appointing officers.

C. For all budget units and the legislative and judicial branches of state government, the committee shall:

1. Review established statewide information technology standards and the statewide information technology plan.

2. Review the minimum qualifications established by the director for each position authorized for the department for information technology.

3. Approve or disapprove all proposed information technology projects, including project changes and contract amendments, that exceed a total cost of $1,000,000, excluding public monies from county, municipal and other political subdivision sources that are not deposited in a state fund. The committee shall also approve or disapprove any proposed information technology project involving more than one budget unit if the collective total development cost of the project is expected to be more than $1,000,000. As part of a budget request for an information technology project that has total costs of more than $1,000,000, a budget unit and the legislative and judicial branches of state government shall indicate the status of review by the committee. Projects shall not be artificially divided to avoid review by the committee.

4. Develop a report format that incorporates the life-cycle analysis for use in submitting project requests to the committee.

5. Require expenditure and activity reports from a budget unit or the legislative or judicial branch of state government on implementing information technology projects approved by the committee.

6. Conduct periodic reviews on the progress of implementing information technology projects approved by the committee.

7. Monitor information technology projects that the committee considers to be major or critical.

8. Temporarily suspend the expenditure of monies if the committee determines that the information technology project is at risk of failing to achieve its intended results or does not comply with the requirements of this chapter.

9. Hear and decide appeals made by budget units regarding the department's rejection of their proposed information technology plans or projects.

10. Report to the governor, the speaker of the house of representatives, the president of the senate and the secretary of state at least annually on all matters concerning its objectives. This includes:

(a) Its review of the statewide information technology plan developed by the department.

(b) The findings and conclusions of its periodic reviews.

(c) Its recommendations on desirable legislation relating to information technology.

11. Adopt rules it deems necessary or desirable to further the objectives and programs of the committee.

D. The committee shall meet at the call of the chairperson.

E. Members of the committee are not eligible to receive compensation but are eligible to receive reimbursement for expenses pursuant to title 38, chapter 4, article 2.

F. For the purposes of this section, "advisory member" means a member who gives advice to the other members of the committee at committee meetings but who is not eligible to vote and is not a member for purposes of determining whether a quorum is present.

18-132. Alternative methods of access to electronic or information technology; complaint procedure; rules

A. In order to improve accessibility of future electronic or information technology and increase the successful employment and access to government services for individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, a budget unit, in developing, procuring, maintaining or using electronic or information technology through the use of state monies, shall ensure that the electronic or information technology provides comparable access to individuals with disabilities in accordance with the accessibility standards adopted under section 508 of the rehabilitation act of 1973 (29 United States Code section 794d) unless doing so would impose an undue burden on the budget unit.

B. The budget unit that contracts with a vendor that provides these products or services is subject to this article for the provision of electronic or information technology or for the provision of related services and shall agree to respond to and make a good faith effort to resolve any complaint regarding accessibility. The department of administration shall establish a complaint procedure for all budget units, except the supreme court shall establish a complaint procedure for the courts. The complaint procedures for the department of administration and the supreme court shall be consistent with section 508 of the rehabilitation act of 1973 to be used by an individual with a disability who alleges that a budget unit failed to comply with this article.

C. The department of administration shall adopt rules that are necessary to implement this article and revise those rules as necessary based on any amendments to section 508 of the rehabilitation act of 1973, including an undue burden process that is consistent with the section 508 federal acquisition regulation provisions. The department of administration shall begin the rule making process by October 1, 2004.

18-305. Reports; electronic submission; exception; posting

A. Notwithstanding any other law, state agencies may submit all statutorily required reports and budget estimates electronically, except those required by section 35-113.

B. Each state agency shall post all statutorily required reports and budget estimates on the state agency's website.

C. Each state agency shall consult with the secretary of state to ensure that the Arizona state library, archives and public records receives an adequate number of copies of the statutorily required reports and budget estimates in a format that is agreed on for the purposes of the state archives pursuant to section 41-151.08.

D. Each state agency that maintains a generally accessible internet website, or for which a generally accessible website is maintained, shall include a link on that website to the website of the ombudsman-citizens aide and a statement that reads as follows: "The ombudsman-citizens aide helps citizens to resolve ongoing issues with state agencies."

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 4, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 9, 2023**

SUBJECT: **DEPARTMENT OF CHILD SAFETY**
Title 21, Chapter 4, Article 1

Summary

This Five Year Review Report (5YRR) from the Department of Child Safety (Department) or (DCS) covers eight (8) rules in Title 21, Chapter 4, Article 1 related to Investigations. The Department of Child Safety is the state agency authorized to protect children by investigating allegations of abuse and neglect, to promote the well-being of the child in a permanent home, and to coordinate services to strengthen the family and prevent, intervene and treat abuse and neglect of children. The rules in Article 1 establish the Department's procedures for investigating DCS reports of child maltreatment. In particular, the rules explain the different methods of investigation; the Department's coordination with law enforcement; the Department's findings on an investigation; the Department's policy to close a case when determined that a child is not in need of services; the Department's procedures used to determine whether a child can safely remain in the home; and the Department's policy to conduct reviews to verify that investigation procedures were conducted properly.

In the prior 5YRR approved by Council in November of 2018, the Department stated they would conduct a rulemaking to address the issues identified in the report by December 2020. The Department did not complete the proposed course of action because the court rules were updated to reflect the new statutory requirements and the Administration believed the other identified concerns were minor and could be updated at a future rulemaking.

Proposed Action

The Department intends to submit a Notice of Final Rulemaking to the Council to address the issues found in the report by May of 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 states that the cost bearers and beneficiaries from these rules include children that are subject of an allegation of abuse or neglect, persons investigated on suspicion of abuse or neglect of a child, and the Department. The Department indicates that the rules in this Chapter are used by the Department to govern the policy and procedures when conducting investigations of child abuse and neglect.

The Department states that the 2018 Five-Year-Review Report incorrectly calculated the FY2017 expenses for the functions of investigating allegations of abuse and neglect. The correct amount for FY2017 was $7,704,969 (as opposed to $120,825,128), while the amount spent in FY2023 for these functions was $10,091,052.

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 current rules pose the minimum cost and burden to the persons regulated by these rules. Any costs related to the implementation of these rules are associated with the Department's responsibility to investigate allegations of abuse and neglect of children as authorized by Arizona Revised Statutes. It is the Department's belief that any cost associated with the rules are offset by the greater benefit of ensuring the safety and protection of Arizona children.

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

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

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

The Department indicates the rules are generally clear, concise, and understandable with the following exceptions:

- R21-4-103: update references, update terminology, and update DCS investigator processes;
- R21-4-105: remove the phrase "After completing an investigation"; expand the acronym PSRT to the full word

- R21-4-107: add rules that align with statute; add rules and information pertaining to parental consent and dependency petitions

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 with the following exception:

- R21-4-107: A.R.S. § 8-821 was amended in 2018 and the Department's rules need to be updated to align with the statute.

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 indicates the rules are generally enforced as written with the following exception:

- R21-4-107: A.R.S. § 8-821 was amended in 2018 and the Department's rules need to be updated to align with the statute.

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 42 U.S.C. 5106a.

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 this subsection does not apply as the rules do not require a regulatory permit, license or agency authorization.

11. **Conclusion**

This Five Year Review Report from the Department of Child Safety covers eight rules in Title 21, Chapter 4, Article 1 related to Investigations. As indicated above, the rules are generally enforced as written and consistent with other rules and statutes. The Department plans on submitting a Notice of Final Rulemaking to the Council to address the issues found in the report by May of 2024.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA
DEPARTMENT
of CHILD SAFETY

David Lujan, Director
Katie Hobbs, Governor

August 14, 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: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 4 Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 4 which is due on August 31, 2023.

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

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at 602-619-3163 or angelica.trevino@azdcs.gov.

Sincerely,

David Lujan
Director

Enclosure

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

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 4. Department of Child Safety - Response to Reports

Article 1. Investigations

August 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-454 and 8-471

2. The objective of each rule:

Article 1. Investigations

Rule	Objective
R21-4-101. Definitions	The objective of this rule is to promote and facilitate uniform understanding of terminology used by the Department.
R21-4-102. Response Times	The objective of this rule is to clarify that the Department will respond to a DCS report as required under Title 21, Chapter 3, Article 2.
R21-4-103. Methods of Investigation	The objective of this rule is to explain the Department's procedures for investigating DCS reports of child maltreatment.
R21-4-104. Coordination with Law Enforcement	The objective of this rule is to explain the Department's coordination with Law Enforcement.
R21-4-105. Investigation Findings; Required Documentation	The objective of this rule is to explain that the Department must render a finding on an investigation; document the finding; and provide notice as appropriate.
R21-4-106. Ongoing Services; Case Closure	The objective of this rule is to explain the Department's policy to close a case when determined that a child is not in need of services.
R21-4-107. Procedures for	The objective of this rule is to explain the Department's procedures used to determine whether a child can safely remain in the home or needs to be removed from the home.

Temporary Custody	
R21-4-108. Quality Assurance	The objective of this rule is to inform that it is the Department's policy to conduct reviews to verify that investigation procedures were conducted properly.

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

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

Rule	Explanation
R21-4-107	A.R.S. § 8-821 was amended in 2018 which includes changes to the process the Department must follow in taking temporary custody of a child. The Department's policy and procedures have been updated to align with the statute. The Department proposes to update the rules in this Chapter.

5. Are the rules enforced as written? **Yes ___No _X_**

Rule	Explanation
R21-4-107	Please refer to #4.

6. Are the rules clear, concise, and understandable? **Yes ___No _X_**

Rule	Explanation
R21-4-103	R21-4-103 (B) is not clear, concise, and understandable as it needs to include a reference to subsection (D). R21-4-103 (H): Use of the term "report" is not clear, concise, and understandable in this rule as this term may be confused with "DCS Report" as defined in Title 21, Article 3. R21-4-103(J): The Department proposes to amend language to clarify that the Department will coordinate the transfer of DCS reports when the alleged abuse or neglect is not within the Department's jurisdiction. This Section should also provide clearer language that explains that the DCS Investigator will call the Intake Hotline upon discovery of evidence of other incidents of abuse or neglect. The Department proposes to amend this Section to provide language that is clearer, and more concise and understandable.

R21-4-105	R21-4-105(A): In efforts for this subsection to be more concise, the Department proposes to remove "After completing an investigation" from the beginning of subsection R21-4-105(A).
R21-4-105	R21-4-105 (C) uses the acronym PSRT; the Department proposes to spell out this acronym for clarity purposes.
R21-4-107	As mentioned in #4, the Department proposes to add rules that align with statute. Additionally, for the purpose of clarity and understanding, as well as expectations, this Section should include rules and information pertaining to parental consent and dependency petitions. The Department proposes to amend this Section to make the rules more clear, concise, and understandable.

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

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

The rules under Chapter 4 pertain to Department's policy and procedures when investigating allegations of abuse and neglect of children. The Department of Child Safety is the state agency authorized by Arizona Revised Statutes to protect children by investigating allegations of abuse and neglect, to promote the well-being of the child in a permanent home, and to coordinate services to strengthen the family and prevent, intervene and treat abuse and neglect of children.

Cost/Benefit Analysis

Cost bearers and beneficiaries from these rules include: children that are the subject of an allegation of abuse or neglect, persons investigated on suspicion of perpetrating abuse or neglect of a child, and the Department. As in the 2018 report, the Department does not anticipate allotting any new full-time employees or making changes to the number currently allotted. The Department only anticipates hiring employees to fill vacancies as they arise. There are no political subdivisions affected by these rules. The benefit of these rules is that the rules provide information as to the Department's policies and procedures when investigating allegations of child abuse and neglect.

Rules in this Chapter are used by the Department to govern the policy and procedures when conducting investigations of child abuse and neglect. There are no fees charged in association with the rules in this Chapter. Between January 1, 2023 and June 30, 2023 there were 22,161 calls made to the DCS Centralized Intake Hotline that met the statutory requirements for a report of abuse or neglect whereas between October 1, 2017 and March 31, 2018, there were 24,093 calls. Of these calls, the Department assigned 21,837 and 23,670 respectively as DCS reports of child abuse and neglect for investigation by Department Investigators.

The Department has multiple offices and units statewide tasked with the responsibility of investigating DCS reports of child abuse and neglect. The Department has five (5) regions: Maricopa East Region, Maricopa West Region, Northeast Region, Northwest Region, and South Region. There are 36 field offices statewide staffed with DCS investigators and/or Office of Child Welfare Investigations (OCWI) investigators and their respective supervisors. Additionally, the Department has five (5) OCWI units co-located in either advocacy centers or with law enforcement.

Tasks associated with investigations are the same as listed in the 2018 Five-Year-Review Report.

The 2018 Five-Year-Review Report reported that in Fiscal Year 2017, $120,825,128.00[1] was expended for the functions in this Article. In Fiscal Year 2023, $10,091,052 was expended for the functions pertaining to this Article. This continues to be a combination of federal and state funding.

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

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

The Department of Child Safety did not complete the course of action indicated in the agency's five-year-report of 2018.

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

The Department believes that the current rules pose the minimum cost and burden to the persons regulated by these rules. Any costs related to the implementation of these rules are associated with the Department's responsibility to investigate allegations of abuse and neglect of children as authorized by Arizona Revised Statutes. It is the Department's belief that any costs associated with the rules are offset by the greater benefit of ensuring the safety and protection of Arizona children.

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

42 U.S.C. 5106a. The rules are not more stringent than federal laws.

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

[1] The amount reflected in the 2018 Five-Year-Review Report was calculated incorrectly and the correct amount for FY2017 was $7,704,969 for the functions pertaining to this Chapter (21 A.A.C. 4). This report reflects the accurate expended amount in FY2023 for the functions of investigating allegations of abuse and neglect (21 A.A.C. 4).

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because the rules in this Chapter do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

The Department of Child Safety has reviewed the current rules and proposes to amend the rules to address the issues listed in this report. The Department proposes to submit a Notice of Final Rulemaking to the Council by May 2024.

TITLE 21. CHILD SAFETY

CHAPTER 4. DEPARTMENT OF CHILD SAFETY – RESPONSE TO REPORTS

Authority: A.R.S. § 8-453(A)(5)

Editor's Note: Chapter 4 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. INVESTIGATIONS

Article 1, consisting of Sections R21-4-101 through R21-4-108, made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

Section

ARTICLE 1. INVESTIGATIONS

R21-4-101. Definitions

The definitions in A.R.S. §§ 8-101, 8-201, 8-455, 8-501, 8-531, and 8-801, and R21-3-101 apply in this Chapter.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-102. Response Times

The DCS Investigator shall respond to the DCS report as required under R21-3-203.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-103. Methods of Investigation

A. DCS shall investigate or respond to each DCS Report by interviewing or personally observing the alleged child victim, interviewing other children and individuals, reviewing documents, and using other accepted investigative techniques, as necessary, to gather sufficient information to:
1. Determine whether the child subject of the report is currently safe or unsafe;
2. Support or refute the allegation of abuse or neglect;
3. Determine the name, age, and condition of other children in the home; and
4. Determine whether child safety services are needed.

B. DCS shall do the following to investigate each DCS report unless one or more of the circumstances listed in subsection (C) exist:
1. Contact the reporting source;
2. Review prior DCS Reports concerning the alleged child victim;
3. Review prior DCS Reports concerning the alleged perpetrator;
4. Interview or facilitate the interview of the alleged child victim or personally observe the alleged child victim;
5. Interview the alleged perpetrator;
6. Interview all other adult household members and verbal children in the home who may have relevant information;
7. Review available court orders that restrict contact with the child by a parent or other person in the home; and
8. Use additional investigative methods based on the factual circumstance of the case.

C. If during the course of an investigation one or more of the following circumstances exists, DCS is not required to take all of the investigative actions otherwise required by this section:
1. The family exercises their right not to cooperate under A.R.S. § 8-803 or is unwilling or unable to cooperate;
2. Other persons who may have relevant information are unwilling or unable to cooperate;
3. The alleged victim is currently over the age of 18 years and the alleged perpetrator has no access to the other children in the household;
4. The alleged child victim is deceased and no surviving child resides in the household;
5. The alleged perpetrator resides outside Arizona and there is no indication or information that the alleged child victim or the other children in the household are currently being abused or neglected;
6. The alleged abuse or neglect occurred more than three years ago and there is no indication or information that the alleged child victim or the other children in the household are currently being abused or neglected;
7. The alleged child victim or the child victim's family cannot be located after DCS has made diligent efforts to locate;
8. A law enforcement agency has investigated the specific allegations contained in the report and the Department has determined that the child is currently safe;
9. A law enforcement or prosecutorial agency requests that the DCS Investigator not contact the alleged perpetrator or other persons with relevant information; or
10. A federal or state law or court order prohibits or restricts DCS from fully investigating the report.

D. If during the course of an investigation the DCS Investigator gathers sufficient information to determine that the child is not a victim of abuse or neglect, the DCS Investigator may close the investigation.

E. A DCS Investigator shall collaborate with law enforcement when applicable.

F. A DCS Investigator may interview a child without the prior written consent of the parent, guardian, or custodian of the child as set forth in A.R.S. §§ 8-802 and 8-471.

G. A DCS Investigator may exclude a parent, guardian, custodian, household member, or any other individual from being present during an interview with the alleged victim, the alleged victim's siblings, or other children residing in the alleged victim's household.

H. If a DCS Investigator discovers evidence of other incidents of abuse or neglect that are not contained in the DCS Report, the DCS Investigator shall make a report to the Hotline regarding those incidents.

I. A DCS Investigator who is not assigned to OCWI may investigate a DCS Report containing criminal conduct allegations, as necessary. A DCS Investigator not assigned to OCWI will

receive advanced training regarding joint investigation protocol per A.R.S. § 8-817 and forensic interview training as a prerequisite to investigating criminal conduct allegations. A DCS Investigator not assigned to OCWI should receive training consistent with A.R.S. § 8-471(D) if investigating criminal conduct allegations.

J. If an alleged child victim resides outside the Department's jurisdiction, the Department shall coordinate with the appropriate child protection agency in the jurisdiction where the child is located.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-104. Coordination With Law Enforcement

A. In DCS Reports containing a criminal conduct allegation, a DCS Investigator shall coordinate with law enforcement pursuant to the applicable Joint Investigative Protocol. In DCS Reports that do not contain a criminal conduct allegation, a DCS Investigator shall coordinate with law enforcement as appropriate.

B. When a DCS Investigator investigates a DCS Report containing allegations of criminal conduct across jurisdictions, the DCS Investigator shall follow the Joint Investigative Protocol of the jurisdiction where the lead investigative agency is located.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-105. Investigation Findings; Required Documentation

A. After completing an investigation, the DCS Investigator or Child Safety Specialist shall propose substantiation if there is probable cause to believe a child was abused or neglected or, if not, shall unsubstantiate the allegation.

B. A DCS Investigator or Child Safety Specialist shall document the finding and the reason in the case record.

C. A DCS Supervisor shall review the proposed finding and shall notify PSRT of a proposed substantiation.

D. DCS shall provide the parent, guardian, or custodian written notice of the outcome of the investigation.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-106. Ongoing Services; Case Closure

A DCS Investigator shall close a case if the investigation determines the child or children are not in need of child safety services, whether or not the allegations are substantiated or unsubstantiated.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-107. Procedures for Temporary Custody

A. Using a uniform safety and risk assessment tool, a DCS Investigator shall determine whether the child can remain safely in the home or needs to be taken into temporary custody of the Department.

B. Before taking temporary custody of a child, the Department shall consider whether the Department may:

1. Help the family obtain resources such as emergency food, shelter, clothing, or utilities, so that the child may safely remain in the home;
2. Enter into an agreement with the child's parent, guardian, or custodian that provides for the alleged abuser to leave the home and for remaining family members to protect the child;
3. Help the protective parent, guardian, or custodian and the child leave the home of the alleged abuser; and
4. Place the child in a voluntary placement agreement as provided in A.R.S. § 8-806.

C. A DCS Investigator shall submit the reasons for temporary custody and the supporting information to a DCS Supervisor and obtain approval from the DCS Supervisor prior to taking temporary custody of a child, except as provided in A.R.S. § 8-822.

D. A DCS Investigator may take a child into temporary custody for a period of not more than 12 hours to have the child examined by a medical doctor or psychologist, if the circumstances indicate that there is reasonable likelihood to believe that a child has suffered serious physical or emotional harm as provided in A.R.S. § 8-821.

E. Under A.R.S. § 8-515.05, a DCS Investigator may remove a foster child from an out-of-home placement on an emergency basis to protect the child from harm or risk of harm without prior notification of the Department's intent to remove.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

R21-4-108. Quality Assurance

DCS shall conduct regular reviews of responses to reports to verify that investigations are properly conducted and procedures for temporary custody are followed.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3252, effective January 26, 2016 (Supp. 15-4).

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.

8-454. Department organization

A. The director shall organize the department to best implement the following functions:

1. Receiving, analyzing and efficiently responding to reports of possible abuse or neglect as provided in section 8-455.

2. Appropriately investigating the reports whether or not they involve criminal conduct allegations as provided in section 8-456.

3. Coordinating services necessary for the child or the child's family as provided in section 8-457.

4. Overseeing adoption pursuant to chapter 1 of this title and foster care pursuant to article 4 of this chapter.

5. Reviewing and reporting the actions of the department to ensure that the actions comply with statute and the rules and policies of the department and reporting significant violations as provided in section 8-458.

B. Subject to title 41, chapter 4, article 4, the director shall employ:

1. A chief of the office of child welfare investigations. The chief is the administrative head of the office of child welfare investigations and shall report directly to the director.

2. An inspector general. The inspector general is the administrative head of the inspections bureau and shall report directly to the director.

3. Administrators to serve as the administrative heads of the other bureaus of the department, who may report directly to the deputy director.

8-471. Office of child welfare investigations; training; responsibilities; annual report

A. The director shall establish the office of child welfare investigations within the department. The director is responsible for the direction, operation and control of the office.

B. The duties of the office include investigating criminal conduct allegations, coordinating with other parts of the department and law enforcement, establishing task forces for the investigation of criminal conduct and other duties as may be assigned by the director.

C. The office shall employ child welfare investigators who have received training to understand law enforcement's role in cases of criminal child abuse or neglect and in social services offered by the department. The office may employ research analysts and peace officers for the purpose of obtaining an originating agency identification number to have direct access to criminal history report information. Each person hired by the office is an employee of the department, is subject to title 41, chapter 4, article 4 and shall comply with the fingerprint requirements of section 8-802.

D. The department, in coordination with the Arizona peace officer standards and training board, shall provide child welfare investigators with training. The training shall be, at a minimum, in the following areas:

1. First responder training on responding to reports of child abuse.

2. Forensic interviewing and processes.

3. Child physical and sexual abuse investigation.

4. The protocols established pursuant to section 8-817.

5. Relevant law enforcement procedures, including the collection and preservation of evidence.

6. A child's constitutional rights as a victim of a crime pursuant to article II, section 2.1, Constitution of Arizona.

7. Impact and intervention practices related to adverse childhood experiences, culturally and linguistically appropriate service delivery, domestic violence, family engagement, communication with special populations and trauma informed responses.

8. Any other training as directed by the director.

E. A child welfare investigator shall:

1. Protect children.

2. Assess, respond to or investigate all criminal conduct allegations, which shall be a priority, but not otherwise exercise the authority of a peace officer.

3. Not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:

(a) The child initiates contact with the investigator.

(b) The child who is interviewed is the subject of, is the sibling of or is living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 4, subdivision (b) of this subsection.

(c) The interview is conducted pursuant to the terms of the protocols established pursuant to section 8-817.

4. After the receipt of any report or information pursuant to paragraph 2 of this subsection, immediately do both of the following:

(a) Notify the appropriate municipal or county law enforcement agency if they have not already been notified.

(b) Make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the report of child abuse or neglect when investigating allegations pursuant to paragraph 2 of this subsection. A criminal conduct allegation shall be investigated with the appropriate municipal or county law enforcement agency according to the protocols established pursuant to section 8-817.

5. Take a child into temporary custody as provided in section 8-821. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian pursuant to section 8-821. A child welfare investigator who is responding to or investigating a report containing a criminal conduct allegation shall have the primary responsibility for making the decision whether to take a child into temporary custody.

6. Evaluate conditions created by the parents, guardian or custodian that would support or refute the allegation that the child should be adjudicated dependent. The investigator shall then determine whether any child is in need of child safety services.

7. Identify, promptly obtain and abide by court orders that restrict or deny custody, visitation or contact by a parent or other person in the home with the child and notify appropriate personnel within the department to preclude violations of a court order in the provision of any services.

8. On initial contact with the parent, guardian or custodian of a child who is the subject of an investigation pursuant to this section, provide the parent, guardian or custodian with the allegation received by the department. This paragraph does not require the department to disclose details or information that would compromise an ongoing criminal investigation.

9. Have access to all records and information of the department necessary to carry out this section.

F. Unless a dependency petition is filed, a child shall not remain in temporary custody for a period exceeding seventy-two hours, excluding Saturdays, Sundays and holidays. If a petition is not filed, the child shall be released to the child's parent, guardian or custodian.

G. In conducting an investigation pursuant to this section, if the investigator is made aware that an allegation of abuse or neglect may also have been made in another state, the investigator shall contact the appropriate agency in that state to attempt to determine the outcome of any investigation of that allegation.

H. The office of child welfare investigations shall submit a report by August 15 each year to the governor, the speaker of the house of representatives, the president of the senate and the secretary of state that includes the following information for the most recently completed fiscal year:

1. The number of DCS reports that involve criminal conduct allegations.

2. The number of joint investigations conducted pursuant to section 8-817.

3. For each case in which a joint investigation did not occur pursuant to section 8-817, the reasons why the joint investigation did not occur.

I. All records gathered or created by the department during an investigation conducted under this section are confidential and shall be protected and released as prescribed in sections 8-807 and 8-807.01, except the department shall not release records if the department determines that the release of these records may compromise an ongoing investigation.

J. Notwithstanding any other law, the office of child welfare investigations is not responsible for conducting the criminal investigation of a criminal conduct allegation.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 18, Article 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: November 15, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 18, Article 1 & 2

Summary

This Five-Year Review Report from the Department of Environmental Quality (Department) relates to fifteen (15) rules in Title 18, Chapter 18, Articles 1 & 2 related to Emergency Planning and Community Right to Know and Hazardous Materials Training Program, Student and Instructor Evidence of Completion, respectively.

These rules in Articles 1 and 2 were last reviewed as separate reports in 2017 and 2018 when they were under the authority of the Department of Emergency and Military Affairs (DEMA) and located in Title 8 of the Administrative Code. In 2021, the Department recodified these Articles from Title 8 to Title 18. The Department indicates, while it has not yet completed the proposed courses of action from the prior 2017 and 2018 reports, the Department states it recently submitted an exemption memo to the Governor's Office for approval to make changes that correct the technical errors identified in the previous 5YRRs.

Proposed Action

In the current report, the Department proposes to amend twelve (12) rules that it has identified could be more clear, concise, or understandable as outlined below and anticipates submitting an expedited rulemaking to address these issues to the Council by March 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 believes the 2003 Economic Impact Statements were accurate and the economic impacts have remained unchanged.

R18-18-107 is the only section in Chapter 18 that imposes a fee. The rest of the Chapter 18 rules have minimal additional economic impact on State, local or private sector entities beyond the current requirements established by Federal and State laws. In 2021, the Department collected $138,025 in fees under Chapter 18. This is up from five years ago when collections were $44,000. The fees collected from Tier II filing fees will not be sufficient to fund the Department's Emergency Response Unit ("ERU"), but the program is fully implemented because the Department provides additional funding outside of the Tier II fees.

Stakeholders include the Department, the Arizona State Emergency Commission, Local Emergency Planning Committees, local fire departments, and participants and instructors of the Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course.

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

According to the Department, the benefits yielded outweigh the costs. As of 2021, there were 4,046 facilities that are regulated by R18-18-107(B), which require the facilities to pay a filing fee. The fees roughly generate $138,00 annually, which roughly calculates to $34 per facility on an annual basis. The fees do not fully fund the Department's ERU. Despite this, the ERU manages to provide the benefits of safety and precaution to the state of Arizona at the expense of revenue from other units within the Department.

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?

While the Department indicates the rules are generally clear, concise, and understandable, it states that minor clarifications and updates could be made to the following rules:

- **R18-18-101.** Definitions

    - Update A.R.S. § 26-341 in subsection (A) to A.R.S. § 49-121 because A.R.S. § 26-341 was transferred and renumbered in 2015.
    - Update A.R.S. § 26-341(2) in subsection (B)(6) to A.R.S. § 49-121 because A.R.S. § 26-341 was transferred and renumbered in 2015.
    - Remove the term "MSDS" from the definitions in subsection (B)(7) because this term is not used elsewhere in Chapter 18.
- **R18-18-103**. Responsibilities of an LEPC
    - Provide an internet website where the material incorporated in subsection (A) is available to modernize the requirement.
- **R18-18-104.** Emergency Planning and Preparedness
    - Update 40 CFR 355.30 in subsection (A) to 40 CFR 355.10 because 40 CFR 355.30 was redrafted and renumbered in 2008.
    - Update A.R.S. § 26-347(B) in subsection (B) to A.R.S. § 49-127(B) because A.R.S. § 26-347 was transferred and renumbered in 2015.
    - Update A.R.S. § 26-347(D) in subsection (C) to A.R.S. § 49-127(D) because A.R.S. § 26-347 was transferred and renumbered in 2015.
    - Change the reference to the Questionnaire and Worksheet in subsections (C) and (D) to the Plan Template, available on the ADEQ website.
- **R18-18-105.** Local Emergency Response Plan
    - Update A.R.S. § 26-345(E) in subsection (A) to A.R.S. § 49-125(E) because A.R.S. § 26-345 was transferred and renumbered in 2015.
- **R18-18-106.** Reportable Release Notification
    - Update A.R.S. § 26-348(A) in subsection (A)(1) to A.R.S. § 49-128(A) because A.R.S. § 26-348 was transferred and renumbered in 2015.
    - Update A.R.S. § 26-348(B) in subsection (A)(2) to A.R.S. § 49-128(B) because A.R.S. § 26-348 was transferred and renumbered in 2015.
    - Update A.R.S. § 26-348(C) in subsection (A)(3) to A.R.S. § 49-128(C) because A.R.S. § 26-348 was transferred and renumbered in 2015.
- **R18-18-107.** Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting
    - Update the incorporation by reference of 40 CFR 370 in subsection (A) for clarity.
    - Provide an internet website for where the material incorporated in subsection (A) is available to modernize the requirement.
    - Update A.R.S. § 26-350 in subsection (B) to A.R.S. § 49-130 because A.R.S. § 26-350 was transferred and renumbered in 2015.
- **R18-18-109.** Community Right-to-know Procedures
    - Update A.R.S. § 26-343(G) in subsection (D) to A.R.S. § 49-123(G) because A.R.S. § 26-343 was transferred and renumbered in 2015.
- **R18-18-201.** Definitions
    - Correct the citation in subsection (7)(h) from A.R.S. § 49-201 to A.R.S. § 49-121.
- **R18-18-202.** Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Curriculum
    - Add language in subsection (B) to adopt, without material change, language consistent with 29 CFR 1910.120(q)(6)(i)(F) to include the following course topic: How to realize the need for additional resources, and to make appropriate notifications to the communication center.

- **R18-18-203.** Instructor Authorization and Renewal
    - Provide an internet website where the material incorporated in subsection (A)(2)(a) is available to modernize the requirement.
    - Add language in (A)(3) to clarify how to schedule or attend instructor workshops.
- **R18-18-204.** Hazmat First Responder Operations Level Course Division Requirements
    - Provide an internet website where the material incorporated in subsection (A) is available to modernize the requirement.
- **R18-18-205.** Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion
    - Update the incorporations by reference in subsection (B) to the most recent version of the CFR.

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?

The Department indicates the rules correspond with, and are no more stringent than, their counterparts under the federal Emergency Planning and Community Right-to-Know Act (EPCRA): 42 U.S.C.A. §§ 11001, 11002, 11003, 11004, 11005, 110021, 110022 & 110023. Moreover, the Department states rule R18-18-109 is no more stringent than corresponding federal law 40 CFR 370 Subpart D.

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 these rules do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to fifteen (15) rules in Title 18, Chapter 18, Articles 1 & 2 related to Emergency Planning and Community Right to Know and Hazardous Materials Training Program, Student and Instructor Evidence of Completion, respectively. The Department indicates the rules are consistent, effective, and enforced. However, the Department

has identified twelve (12) rules it believes could be more clear, concise, or understandable. The Department states it recently submitted an exemption memo to the Governor's Office for approval to amend these rules and anticipates submitting an expedited rulemaking to the Council by March 2024.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

July 2#, 2023

SENT VIA EMAIL ONLY

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 18, Articles 1 and 2

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 18, Articles 1 and 2: Department of Environmental Quality.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Dominic Trader, Rulewriter at 602-771-7315 or trader.dominic@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters,
Director

Enclosure

Arizona Department of Environmental Quality

Five-Year Review Report

Title 18. Environmental Quality

Chapter 18. Department of Environmental Quality - Emergency Planning and Hazardous Materials Training

Article 1. Emergency Planning and Community Right to Know

Article 2. Hazardous Materials Training Program, Student and Instructor Evidence of Completion

July 27, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 49-104(B)(4)

Specific Statutory Authority: A.R.S. §§ 49-123(F) to 49-123(I), and 49-123(J)

2. The objective of each rule:

Rule	Objective
Definitions R18-18-101	The rule provides definitions necessary for the implementation of 18 A.A.C. 18, Article 1.
General Provisions R18-18-102	This rule requires the Arizona State Emergency Commission ("Commission" or "AZSERC") to make all forms regulated under 18 A.A.C. 18 available on the internet. Furthermore, this rule stipulates when regulated facilities may submit forms electronically to the Commission, Local Emergency Planning Committees ("LEPCs") or the Fire Department. Moreover, the rule directs the Executive Director of the Commission to respond to the chair of LEPCs on behalf of the Commission when the items requiring action are forwarded to the Commission during the interim periods between meetings.
Federal Law & LEPCs R18-18-103	This rule directs LEPCs to fulfil federal statutory duties and additional duties outlined in the rule text.
Federal & State Requirements R18-18-104	This rule details the requirements for facilities that fall under 40 CFR 355.30 & A.R.S. § 26-347(B) must also comply with.
LEPC Response Plans R18-18-105	This rule stipulates when LEPCs shall prepare, review and update emergency response plans.
Reportable Release R18-18-106	This rule provides the process facilities must follow after a reportable release occurs.
Reporting Requirements R18-18-107	This rule establishes the reporting requirements for hazardous chemicals and substances and the fees attached.
Public Access to Information R18-18-108	This rule mandates that the Commission make information regarding the federal Emergency Planning and Community Right-to-Know Act ("EPCRA") available for regulated facilities.
Right to Know R18-18-109	This rule regulates how an LEPC and the Commission should respond to a request for information.

Grants R18-18-110	This rule mandates that the Commission provides notice to LEPCs of available grants and how an LEPC can receive grants.
Definitions R18-18-201	The rule provides definitions necessary for the implementation of 18 A.A.C. 18, Article 2.
Course Curriculum R18-18-202	This rule establishes the standards for the curriculum for the Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course.
Instructor Authorization R18-18-203	This rule establishes the requirements an individual must comply with in order to become an authorized instructor for purposes of R18-18-201 to instruct the Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course.
Course Division Requirements R18-18-204	This rule provides guidance for instructors in a division that teach the Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course.
Evidence of Completion R18-18-205	This rule provides the guidance on how to receive evidence of completion of the Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course.

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

Rule	Explanation

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

Rule	Explanation

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

Rule	Explanation

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

The rules are clear, concise, and understandable. Minor clarifications and updates can be made as described in the table below.

Rule	Explanation
R18-18-101. Definitions	Update A.R.S. § 26-341 in subsection (A) to A.R.S. § 49-121 because A.R.S. § 26-341 was transferred and renumbered in 2015. Update A.R.S. § 26-341(2) in subsection (B)(6) to A.R.S. § 49-121 because A.R.S. § 26-341 was transferred and renumbered in 2015. Remove the term "MSDS" from the definitions in subsection (B)(7) because this term is not used elsewhere in Chapter 18.

Rule	Explanation
R18-18-103. Responsibilities of an LEPC	Provide an internet website where for the material incorporated in subsection (A) is available to modernize the requirement.
R18-18-104. Emergency Planning and Preparedness	Update 40 CFR 355.30 in subsection (A) to 40 CFR 355.10 because 40 CFR 355.30 was redrafted and renumbered in 2008. Update A.R.S. § 26-347(B) in subsection (B) to A.R.S. § 49-127(B) because A.R.S. § 26-347 was transferred and renumbered in 2015. Update A.R.S. § 26-347(D) in subsection (C) to A.R.S. § 49-127(D) because A.R.S. § 26-347 was transferred and renumbered in 2015. Change the reference to the Questionnaire and Worksheet in subsections (C) and (D) to the Plan Template, available on the ADEQ website.
R18-18-105. Local Emergency Response Plan	Update A.R.S. § 26-345(E) in subsection (A) to A.R.S. § 49-125(E) because A.R.S. § 26-345 was transferred and renumbered in 2015.
R18-18-106. Reportable Release Notification	Update A.R.S. § 26-348(A) in subsection (A)(1) to A.R.S. § 49-128(A) because A.R.S. § 26-348 was transferred and renumbered in 2015. Update A.R.S. § 26-348(B) in subsection (A)(2) to A.R.S. § 49-128(B) because A.R.S. § 26-348 was transferred and renumbered in 2015. Update A.R.S. § 26-348(C) in subsection (A)(3) to A.R.S. § 49-128(C) because A.R.S. § 26-348 was transferred and renumbered in 2015.
R18-18-107. Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting	Update the incorporation by reference of 40 CFR 370 in subsection (A) for clarity. Provide an internet website for where the material incorporated in subsection (A) is available to modernize the requirement. Update A.R.S. § 26-350 in subsection (B) to A.R.S. § 49-130 because A.R.S. § 26-350 was transferred and renumbered in 2015.
R18-18-109. Community Right-to-know Procedures	Update A.R.S. § 26-343(G) in subsection (D) to A.R.S. § 49-123(G) because A.R.S. § 26-343 was transferred and renumbered in 2015.
R18-18-201. Definitions	Correct the citation in subsection (7)(h) from A.R.S. § 49-201 to A.R.S. § 49-121.
R18-18-202. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Curriculum	Add language in subsection (B) to adopt, without material change, language consistent with 29 CFR 1910.120(q)(6)(i)(F) to include the following course topic: How to realize the need for additional resources, and to make appropriate notifications to the communication center.

Rule	Explanation
R18-18-203. Instructor Authorization and Renewal	Provide an internet website where the material incorporated in subsection (A)(2)(a) is available to modernize the requirement. Add language in (A)(3) to clarify how to schedule or attend instructor workshops.
R18-18-204. Hazmat First Responder Operations Level Course Division Requirements	Provide an internet website where the material incorporated in subsection (A) is available to modernize the requirement.
R18-18-205. Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion	Update the incorporations by reference in subsection (B) to the most recent version of the CFR.

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

Rule	Explanation

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

The Department believes the 2003, see 9 A.A.R 309 (Feb. 7, 2003), and 2008, see 14 A.A.R. 2931 (Aug. 30, 2008), Economic Impact Statements conducted by Department of Emergency and Military Affairs ("DEMA") were accurate and the economic impacts have remain unchanged. Arizona Administrative Code Section R18-18-107 is the only section in Chapter 18 that imposes a fee. The rest of the Chapter 18 rules have minimal additional economic impact on State, local or private sector entities beyond the current requirements established by Federal and State laws. In 2021 ADEQ collected $138,025 in fees under Chapter 18. This is up from five years ago when collections were $44,000. The fees collected from Tier II filing fees will not be sufficient to fund ADEQ's Emergency Response Unit ("ERU"), but the program is fully implemented because ADEQ provides additional funding outside of the Tier II fees.

The Commission in 1987 established that there would be 15 emergency planning districts in Arizona with each planning district residing within each county. In 2008 there were 15 LEPCs, one for each of the 15 counties within Arizona and that number has not changed. There were 4,046 facilities that reported to AZSERC via the electronic reporting system in 2021.

AZSERC administers two grant programs. One is the Hazardous Materials Emergency Preparedness ("HMEP") grant which is a federal grant from the Pipeline, Hazardous Materials Safety Administration ("PHMSA"). The

funds provided by this grant are assessed on hazardous material transporters within the United States. The funds are used to promote training and planning efforts within each state for emergency responders and planners. These grant funds create no economic burden on the state. The second grant program is the Emergency Response Fund which is a fund provided by the Arizona Department of Environmental Quality ("ADEQ") through its hazardous waste fees assessed. Ten percent of the funds are provided to AZSERC to assist local fire and public safety agencies with sustaining or improving their hazardous materials programs.

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 rules in these Articles were last reviewed as Title 8 rules (DEMA) in separate five-year reports approved by GRRC and due in 2017 and 2018. In 2021, ADEQ recodified these Articles from Title 8 to Title 18. Subsequently, GRRC approved ADEQ's request that these Articles be combined into a five-year report due in July 2023. While not yet completed, ADEQ recently submitted an exemption memo to the Governor's Office for approval to make changes that correct the technical errors identified in the previous five-year-review reports. Upon approval from the Governor's Office, ADEQ will proceed expeditiously.

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 benefits yielded to the state of Arizona from the implementation of Chapter 18 do outweigh Chapter 18's costs. As of 2021 there were 4,046 facilities that are regulated by R18-18-107(B) – said facilities are required to pay a filing fee for submitting a Tier II inventory report. Tier II Chemical Inventory Reporting System was developed to keep an inventory of all chemicals stored in commercial and government buildings. The system can be accessed on location in the event of a fire or natural disaster so that emergency response teams can be adequately informed about chemicals that may be inside the facility. R18-18-107 is the only section that imposes a fee throughout the entirety of Chapter 18. Furthermore, the fees roughly generate $138,000 annually, which calculates roughly to $34 per facility on an annual basis. The fees do not fully fund ADEQ's ERU (the unit that implements AZSERC rules). Moreover, despite this fact the ERU manages to provide the benefits of safety and precaution to the state of Arizona at the expense of revenue from other units within ADEQ.

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

The rules correspond with and are no more stringent than their federal counterparts under EPCRA: 42 U.S.C.A. §§ 11001, 11002, 11003, 11004, 11005, 110021, 110022 & 110023. Moreover, R18-18-109 is no more stringent than 40 CFR 370 Subpart D.

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 these Articles do not require the issuance of a regulatory permit, license or agency authorization.

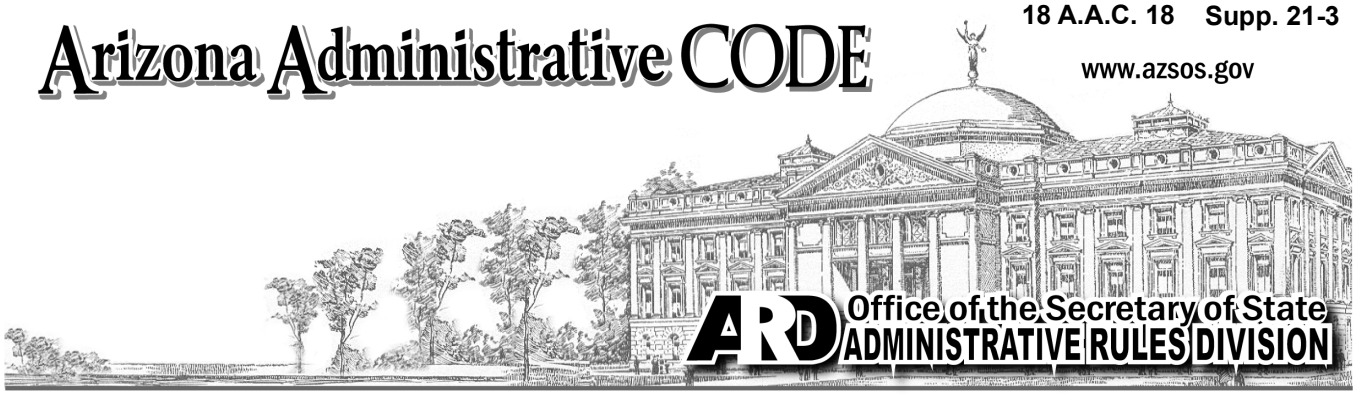
14. Proposed course of action

ADEQ recently requested approval from the Governor's Office to proceed with a rulemaking that aims to address all issues identified in Section 6 of this report. If approved by the Governor's Office, ADEQ anticipates submitting this expedited rulemaking to GRRC by March of 2024.

Arizona Administrative CODE

18 A.A.C. 18 Supp. 21-3

www.azsos.gov



TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 18. DEPARTMENT OF ENVIRONMENTAL QUALITY - EMERGENCY PLANNING AND HAZARDOUS MATERIALS TRAINING

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 recodified in the *Arizona Administrative Code* between the dates of July 1, 2021 through September 30, 2021

This is a new Chapter. See the table of contents on page 1 for a list of rules recodified (Supp. 21-3).

Questions about these rules? Contact:

Department:	Department of Environmental Quality Waste Program Division
Address:	1110 W. Washington St Phoenix, AZ 85007
Website:	https://azdeq.gov/waste-programs-division
Name:	Mark Lewandowski
Telephone:	(602) 771-2230
Fax:	(602) 771-4272
Email:	lewandowski.mark@azdeq.gov

This is a new Chapter.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing Chapters using these paper colors.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 18. DEPARTMENT OF ENVIRONMENTAL QUALITY - EMERGENCY PLANNING AND HAZARDOUS MATERIALS TRAINING

Authority: A.R.S. § 49-123(F) and (I)

Supp. 21-3

Editor's Note: Chapter 208 (H.B. 2274), 52 Legislature, 2015 First Regular Session, transferred the duties of the Arizona Emergency Response Commission to the Department of Environmental Quality. The rules in this Chapter were recodified from 8 A.A.C. 4 and 8 A.A.C. 2, Article 6, at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

CHAPTER TABLE OF CONTENTS

ARTICLE 1. EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

Article 1, consisting of Sections R18-18-101 through R18-18-110, recodified from R8-4-101 through R8-4-110, at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

ARTICLE 2. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT AND INSTRUCTOR EVIDENCE OF COMPLETION

Article 2, consisting of Sections R18-18-201 through R18-18-205, recodified from R8-2-601 through R8-2-605, at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

CHAPTER 18. DEPARTMENT OF ENVIRONMENTAL QUALITY - EMERGENCY PLANNING AND HAZARDOUS MATERIALS TRAINING

ARTICLE 1. EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

R18-18-101. Definitions

A. The definitions in A.R.S. § 26-341 apply to this Chapter.

B. In this Article, unless specified otherwise:

1. "Emergency planning district" means an area that the Commission designates to facilitate preparing and implementing an emergency response plan.
2. "EPA" means the United States Environmental Protection Agency.
3. "EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986, commonly known as SARA Title III.
4. "FD" means local fire department or the fire district with jurisdiction for a particular facility.
5. "Hazardous substance" means a substance on the list that appears at 40 CFR 302.4.
6. "LEPC" means "Committee," as prescribed at A.R.S. § 26-341(2).
7. "MSDS" means material safety data sheet and has the same meaning as prescribed at 40 CFR 370.02.
8. "NIMS" means National Incident Management System.
9. "Reportable release" means a release that is not excluded under 40 CFR 355.40.
10. "TPQ" means threshold planning quantity and has the same meaning as prescribed at 40 CFR 355.20.

Historical Note

New Section R18-18-101 recodified from R8-4-101 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-102. General Provisions

A. The Commission shall make all forms referenced in this Chapter available on its internet site.

B. The owner or operator of a facility that is required to submit information under this Article may submit the information electronically to the Commission and LEPC and to the FD if, as indicated on the Commission's web site, the FD has entered into an agreement with the Commission regarding electronic submission.

C. When the chair of an LEPC forwards to the Commission an item requiring action by the Commission before its next meeting, the Executive Director of the Commission shall respond to the LEPC on behalf of the Commission until the Commission takes action at its next meeting.

Historical Note

New Section R18-18-102 recodified from R8-4-102 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-103. Responsibilities of an LEPC

A. Members of an LEPC shall fulfill the responsibilities listed at 42 U.S.C. 11001(c), October 17, 1986, which is incorporated by reference, contains no future editions or amendments, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.

B. In addition to the responsibilities under subsection (A), members of an LEPC shall:

1. Establish procedures for access to the Local Emergency Response Plan;
2. Evaluate the resources needed to develop and implement the Local Emergency Response Plan and make recommendations to the County Board of Supervisors and the Commission regarding mechanisms to provide the resources needed;
3. Ensure that newly appointed LEPC members participate in training provided by the Commission regarding the responsibilities of LEPC members; and
4. Ensure that LEPC members are aware of and have the opportunity to attend Commission-sponsored meetings regarding matters related to emergency planning and preparedness.

Historical Note

New Section R18-18-103 recodified from R8-4-103 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-104. Emergency Planning and Preparedness

A. If a facility is required to comply with 40 CFR 355.30, the owner or operator of the facility shall also comply with the emergency planning and preparedness requirements in this Section.

B. If a facility is designated by the Commission under A.R.S. § 26-347(B), the owner or operator of the facility shall comply with the emergency planning and preparedness requirements in this Section and the reporting requirements of R18-18-107.

C. No later than 60 days after a facility first becomes subject to the emergency planning and preparedness requirements of this Section, the owner or operator of the facility shall submit a facility emergency response plan according to A.R.S. § 26-347(D). The owner or operator of the facility may submit the facility emergency response plan by completing and submitting an Emergency Response Plan Questionnaire, which is available from the Commission.

D. The owner or operator of a facility that submits an Emergency Response Plan Questionnaire under subsection (C) may also submit a Hazard Analysis Worksheet for each extremely hazardous substance at the facility that equals or exceeds the TPQ.

E. On or before March 1 of each year, the owner or operator of a facility described in subsection (A) or (B) shall:

1. Review and determine whether the facility emergency response plan submitted under subsection (C) is still accurate and, if changes are needed to ensure that the facility emergency response plan is accurate, submit information regarding the relevant changes. If information regarding relevant changes to the facility emergency response plan is submitted, the owner or operator of the facility may revise and submit the Hazard Analysis Worksheet previously submitted under subsection (D); and
2. Comply with R18-18-107(C).

Historical Note

New Section R18-18-104 recodified from R8-4-104 with amendments to Chapter Section and subsection references at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-105. Local Emergency Response Plan

A. Within 12 months after the Commission designates a new emergency planning district and appoints members of an LEPC for the newly designated emergency planning district, the LEPC shall prepare an emergency response plan that complies with the requirements at A.R.S. § 26-345(E) and complies with NIMS.

B. On or before December 31 of each year and when there are changed circumstances in the community or at a facility, an LEPC shall review and update the emergency response plan for its emergency planning district.

C. An LEPC shall submit a copy of the emergency response plan prepared under subsection (A) or (B) to the Commission.

D. Within 60 days after the Commission receives a copy of an emergency response plan under subsection (C), the Commission staff shall:
1. Review the emergency response plan and make recommendations for revisions necessary to ensure that the emergency response plan complies with law and coordinates with the emergency response plans of adjoining emergency planning districts; and
2. Return the emergency response plan and recommendations to the LEPC.

E. An LEPC shall ensure that the emergency response plan prepared under subsection (B) and reviewed and amended under subsection (D) is incorporated into the county's emergency operations plan in accordance with county procedures.

F. At least biennially and after providing at least 30 days notice to the Commission, an LEPC shall conduct an exercise of its emergency response plan.

G. On or before December 31 of each year, an LEPC shall survey its emergency planning district to determine how many copies of the U.S. Department of Transportation Emergency Response Guidebook are needed and forward the information regarding the number of copies needed to the Commission.

Historical Note
New Section R18-18-105 recodified from R8-4-105 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-106. Reportable Release Notification
The owner or operator of a facility at which a reportable release occurs shall:
1. Comply with the notification requirements of A.R.S. § 26-348(A);
2. Submit the written follow-up emergency notice required under A.R.S. § 26-348(B); and
3. Update the notice provided under subsection (2) as required under A.R.S. § 26-348(C).

Historical Note
New Section R18-18-106 recodified from R8-4-106 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-107. Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting

A. The owner or operator of a facility shall comply with the extremely hazardous substance and hazardous chemical reporting requirements of 40 CFR 370, Subpart B, July 1, 2007, which is incorporated by this reference, contains no later amendments or editions, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.

B. As required by A.R.S. § 26-350, an owner or operator described in subsection (A) shall submit a Tier Two Emergency and Hazardous Chemical Inventory Form, using a form available from the Commission, by March 1 of each year. All facilities subject to this reporting requirement shall be subject to the Tier II Emergency and Hazardous Chemical Inventory Reporting fee schedule:
1. Each owner or operator of a facility required to file a hazardous chemical inventory report(s) (Tier II Reports) under the provisions of 42 U.S.C. § 11022 will be assessed a report filing fee of seventy-five dollars ($75.00) for the first required facility report and an additional fee of twenty dollars ($20.00) for each additional required facility report up to a maximum limit of five hundred dollars ($500) per annual reporting period.
2. Owners or operators of facilities meeting the following conditions are exempt from the reporting fee(s):
   a. Any business or other outlet that primarily reports or sells gasoline, diesel and other motor fuel only at retail to the public.
   b. Any business or other outlet that only files a Tier II report to claim lead acid batteries.
   c. Any business or other outlet that only files a Tier II report to claim diesel or gasoline.
   d. Any business or other outlet that resides on tribal lands or a tribal Nation and must report to a Tribal Emergency Response Commission (TERC) or Chemical-Tribal Emergency Response Commission (C-TERC).

C. If a facility ceases to meet the minimum reporting thresholds of 40 CFR 370, Subpart B, for EHS and hazardous chemical reporting with regard to a specific EHS or hazardous chemical, the owner or operator of the facility may submit a notice to the Commission, LEPC, and FD indicating that the specific EHS or hazardous chemical is no longer present in a quantity that meets the minimum reporting threshold.

Historical Note
New Section R18-18-107 recodified from R8-4-107 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-108. Compliance Procedures

A. The Commission shall make information regarding the EPCRA available to the owner or operator of a facility.

B. The owner or operator of a facility may obtain guidance, but not legal advice, regarding complying with the EPCRA by contacting the Commission.

Historical Note
New Section R18-18-108 recodified from R8-4-108 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-109. Community Right-to-know Procedures

A. To obtain information regarding a specific hazardous chemical or extremely hazardous substance at a specific facility, local emergency response plan, or notice regarding a reportable release, a person shall submit a written request to the Commission or LEPC. If a request is submitted to an LEPC, the LEPC may forward a copy of the request to the Commission so Commission staff can coordinate a response to the request. To obtain a copy of a Form R relating to toxic chemical releases, a person shall submit a written request to the Commission.

B. As required by 42 U.S.C. 11022, the Commission or LEPC shall respond to a written request for information. The response shall advise the person making the request of one of the following:
1. The time and location at which the person may inspect and copy the requested information,
2. That additional information is needed to process the request,
3. That the requested information is not available but the Commission or LEPC will ask the owner or operator of the facility to provide the information, or
4. That the request is denied because:
   a. The requested information does not exist,
   b. The owner or operator of the facility is not required to provide the information,
   c. The Commission or LEPC determined that disclosing the information will impair its ability to protect public health or safety and the public interest in non-

disclosure outweighs the public interest in disclosure, or

d. The information is exempt by law from disclosure.

C. Before releasing information, the Commission or LEPC shall advise the owner or operator of a facility of the request for information regarding the facility.

D. Under A.R.S. § 39-121, the Commission or LEPC shall charge the person making a request under this Section the cost of reproducing the information requested. The Commission shall deposit the funds received under this subsection in accordance with A.R.S. § 26-343(G).

Historical Note

New Section R18-18-109 recodified from R8-4-109 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-110. Grants

A. On or before September 1 of each year, the Commission shall provide notice that is consistent with A.R.S. § 41-2702 to all LEPCs regarding grants that are available from the Commission.

B. To receive funds that are awarded on a non-competitive basis, an LEPC shall submit a "Certification and Request for Funding" form in which the LEPC certifies that it:

1. Is in compliance with all applicable law, including NIMS;
2. Will use the funds in the manner intended;
3. Will keep separate funds from the Emergency Response Fund and funds from other sources; and
4. Will submit all required reports.

C. To receive grant funds that are awarded on a competitive basis, an LEPC shall submit to the Commission a proposal that specifies:

1. The goal that the LEPC intends to accomplish with any grant funds received,
2. Where the grant funds will be spent,
3. The amount of grant funds needed to accomplish the goal,
4. The time needed to accomplish the goal, and
5. Other information that the Commission requests to assist the Commission to evaluate the grant proposal.

D. On behalf of the Commission, Commission staff shall meet at least annually with members of the LEPCs to establish the criteria used to evaluate a grant proposal. Commission staff, on behalf of the Commission, shall evaluate each proposal that is timely received using the criteria established. The Commission shall ensure that the criteria used include consideration of both the qualification of and need for an LEPC to receive a grant.

1. The criteria regarding qualification of an LEPC to receive a grant may include:
   a. The extent to which the LEPC fulfilled the responsibilities listed in R18-18-103;
   b. Whether the LEPC complied with all provisions of R18-18-104;
   c. Whether the LEPC submitted all reports required for grant funds previously received;
   d. Whether previously received grant funds were used in a manner that achieved the goal established;
   e. Attendance by LEPC members at Commission-sponsored meetings; and
   f. The number of training sessions provided by LEPC members to emergency responders in the emergency planning district; and
2. The criteria regarding need for an LEPC to receive a grant may include:
   a. The number of facilities required to report to the LEPC under this Chapter;
   b. The population represented by the LEPC; and
   c. The number of reportable releases during the past year in the area represented by the LEPC.

E. Within 60 days after the grant-proposal deadline specified in the notice of grant availability, the Commission shall provide written notice to each LEPC that applies for grant funds regarding whether grant funds will be awarded and if so, the amount awarded.

F. An LEPC that receives grant funds shall submit progress reports to the Commission on dates prescribed by the Commission. The LEPC shall include in each progress report a summary of the work done to accomplish the goal stated in the grant proposal and a detailed accounting of the expended and remaining grant funds.

Historical Note

New Section R18-18-110 recodified from R8-4-110 with amendments to Chapter Section references at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

ARTICLE 2. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT AND INSTRUCTOR EVIDENCE OF COMPLETION

R18-18-201. Definitions

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

1. "Authorized instructor" means an individual who the Division determines meets the criteria at R18-18-202.
2. "Director" means the director of the Division.
3. "Division" means the Arizona Division of Emergency Management.
4. "Evidence of Completion" means a document issued by the Division to an individual who successfully completes a standardized course of instruction.
5. "Hazmat First Responder Awareness Level personnel" means individuals who are likely to witness or discover a hazardous material release and who are trained to initiate an emergency response sequence by notifying the proper authorities of the release.
6. "Hazmat First Responder Operations Level operatives" means individuals who are trained to respond in a defensive fashion without actually trying to stop a hazardous material release.
7. "Hazardous materials" means:
   a. Any material designated under the hazardous materials transportation act of 1974 (49 U.S.C. 1801);
   b. Any element, compound, mixture, solution, or substance designated under the comprehensive environmental response, compensation, and liability act of 1980 (42 U.S.C. 9602);
   c. Any substance designated in the emergency planning and community right-to-know act of 1986 (42 U.S.C. 11002);
   d. Any substance designated in the water pollution control act (33 U.S.C. 1317(a) and 1321(b)(2)(A));
   e. Any hazardous waste having the characteristics identified under or listed under A.R.S. § 49-922;
   f. Any imminently hazardous chemical substance or mixture with respect to which action is taken under the toxic substances control act (15 U.S.C. 2606);
   g. Any material or substance determined to be radioactive under the atomic energy act of 1954 (42 U.S.C. 2011);

h. Any substance designated as a hazardous substance under A.R.S. § 49-201; and
i. Any highly hazardous chemical or regulated substance as listed in the clean air act of 1963 (42 U.S.C. 7401-7671).

8. "Hazardous materials incident" means an uncontrolled, unpermitted release or potential release of hazardous materials that presents an imminent and substantial danger to the public health or welfare or to the environment.
9. "Hazardous materials response experience" means knowledge and skills gained by responding to hazardous materials incidents.
10. "Instructor requirements" means the criteria listed at R18-18-202 for authorization as an instructor by the Division.
11. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:
a. Release that results in exposure to persons solely within a workplace, with respect to a claim that the persons may assert against their employer;
b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
c. Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if the release is subject to financial protection requirements established by the Nuclear Regulatory Commission under section 170 of the Act, or for the purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and
d. Normal application of fertilizer.

Historical Note
New Section R18-18-201 recodified from R8-2-601 with amendments to Chapter Section references at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-202. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Curriculum

A. An authorized instructor shall conduct a Hazmat First Responder Awareness Level course or a Hazmat First Responder Operations Level course in accordance with the standardized curriculum maintained by the Division. The Division shall promptly notify all authorized instructors of any change in the curriculum.

B. Topics covered in the Hazmat First Responder Awareness Level course are:
1. What hazardous materials are and the risks associated with a hazardous materials incident;
2. Potential outcomes associated with an emergency created when hazardous materials are present;
3. How to recognize the presence of hazardous materials in an emergency;
4. How to identify different hazardous materials; and
5. Role of a first responder awareness individual in an employer's emergency response plan, including site security and control, and use of current resource materials.

C. Topics covered in the Hazmat First Responder Operations Level course are:
1. Basic hazard and risk assessment techniques;
2. How to select and use proper protective equipment;
3. Basic hazardous materials terms;
4. How to perform basic control, containment, or confinement operations with the resources and personal protective equipment available;
5. How to implement basic decontaminating procedures; and
6. Standard operating and terminating procedures.

Historical Note
New Section R18-18-202 recodified from R8-2-602 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-203. Instructor Authorization and Renewal

A. Instructor authorization:
1. An instructor authorized by the Division shall teach each Hazmat First Responder Awareness Level and Hazmat First Responder Operations Level course.
2. To be authorized as an instructor, an individual shall submit the following to the Division:
a. A "Participant Application" form obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell Road, Bldg. 101, Phoenix, Arizona 85008. The applicant shall provide the following information to take an instructor workshop:
i. Course number;
ii. Course date;
iii. Course title;
iv. Applicant's name;
v. SSN;
vi. Applicant's employer;
vii. Applicant's position or title;
viii. Phone number;
ix. Fax number, if any;
x. Work mailing address, city, state, zip code, and county;
xi. Electronic mail address, if any;
xii. Brief description of current duties and how training as an instructor will be used;
xiii. Applicant's signature and date; and
xiv. Supervisor's signature, if applicable, and date;
b. Evidence of two years' experience in hazardous materials incident response;
c. Evidence of Completion of at least 80 hours for Awareness Level or at least 240 hours for Operations Level of hazardous materials training, and a signed copy of attendance and performance records;
d. A letter of recommendation to take instructor training from the applicant's employer, local emergency planning committee chair, county emergency management director, or coordinator; and
e. A brief summary of the applicant's experience in hazardous materials response and as an instructor of adult-level courses.
3. After an applicant submits to the Division the documentation described in subsection (A)(2)(a), the applicant shall:
a. Attend the instructor workshop,
b. Attain a score of at least 90% on the written exam, and

c. Successfully complete a teach back to demonstrate appropriate educational methodology and instructional techniques during an oral presentation.

4. The Division shall issue Evidence of Completion to an individual who successfully completes the instructor workshop.
5. The Division shall maintain records of instructor authorization.
6. Instructor authorization is valid for two calendar years.

B. To renew instructor authorization obtained from the Division, an authorized instructor shall:

1. Submit a "Participant Application" form as described in subsection (A) to take an instructor refresher workshop;
2. Attend an instructor refresher workshop sponsored by the Division before expiration of the current instructor authorization; and
3. Provide evidence of having taught either a Hazmat First Responder Awareness Level course or refresher, or a Hazmat First Responder Operations Level course or refresher, two times in the current authorization period.

C. An instructor who fails to comply with subsection (B), may obtain instructor authorization by applying and meeting the requirements as a new instructor under subsection (A).

Historical Note

New Section R18-18-203 recodified from R8-2-603 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-204. Hazmat First Responder Awareness Level Course and Hazmat First Responder Operations Level Course Division Requirements

A. An instructor authorized by the Division shall teach each Hazmat First Responder Awareness Level course and Hazmat First Responder Operations Level course. An instructor shall notify the Division at least 30 days before course delivery by submitting a "Course Request Form" obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell Road, Bldg. 101, Phoenix, Arizona 85008. The instructor shall provide the following information:

1. Name of requestor;
2. Date;
3. Agency of requestor;
4. Mailing address, city, state, zip code and county;
5. Phone number;
6. Fax number, if any;
7. Name of agency head;
8. Applicant signature;
9. Electronic mail address;
10. Type of course;
11. Course name;
12. Course number;
13. Date course is offered;
14. Training site address and county;
15. Intended audience;
16. Estimated number of participants;
17. Name and signature of requestor; and
18. County emergency management director or local emergency planning committee chairperson endorsement: name, signature, title, and date.

B. Within two weeks following completion of either the Hazmat First Responder Awareness Level course or refresher, or the Hazmat First Responder Operations Level course or refresher, the instructor shall provide the Division with all course records, including student application forms, course roster, completed pre- and post-exam answer sheets, and instructor and course evaluations. In addition, the instructor shall return all unused course materials to the Division.

Historical Note

New Section R18-18-204 recodified from R8-2-604 at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

R18-18-205. Hazmat First Responder Awareness Level Personnel and Hazmat First Responder Operations Level Operatives Evidence of Completion

A. To receive Evidence of Completion as Hazmat First Responder Awareness Level personnel or as Hazmat First Responder Operations Level operative, an individual shall:

1. Submit a "Participant Application" form as described in R18-18-203(A) for Division-sponsored courses. For non-Division-sponsored courses, the individual shall submit the course application contained in the student manual:
   a. Course number: U100 (First Responder Awareness Course) or U200 (First Responder Operations Level Course);
   b. Course date;
   c. Course name: First Responder Awareness Course or First Responder Operations Level Course;
   d. Applicant's name;
   e. SSN;
   f. Title;
   g. Phone number;
   h. Fax number, if any;
   i. Organization;
   j. Electronic address; and
   k. Work mailing address, city, state, zip and county; and
2. Successfully complete the Hazmat First Responder Awareness Level course, or the Hazmat First Responder Operations Level course, and attain a score of at least 75% on the written exam.

B. The Division shall issue Evidence of Completion to an individual who successfully completes the Hazmat First Responder Awareness Level course or the Hazmat First Responder Operations Level course. The employer of an individual issued Evidence of Completion shall maintain evidence of the individual's competency under 29 CFR 1910.120(Q)(6) and (Q)(8)(ii), published by the United States Government Printing Office and revised July 1, 2001, with no later editions or amendments. This regulation is incorporated by reference and on file with the Division and the Office of the Secretary of State.

Historical Note

New Section R18-18-205 recodified from R8-2-605 with amendments to a Chapter Section and subsection reference at 27 A.A.R. 1535, with an immediate effective date of September 1, 2021 (Supp. 21-3).

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.

49-123. Hazardous materials emergency management program; Arizona emergency response commission; emergency planning and community right-to-know

A. The department is designated the lead agency for developing and implementing a state hazardous materials emergency management program.

B. The director shall appoint a coordinator to work in consultation with the Arizona emergency response commission in the development and implementation of the hazardous materials emergency management program.

C. The Arizona emergency response commission is established consisting of representatives from the following agencies and departments:

1. The division of emergency management.

2. The department of health services.

3. The department of public safety.

4. The department of transportation.

5. The Arizona department of agriculture.

6. The corporation commission.

7. The industrial commission of Arizona.

8. The office of the state fire marshal in the Arizona department of forestry and fire management.

9. The office of state mine inspector.

10. Two representatives nominated by the Arizona fire chiefs association or its successor organization, one of whom represents a fire department or a fire district serving a population of less than two hundred fifty thousand persons.

11. Other agencies or offices deemed necessary by the director.

D. This article does not change or alter the existing regulatory authority or provisions of law relating to the agencies and departments listed in subsection C of this section.

E. The department is designated as the lead agency for implementing title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499). The director shall administer any monies received under subsection G of this section.

F. The department shall administer this article and the rules adopted under this article. The department shall administer title III in this state and may conduct whatever activities are necessary to implement this article and title III in this state. The department is granted all the authority and responsibilities of a state emergency response commission for purposes of title III.

G. The department may procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties. The department may also enter into agreements with the federal government, Indian tribes, other states and political subdivisions of this state for the purposes of this article. The department may also accept on behalf of this state any reimbursement, grant or gift that may become available for purposes of this article. The department shall deposit, pursuant to sections 35-146 and 35-147, any such monies in the emergency response fund.

H. The department shall establish a program of financial grants to local governments funded through the department by appropriations to the emergency response fund. The grants shall be dedicated to and used for local compliance with this article. The department shall include procedures for applying for the grants and qualifying criteria for awarding the grants.

I. The department shall adopt and may modify, suspend or repeal rules pursuant to title 41, chapter 6. The rules may not be more stringent than title III and the federal regulations adopted under title III, except as specifically authorized in this article. These rules shall implement this article and title III in this state. The authority to adopt rules includes establishing:

1. Procedures for handling public information requests.

2. Procedures and implementing programs for chemical emergency planning and preparedness.

3. Community right-to-know program reporting requirements.

4. Fees to implement the community right-to-know program. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the emergency response fund established by section 49-132. The governor's regulatory review council must approve rules adopted pursuant to this paragraph.

5. Release reporting requirements.

J. The department shall ensure that mandatory hazardous materials training programs for on-scene command personnel that are developed, delivered or managed by their respective agencies, departments or divisions address notification procedures, coordination of services and comprehensive management for protection of the public health during and after a chemical or other toxic fire event. The training shall include notification and coordination with the department of public safety, the department of transportation, the commission, local emergency planning committees, the department of health services, the division of emergency management, the national response center and the Arizona poison control system. Training shall also include orientation on the state emergency response and recovery plan concerning hazardous materials. The department shall encourage private companies that deliver similar training in this state to include the same curriculum in their programs.

E-4.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 9, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7, Article 5

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers twenty-five (25) rules and one (1) appendix in Title 9, Chapter 7, Article 5 related to Sealed Source Industrial Radiography.

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 5 regulate persons that perform industrial radiography using sealed sources and were adopted to satisfy requirements of the Nuclear Regulatory Commission (NRC) that the rules comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967. The rules specify the minimum standards to protect the health and safety of employees of persons licensed to use sealed-source systems, clients of these persons, and the general public, as well as to comply with terms of the Agreement.

In the previous 5YRR approved by Council in November of 2018, the Department planned "to review the rules in the entire Chapter at a later date, possibly after completing the five-year-review reports on all Articles in the Chapter, and may consider a rulemaking at that time to better format the Chapter and if issues with the rules appear to warrant such action and expenditure of resources." The Department has completed reviewing 5YRRs for the Chapter.

Proposed Action

The Department is planning to extensively revise and reorganize the Chapter. To that end, the Department has requested and received approval to begin the rulemaking, however, given the complex and technical nature of the content of the Chapter and the need to coordinate and collaborate with the NRC in drafting revisions to most of the Articles in the Chapter, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025.

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

   The Department cites both general and specific statutory authority for these rules.

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

   The rules relate to the regulation of radioactive materials and those persons using them. The costs of the rules are minimal or non-existent to stakeholders while providing the benefit of increased safety and maintained compliance with the federal government. Historic changes include updating standards, improving clarity and understandability, and adding definitions, which all had minimal or no economic impact. The Department believes that the effects of the rules are consistent with any originally anticipated economic impacts and that the rules may benefit from an adoption of consistent terminology, the removal of obsolete references, and further restructuring.

   Stakeholders are identified as the Department, the Arizona Radiation Regulatory Agency, entities performing industrial radiography using sealed sources, employees of persons licensed to use sealed-source systems, clients of these persons, 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?**

   Because these rules ensure regulated entities comply with federal requirements--hence avoiding much higher fees to the U.S. Nuclear Regulatory Commission, ensuring that Arizona retains primacy, and establishing protective benefits—the Department believes that the rules' benefits outweigh any associated costs. It is with this in mind that the Department believes that the rules, with few exceptions, impose the least burden and costs to persons regulated by the rules.

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

   The Department has not received any written criticism 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 not clear, concise, or understandable and gives the following examples:

- Rules should state that records are to be maintained for "at least" three years
- Rules should use "radiographic exposure device" consistently
- Rules should use "depleted uranium" consistently
- Rules should be updated and reformatted
- R9-7-501: defined terms should not used as part of the definition; either "certifying entity" or "independent certifying organization" should be used consistently; and the definitions section in general should be updated
- R9-7-502: should be identified that subsections (B) through (I) are part of an application; timeframes for review should be referenced in Table A of Article 12; citations should be updated
- R9-7-503: consistent nomenclature should be used; obsolete requirement should be eliminated
- R9-7-503 and R9-7-508: rules should use "Type B transport container" or "Type B package" consistently
- R9-7-505 and R9-7-508: rules should be restructured and reformatted
- R9-7-509 and R9-7-531: the rules should be combined into one rule
- R9-7-512: approval process and time frames of an RSO should be clarified
- R9-7-513: requirements should be included in the rule
- R9-7-517 and R9-7-532: the rules should be combined into one rule
- R9-7-518: rule should be consolidated with R9-7-515
- R9-7-523: requirements for RSO should be better delineated
- R9-7-525: rule should include email notification
- R9-7-533: rule should clarify how the last survey of the day is determined
- R9-7-539: rule should be reformatted and the term "alarm signal" should be used consistently
- R9-7-543: rule needs to be retitled; radiographer needs to be properly defined; the term "personal supervision" should be defined;
- Appendix A: should not restate definitions; "nationally recognized organization" should be defined; similar information is found in this appendix as the appendix in article 11

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

The Department states the rules are generally consistent with other rules and statutes with the following exceptions:

- The incorporation by reference dates of 10 CFR 71 in R9-7-503(B)(2), R9-7-518(B), and R9-7-543(B)(1) and (C)(1) are incorrect. In addition, the date for the incorporation by reference of 10 CFR 71,5 in R9-7-540(B)(11) is incorrect.

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

The Department states the rules are generally effective in achieving their objectives, however could be more effective if the items described in subsection 5 and 6 are amended.

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. **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 the rules qualify for an exception under A.R.S. § 41-1037(A)(3), as the issuance of a general permit would not meet the statutory requirement of A.R.S. § 30-656, which allows Arizona to be an Agreement State and compatibility of licensing is one of the requirements of the negotiation between Arizona and the U.S. Atomic Energy Commission.

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers twenty-five rules and one appendix in Title 9, Chapter 7, Article 5 related to Sealed Source Industrial Radiography. As stated above, the rules are generally effective in meeting their objectives and not more stringent than corresponding federal law. The Department intends to submit a Notice of Final Rulemaking to the Council by December 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

August 25, 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. 7, Article 5, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 5, which is due on or before September 29, 2023.

The Department is requesting that the rules be heard at the Council meeting on November 7, 2023.

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

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 5. Sealed Source Industrial Radiography

August 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-673, 30-681, 30-688, 30-689

For R9-7-502, A.R.S. §§ 30-671 and 30-672 are additional specific statutory authority.

2. The objective of each rule:

Rule	Objective
R9-7-501	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-502	To specify the documents an applicant for a license to use radioactive materials for industrial purposes is required to submit, and To establish the application review process used by the Department.
R9-7-503	To establish the minimum criteria for equipment used in industrial radiography.
R9-7-504	To specify the minimum number and calibration requirements for radiation survey instruments to be maintained at each location where sources of radiation are present.
R9-7-505	To establish minimum requirements for leak testing of sealed sources, including authorized persons, methods, thresholds, and timing; and To require replacement of defective equipment.
R9-7-506	To require a quarterly inventory of all sealed sources and devices containing depleted uranium (DU).
R9-7-507	To specify the content of a utilization log for each sealed source.
R9-7-508	To require written inspection and maintenance procedures for radiographic exposure devices and other equipment to protect health and safety, and To establish requirements for performing visual and operability checks on equipment and for maintaining records of the checks.
R9-7-510	To specify requirements for a radiographic operation at a location other than a permanent radiographic installation.
R9-7-512	To establish the qualifications and duties of a radiation safety officer (RSO).
R9-7-514	To establish limits on external radiation levels from storage containers and source changers.
R9-7-515	To establish requirements for locking radiographic exposure devices, storage containers, and source changers to prevent theft.

R9-7-516	To require a licensee to establish, maintain, and retain records that show the receipt and transfer of a sealed source or a device that uses DU for shielding and the content of the records.
R9-7-517	To require posting in any area in which industrial radiography is performed to inform the general public, as well as occupational workers, of the presence of radioactive material at a location that does not typically have such a hazard.
R9-7-518	To establish requirements for labelling and locking up source changers, storage containers, and transported licensed material.
R9-7-522	To specify the establishment, content, and retention of operating and emergency procedures.
R9-7-523	To establish requirements for the monitoring of radiation exposure by personnel and for related actions to protect health and safety.
R9-7-524	To specify requirements for supervision of a radiographer's assistant.
R9-7-525	To require a licensee to notify the Department of any planned field radiography.
R9-7-531	To specify requirements for continuous direct visual surveillance of a radiographic operation to protect against unauthorized entry into a high radiation area.
R9-7-533	To establish requirements for a licensee to conduct and document radiation surveys to protect health and safety.
R9-7-535	To require a licensee to notify the Department of specific incidents involving radiography equipment and the content of the notification so the incident could be investigated, and To require a licensee to notify the Department of radiographic operations or storage of radioactive material at a location not listed on the license or for a period longer than 180 days.
R9-7-539	To establish requirements for entrance control devices and alarm signals used in a permanent radiographic installation.
R9-7-540	To specify the records to be maintained at the location specified under R9-7-502(I) and at each field station or temporary job site to ensure the minimum amount of safety information is available.
R9-7-543	To establish qualifications for a radiographer and for a radiographer's assistant and the documentation of qualifications, To specify an inspection program to examine job performance, and To specify the topics to be covered in the training required for a radiographer.
Appendix A	To specify standards for an independent certifying organization that provides radiography certification.

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
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules. However, much of the current wording must be word-for-word with requirements of the U.S. Nuclear Regulatory Commission (NRC) to comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967.

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
Multiple	The dates of the incorporation by reference of 10 CFR 71 in R9-7-503(B)(2), R9-7-518(B), and R9-7-543(B)(1) and (C)(1) are all different and incorrect. The correct date should be September 9, 2015. In addition, the date for the incorporation by reference of 10 CFR 71,5 in R9-7-540(B)(11) is incorrect and should also be September 9, 2015.

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 ___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
Multiple	The rules would be clearer if the rules stated that the specified records were required to be maintained for "at least" three years. The rules would be more understandable if they were reformatted.
Multiple	The rules would be clearer if the defined term "radiographic exposure device" were used consistently, rather than the term "exposure device" being used in multiple locations in the Article. However, the wording is required by the NRC.
Multiple	The rules would be clearer if the term "depleted uranium" were used consistently, rather than "depleted uranium" in some locations and "DU" in others.
R9-7-501	The rule would be clearer if the defined term were not used as part of the definition, such as for "access panel," "associated equipment," "control (drive) cable," "independent certifying organization," and "practical examination." The rule would be more concise if both "certifying entity" and "independent certifying organization" were not both used/defined. The rule would be more improved if the second sentence in the definition of "annual refresher training" were in the body of the rules, rather than part of the definition. It is unclear why the terms "door" and "port" are defined in this Section, since they state the definition pertains to a "cabinet x-ray unit" and should, therefore, be in Article 11 of the Chapter. It is also unclear why the definition of the term "radiographic exposure device" includes "any x-ray machine" rather than focusing on devices containing a sealed source.
R9-7-502	The rule would be more understandable if it were clearer that the documents in subsections (B) through (I) were part of an application. The rule would also be improved if the rule referenced the

	timeframes for review in Table A of Article 12. It is unclear why subsection (A)(2)(a) is in the rule, although it is in 10 CFR 34.13.
R9-7-503	Subsection (A)(2) would be improved if reformatted to eliminate the second sentence. Subsection (C) should be reformatted to remove passive language and make the structure of subsections consistent. The rule would be clearer if consistent nomenclature were used, instead of "ANSI N432-1980" in subsection (C)(8) and "American National Standards Institute N432-1980" in subsection (E). The rule would be more concise if the obsolete requirement in subsection (D) could be removed.
R9-7-503 and R9-7-508	The rules would be clearer if references to "Type B transport container" (subsection (B)(2) in R9-7-503) and "Type B package" (subsection (B)(2) in R9-7-508) were consistent and the term used was defined.
R9-7-504	The rule would be clearer if subsections (A) and (B) were reformatted.
R9-7-505	Subsection (C) would be clearer if broken into separate subsections to better delineate the responsibilities of a licensee and a "person who performs leak testing" and if there were a citation to the subsection related to maintaining "records of the leak tests in accordance with this Section." Subsection (E) would be improved by restructuring to first describe what constitutes leakage, then stating what needs to happen after a leak is detected. Subsection (F) would benefit from similar restructuring.
R9-7-508	Subsection (A) would be clearer if restructured to better delineate that use of a check source pertains to survey instrument operability checks, but that removal from service of equipment with a problem applies to all the listed equipment. Subsection (B)(1) would be clearer if the second and third sentences in the subsection were made into separate subsections to better identify that the written inspection and maintenance procedures need to address these requirements, and that they are not duplicating requirements in subsection (A).
R9-7-509 and R9-7-531	This requirements in R9-7-509 seem to overlap greatly with requirements in R9-7-531, so the rules might be clearer and more concise if the requirements were combined into one rule. There is also some overlap with R9-7-510(A)
R9-7-510	The rule would be clearer if the rule were reformatted and if the wording in subsection (B) were clarified so it did not appear to contradict requirements in subsection (A) and in R9-7-509 and R9-7-535(C) about the use of industrial radiography in field locations.
R9-7-512	It is unclear whether the Department has to approve the use of an individual, as in subsection (C), without the required experience and training to act as RSO, and the process/time-frame for approval.
R9-7-513	The rules in the Article would be more concise if the stated requirement were included in a Section specifying the types of records to which it pertains.
R9-7-517 and R9-7-532	The requirements in these rules appear duplicative and should be consolidated or differences clarified. It is unclear why the NRC required R9-7-532, which just provides cross-references to other Sections in the Chapter and appears to be duplicated in R9-7-517.
R9-7-518	Subsection (C) appears to overlap with requirements in R9-7-515, and the rule would be improved if requirements could be consolidated or differences clarified.
R9-7-522	Subsection (A)(1) would be improved if "persons" were replaced with "individuals" who should not be exposed to radiation. The last sentence in subsection (B) appears duplicative of requirements in R9-7-540(B).
R9-7-523	The rule would be clearer if the requirements for the licensee, the Radiation Safety Officer, and individuals potentially exposed to radioactivity were better delineated.
R9-7-525	The rule would be improved if it included e-mail notification.
R9-7-533	The rule would be improved by clarifying how the last survey of the day would be determined.

R9-7-535	The rule would be clearer if it specified what other actions may need to be taken after the notification required in subsection (C) was made.
R9-7-539	The rule would be clearer if the term "alarm signal" were used, with or without the modifiers "visible" or "audible." Subsection (B) would be improved if separated into different subsections for alarm signals and entrance control devices, especially because their frequency of testing is different.
R9-7-540	The rule would be clearer if subsection (B)(2) stated "this Article" rather than Article 5 and if "that location" in subsection (B)(3) were specified.
R9-7-543	The rule would be clearer if it were retitled, because the rule also contains requirements for providing proof of certification to the Department, other requirements for a radiographer and radiographer's assistant, and requirements for an inspection program. Although Arizona does not have a certification program for industrial radiographers, it is unclear in subsection (A)(3) whether a radiographer 's certification can be renewed, as may be described in subsection (A)(4), and how that affects subsection (A)(3)(a), as well as what an "uncertified radiographer" in subsection (A)(3)(b) is. The citation in subsection (A)(5) should be to "subsection (A)(4)(b)" rather than to "subsection (4)(b)." It is unclear how many hours of continuing education are required in subsection (A)(4)(b); either the number of hours or a citation to where the number of hours is specified would improve the rule, but cannot be added due to the NRC. It is also unclear by whom the written or oral examination specified in subsection (B)(2) or the practical examination in subsection (C)(3) is given. Since the term "personal supervision" is used in subsection (C)(2), but only defined in R9-7-524 for the purposes of that Section, the rule would be clearer if the term were defined in R9-7-501. If the term were defined in R9-7-501, then the remainder of R9-7-524 may be able to be combined into subsection (C). Subsection (G) would be clearer if it stated or cited to what equipment is meant.
Appendix A	The rule would be more concise if it did not restate the definition in R9-7-501, if subsections (I)(G) and (I)(H) were combined, and if "nationally recognized organization" were described or defined somewhere in the Article. In addition, (II)(B)(3) should include the Department.

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:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 5 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though all of the seven rulemakings were in 12 A.A.C. 1. One economic impact statement (EIS) is available to the Department for the rulemaking effective July 3, 2004; no documentation is available for the rulemaking effective 1994; and the economic impact of the Sections made/revised in the other rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking, including review of the changes made. If a rule included in

one of these rulemakings was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking.

The Department currently issues approximately five licenses to entities that perform industrial radiography using sealed sources under Article 5, with another five to 10 entities operating under reciprocity according to R9-7-320. Persons affected by these rules include entities performing industrial radiography and their employees, the persons for whom they perform industrial radiography, and the general public. The persons for whom industrial radiography is performed include companies that transport oil or gas in pipelines through Arizona, companies that perform quality assessments of aircraft parts, and persons that evaluate steam pipelines in Palo Verde.

Since none of the available documentation enumerates the different cost estimates, costs/benefits in this report are considered minimal if $1,000 or less, moderate when greater than $1,000 but less than or equal to $10,000, and substantial when greater than $10,000. One rule in the Article, R9-7-532, has been in place since 1994, and no documentation related to its adoption is available. Since the rule just provides cross-references to other Sections in the Chapter, the Department considers the rule to provide a benefit to regulated persons by notifying them of requirements in the other Sections, while any costs would be imposed by the other Sections. Another rule, R9-7-531, was last revised effective June 8, 2001. The NFR for the rulemaking stated that many changes in the Article were made to improve clarity and understandability, and the changes in R9-7-531 were among these. No economic effect was anticipated from the changes. The Department believes that the actual effects of the changes were as anticipated.

In a rulemaking effective May 9, 2003, two rules, R9-7-514 and R9-7-535, were added to the Article. The NFR for the rulemaking stated that R9-7-514 was added to include radiation exposure standards for source storage containers and source changers. The NFR stated that "new equipment standards in R[9]-[7]-514 should not impose any increased costs to radiography business because the industry is limited to a number of suppliers that are regulated by the federal government. Therefore, it would be unlikely that an Arizona licensee could purchase unacceptable equipment. The regulations are needed to prevent the use of home-made or modified older equipment that does not meet the new standards." The requirements in R9-7-535 were added at the request of the NRC, and require the Department to be notified of any radiography incident that meets the specifications described in the rule. Both rules are required by the NRC to be in Arizona's rules to comply with the Agreement, and licensees would need to adhere to the requirements, regardless of whether they were in the rules. The Department estimates that the actual costs described in the NFR are generally consistent with the costs and benefits of the rules.

With the exception of the rules specified above and R9-7-501, R9-7-503, R9-7-518, and R9-7-523, which are discussed below, the remainder of the rules in the Article were last made or revised in a rulemaking effective July 3, 2004. An EIS is available for this rulemaking. Of the 21 rules in the Article that were part of the rulemaking, 13 were newly adopted. The EIS stated that all of the changes made to the Article as part of the rulemaking, except for the requirements in R9-7-525, were made to conform to requirements in 10 CFR 34. The EIS stated that "[i]t

is doubtful … that any significant costs will result from these amendments because all seven of our licensees contract for work throughout the United States and hire employees that are familiar with national standards. … [The new] federal radiography standards … have already been adopted by most Agreement States," so the licensees would likely have already put the new requirements in place based on working in these other states. One exception to this is that the rules in R9-7-512 for a Radiation Safety Officer (RSO) "grandfather[] in the existing active RSO's." The EIS stated that "the new standards may result in higher salaries for the newly qualified RSO's." The requirements in R9-7-525 for licensees to notify the Department of "any planned fieldwork" were added to enable inspectors to find where field operations were being performed to ensure "meaningful safety inspections of radiography field operations." The EIS stated that the cost associated with the addition "should be minimal for licensees" and provide a benefit to inspection staff "by ensuring that each trip to the field will result in a meaningful inspection of the radiographers and additional time to conduct overdue inspections." The Department believes that the actual effects of the changes were as anticipated.

Two of the four remaining rules, R9-7-518 and R9-7-523, were part of a rulemaking, effective December 4, 2004, carried out to comply with the Agreement. The new R9-7-518 describes requirements for labeling of source changers and storage containers for "licensed material," transporting "licensed material," and secure and safe storage of "licensed material." R9-7-523 was amended to make clearer that the licensee is responsible for ensuring that personal monitoring devices are worn, readings recorded, the devices properly maintained. The NFR for the rulemaking stated that these requirements were added to ensure public safety through the safe use, transport, storage, and disposal of radiation sources. There was not considered to be "any significant economic impact as a result of the implementation of the proposed amendments," and licensees would need to adhere to the requirements, regardless of whether they were in the rules. The Department estimates that the effect described in the NFR is generally consistent with the costs and benefits of the rules.

One rule, R9-7-501, was last revised in a rulemaking effective February 7, 2006. The definition of "guide tube" was revised to improve understandability and the definition of "radiographer certification" was added to make the rules clearer. The NFR for the rulemaking stated that these changes were "required by the NRC as part of the agreement between the Agency and the federal government," and that they would "result in no new economic impact to the affected radiation users and members of the public." The Department believes that the effect described in the NFR is generally consistent with the economic impact of the changes.

The final rule, R9-7-503, was last revised in a rulemaking effective February 2, 2016. In the rulemaking, the incorporations by reference in subsections (A)(1) and (B)(2) of the rule were updated to be consistent with requirements of the Agreement. No economic impact was anticipated. The Department believes that the estimation was generally consistent with the actual effect.

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 previous 5YRR stated that the Department planned "to review the rules in the entire Chapter at a later date, possibly after completing the five-year-review reports on all Articles in the Chapter, and may consider a rulemaking at that time to better format the Chapter and if issues with the rules appear to warrant such action and expenditure of resources." The Department has completed this course of action with the review of the final 5YRRs for the Chapter, approved by the Council in March 2022. The Department has developed a plan for a rulemaking for the Chapter and has requested approval to begin the rulemaking, as required by A.R.S. § 41-1039(A). With receipt of this approval, the Department has begun the rulemaking process.

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

The rules in Article 5 regulate persons that perform industrial radiography using sealed sources and were adopted to satisfy requirements of the NRC that the rules comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967. The rules specify the minimum standards to protect the health and safety of employees of persons licensed to use sealed-source systems, clients of these persons, and the general public, as well as to comply with terms of the Agreement. Without these requirements, which are compatible with federal regulations, Arizona cannot remain an Agreement State. If Arizona lost primacy for the regulation of radioactive materials in Arizona, regulated entities would still need to comply with the federal requirements, but would need to pay the much higher fees to the NRC rather than the fees under the rules in 9 A.A.C. 7.

Thus, these entities receive a substantial benefit from state licensure over obtaining a license through the NRC, which is much more costly. The Department believes that the protective benefits of these rules, as well as their enabling Arizona to retain primacy, outweigh the probable costs of the rules. Although the issues described in this report may impose a slight regulatory burden, many of them cannot be changed because they are required to be the same as the federal regulations. Therefore, the Department believes that the rules, with this constraint and few exceptions, impose the least burden and costs to regulated persons 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)?

10 CFR 20.1501(b), 10 CFR 30.20, 10 CFR 30.22, 10 CFR 40.36(d), 10 CFR 40.46, 10 CFR 70.50(c)(2), and 10 CFR 71.0(c)

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:

All but one of the rules in the Article were adopted before July 29, 2010. However, the Department believes the rules are exempt from A.R.S. §§ 41-1037 due to paragraph (A)(3), as the issuance of a general permit would not meet the statutory requirement of A.R.S. § 30-656, which allows Arizona to be an Agreement State, since compatibility of licensing is one of the requirements of the Agreement.

14. Proposed course of action

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

As discussed with the Council, the Department is planning to extensively revise and reorganize the Chapter. To that end, the Department has requested and received approval to begin the rulemaking, as required by A.R.S. § 41-1039(A). Given the complex and technical nature of the content of the Chapter and the need to coordinate and collaborate with the NRC in drafting revisions to most of the Articles in the Chapter, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025.

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

ARTICLE 5. SEALED SOURCE INDUSTRIAL RADIOGRAPHY

ARTICLE 5. SEALED SOURCE INDUSTRIAL RADIOGRAPHY

R9-7-501. Definitions

"Access panel" means any panel that is designed to be removed or opened for maintenance or service purposes, opened using tools, and used to provide access to the interior of the cabinet x-ray unit.

"Annual refresher safety training" means a review conducted or provided by the licensee for its employees on radiation safety aspects of industrial radiography. The review shall include, as applicable, the results of internal inspections, new procedures or equipment, new or revised state rules, accidents or errors that have occurred, and provide opportunities for employees to ask safety questions.

"Aperture" means any opening in the outside surface of the cabinet x-ray unit, other than a port, which remains open during generation of x-radiation.

"Associated equipment" means equipment used in conjunction with a radiographic exposure device that drives, guides, or comes in contact with the source.

"Certifying entity" means an independent certifying organization that complies with the requirements in Appendix A of this Article, or requirements of the NRC or another Agreement State, that are equivalent to the requirements in parts II and III of Appendix A.

"Collimator" means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is positioned to make a radiographic exposure.

"Control (drive) cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

"Control (drive) mechanism" means a device that enables the source assembly to be moved to and from the exposure device.

"Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

"Door" means any barrier that is designed to be movable or opened for routine operation purposes, not opened using tools, and used to provide access to the interior of the cabinet x-ray unit.

"Exposure head" means a device that places the gamma radiography sealed source in a selected working position.

"Ground fault" means an accidental electrical grounding of an electrical conductor.

"Guide tube (projection sheath)" means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

"Hands-on experience" means accumulation of knowledge or skill in any area relevant to radiography.

"Independent certifying organization" means an independent organization that meets all of the requirements in Appendix A.

"Lay-barge radiography" means industrial radiography performed on any water vessel used for laying pipe.

"Port" means any opening in the outside surface of the cabinet x-ray unit that is designed to remain open, during generation of x-rays, for conveying material being irradiated into and out of the cabinet, or for partial insertion of an object for irradiation whose dimensions do not permit complete insertion into the cabinet x-ray unit.

"Practical examination" means a demonstration, through practical application of safety rules and principles of industrial radiography, including use of all radiography equipment and knowledge of radiography procedures.

"Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

"Radiographic exposure device" means any x-ray machine used for purposes of making an industrial radiographic exposure or a device that contains a sealed source, and the sealed source or its shielding may be moved or otherwise changed from a shielded to an unshielded position for purposes of making an industrial radiographic exposure.

"Radiographic operations" means all activities associated with the presence of radiation sources in a radiographic exposure device during use of the device or transport (except when the device is being transported by a common or contract carrier). This includes performing surveys to confirm the adequacy of boundaries, setting up equipment, and conducting any activity inside restricted area boundaries.

"S-tube" means a tube through which a radioactive source travels when the source is inside a radiographic exposure device.

"Source assembly" means an assembly that consists of a sealed source and a connector that attaches the source to a control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

"Underwater radiography" means industrial radiography performed when a radiographic exposure device is beneath the surface of water.

R9-7-502. License Requirements

A. The Department shall review an application for a specific license for the use of radioactive material in industrial radiography and approve the license if an applicant meets all of the following requirements:
1. The applicant satisfies the general requirements in R9-7-309 and any special requirements contained in this Article; and
2. The applicant submits a program for training radiographers and radiographers' assistants that complies with R9-7-543, except that:
   a. After the effective date of this Section, an applicant is not required to describe its initial training and examination program for radiographers;
   b. An applicant shall affirm that an individual who is acting as an industrial radiographer is certified in radiation safety by a certifying organization, as required in R9-7-543, before permitting the individual to act as a radiographer. This affirmation substitutes for a description of the applicant's initial training and examination program for radiographers in the subjects outlined in R9-7-543(G); and
   c. An applicant shall submit procedures for verifying and documenting the certification status of each radiographer and for ensuring that the certification remains valid.

B. The applicant shall submit written operating and emergency procedures as prescribed in R9-7-522.

C. The applicant shall submit a description of a program for review of job performance of each radiographer and radiographers' assistant at intervals that do not exceed six months as prescribed in R9-7-543(E).

D. The applicant shall submit a description of the applicant's overall organizational structure as it applies to radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

E. The applicant shall submit a list of the qualifications of each individual designated as an RSO under R9-7-512 and indicate which designee is responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures.

F. If an applicant intends to perform leak testing on any sealed source or exposure device that contains depleted uranium (DU) shielding, the applicant shall submit a description of the procedures for performing the leak testing and the qualifications of each person authorized to perform leak testing. If the applicant intends to analyze its own wipe samples, the application shall include a description of the procedures to be followed. The description shall include the:
1. Instruments to be used,
2. Methods of performing the analysis, and
3. Relevant experience of the person who will analyze the wipe samples.

G. If the applicant intends to perform "in-house" calibrations of survey instruments, the applicant shall describe each calibration method to be used and the relevant experience of each person who will perform a calibration. A licensee shall perform all calibrations according to the procedures prescribed in R9-7-504.

H. The applicant shall identify and describe the location of all field stations and permanent radiographic installations.

I. The applicant shall identify each location where records required by this Chapter will be maintained.

R9-7-503. Performance Requirements for Equipment

A. A licensee shall ensure that equipment used in industrial radiographic operations meets the following minimum criteria:
1. Each radiographic exposure device, source assembly or sealed source, and all associated equipment meet the requirements in American National Standards Institute, N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography" (published as NBS Handbook 136, issued January 1981) by the American National Standards Institute, which is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments. This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036 Telephone (212) 642-4900. A copy of the document is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*; or
2. An engineering safety analysis demonstrates the applicability of previously performed testing on similar individual radiography equipment components. Based on a review of the analysis, the Department may find that previously performed testing can be substituted for testing of the component under the standards in subsection (A)(1).

B. In addition to the requirements in subsection (A), the following requirements apply to each radiographic exposure device, source changer, source assembly, and sealed source:

1. A licensee shall ensure that each radiographic exposure device has attached to it a durable, legible, and clearly visible label bearing:
   a. The chemical symbol and mass number of the radionuclide in the device;
   b. The activity of the source and the date on which this activity was last measured;
   c. The model (or product code) and serial number of the sealed source;
   d. The manufacturer's description of the sealed source; and
   e. The licensee's name, address, and telephone number.
2. A licensee shall ensure that each radiographic exposure device intended for use as a Type B transport container meets the applicable requirements of 10 CFR 71, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
3. A licensee shall not modify any radiographic exposure device, source changer, source assembly, or associated equipment, unless the design of the replacement component, including source holder, source assembly, controls, or guide tubes is consistent with and does not compromise the design safety features of the system.

C. In addition to the requirements in subsections (A) and (B), the following requirements apply to each radiographic exposure device, source assembly, and associated equipment that allows the source to be moved out of the device for radiographic operations or to a source changer:

1. The license shall ensure that the coupling between the source assembly and the control cable is designed so that the source assembly does not become disconnected if it is positioned outside of the guide tube and is constructed so that an unintentional disconnect will not occur under normal and reasonably foreseeable abnormal conditions;
2. The device automatically secures the source assembly if it is retracted into the fully shielded position within the device and the securing system is released from the exposure device only by means of a deliberate operation;
3. The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device are equipped with safety plugs or covers installed for storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter;
4. Each sealed source or source assembly has attached to it or is engraved with a durable, legible, and visible label with the words: "DANGER--RADIOACTIVE." The licensee shall ensure that the label does not interfere with safe operation of the equipment;
5. The guide tube is able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use;
6. A guide tube is used if a person moves the source out of the device;
7. An exposure head or similar device, designed to prevent the source assembly from passing out of the end of the guide tube, is attached to the outermost end of the guide tube during industrial radiography operations;
8. The guide tube exposure head connection is able to withstand the tensile test for control units specified in ANSI N432-1980, incorporated by reference in subsection (A); and
9. Source changers provide a system for ensuring that the source is not accidentally withdrawn from the changer when a person is connecting or disconnecting the drive cable to or from the source assembly.

D. A licensee shall ensure that radiographic exposure devices and associated equipment in use after January 10, 1996 comply with the requirements of this Section.

E. Notwithstanding subsection (A), a licensee with equipment used in industrial radiographic operations need not comply with Sec. 8.92(C) of the Endurance Test in American National Standards Institute N432-1980 if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

R9-7-504. Radiation Survey Instruments

A. A licensee shall maintain at least two calibrated and operable radiation survey instruments at each location where sources of radiation are present to make radiation surveys required by this Article and Article 4 of this Chapter. Instrumentation required by this Section shall be capable of measuring a range from 0.02 millisieverts (2 millirems) per hour through 0.01 sievert (1 rem) per hour.

B. A licensee shall ensure that each radiation survey instrument required under subsection (A) is calibrated:

1. At intervals that do not exceed six months, and after instrument servicing, except for battery changes;
2. For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 0.02 and 10 millisieverts (2 and 1000 millirems) per hour; and
3. So that an accuracy within plus or minus 20% of the calibration source can be demonstrated at each point checked.

C. A licensee shall maintain calibration records for each radiation survey instrument, and maintain each record for three years after it is made.

R9-7-505. Leak Testing and Replacement of Sealed Sources

A. A licensee shall ensure that replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing of any sealed source is performed by a person authorized to do so by the Department, the NRC, or another Agreement State.

B. A licensee shall ensure that opening, repairing, or modifying any sealed source is performed by a person specifically authorized to do so by the Department, the NRC, or another Agreement State.

C. A licensee that uses a sealed source shall have the source tested for leakage by a qualified person at intervals that do not exceed six months. The person who performs leak testing of the source shall use a method approved by the Department, the NRC, or by another Agreement State. A wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample shall be analyzed for radioactive contamination. The licensee shall ensure that the analysis is capable of detecting the presence of 185 Bq (0.005 microcurie) of radioactive material on the test sample and a person specifically authorized by the Department, the NRC, or another Agreement State performs the analysis. The licensee shall maintain records of the leak tests in accordance with this Section.

D. Unless a sealed source is accompanied by a certificate from the transferor that shows that the sealed source has been leak tested within six months before the transfer, a licensee shall not use the sealed source until it is tested for leakage. A licensee is not required to test a sealed source that is in storage, but shall test each sealed source before use or transfer to another person if the interval of storage exceeds six months.

E. A licensee shall immediately withdraw equipment containing a leaking source from use and have it decontaminated and repaired or dispose of the source in accordance with this Chapter. The licensee shall file a report with the Director of the Department within five days of any test with results that exceed the threshold in this subsection, and describe the equipment involved, the test results, and corrective action taken. If a leak test conducted under this Section reveals the presence of 185 Bq (0.005 microcurie) or more of removable radioactive material the Department classifies the sealed source as leaking.

F. A licensee shall test for DU contamination at intervals that do not to exceed 12 months a radiographic exposure device that uses depleted uranium (DU) shielding and an "S" tube configuration. The licensee shall ensure that the analysis is capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and a person specifically authorized by the Department, the NRC, or another Agreement State performs the analysis. If the testing reveals the presence of 185 Bq (0.005 microcuries) or more of removable DU contamination, the licensee shall remove the exposure device from use until an evaluation of the wear on the S-tube is completed. If the evaluation reveals that the S-tube is worn through, the licensee shall ensure that the device is not used again. The licensee is not required to test for DU contamination if the radiographic exposure device is in storage. Before using or transferring the radiographic exposure device, the licensee shall test the device for DU contamination if the interval of storage exceeds 12 months. The licensee shall maintain records of the DU leak test in accordance with subsection (G).

G. A licensee shall maintain records of leak test results for each sealed source and for each device that contains DU. The licensee shall ensure results are in Becquerels (microcuries), and retain each record for three years after it is made or until the source is removed from storage and tested, whichever is longer.

R9-7-506. Quarterly Inventory

A. A licensee shall conduct a quarterly physical inventory to account for all sealed sources and devices that contain depleted uranium.

B. A licensee shall maintain a record of the quarterly inventory required under subsection (A) for three years after it is made.

C. The record required in subsection (B) shall include the date of the inventory, name of the individual who conducted the inventory, radionuclide, number of becquerels (curies) or mass (for DU) in each device, location of sealed source and associated devices, and manufacturer, model, and serial number of each sealed source and device as applicable.

R9-7-507. Utilization Logs

A. A licensee shall maintain for each sealed source a utilization log that provides all of the following information:

1. A description, including the make, model, and serial number of each radiographic exposure device, and each sealed source transport and storage container that contains a sealed source;
2. The identity and signature of the radiographer using the source; and
3. The plant or site where the source is used and dates of use, including the date each source is removed from and returned to storage.

B. A licensee shall retain the log required by subsection (A) for three years after the log is made.

R9-7-508. Inspection and Maintenance of Radiographic Exposure Devices, Transport and Storage Containers, Source Changers, Survey Instruments, and Associated Equipment

A. A licensee shall perform visual and operability checks on each survey instrument, radiographic exposure device, transport and storage container, source changer, and associated equipment before use on each day the equipment is to be used to ensure that the equipment is in good working condition, the source is adequately shielded, and required labeling is present. A survey instrument operability check shall be performed using a check source or other authorized means. If an equipment problem is found, the licensee shall remove the equipment from service until it is repaired.

B. A licensee shall have written inspection and maintenance procedures to ensure that:

1. Radiographic exposure devices, source changers, transport and storage containers, survey instruments, and associated equipment that require inspection and maintenance at intervals that do not exceed three months or before first use of the equipment are functioning properly and safely. Replacement components shall meet design specifications. If an equipment problem is discovered, the licensee shall remove the equipment from service until it is repaired; and
2. Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

C. A licensee shall maintain records of daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, source changers, survey instruments, and associated equipment, and retain each record for three years after it is made. The record shall include the date of the check or inspection, name of the inspector, equipment involved, any problems found, and any repair or needed maintenance performed.

R9-7-509. Surveillance

During each radiographic operation, a radiographer or the radiographer's assistant, as permitted by R9-7-510, shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at permanent radiographic installations where all entrances are locked and the licensee is in compliance with R9-7-539.

R9-7-510. Radiographic Operations

A. If industrial radiography is performed at a location other than a permanent radiographic installation, a licensee shall ensure that the radiographer is accompanied by at least one other radiographer or radiographer's assistant, qualified under R9-7-543. The additional radiographer or radiographer's assistant shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Industrial radiography is prohibited if only one qualified individual is present.

B. A licensee shall ensure that each industrial radiographic operation is conducted at a location of use authorized on the license in a permanent radiographic installation, unless another permanent location is specifically authorized by the Department.

R9-7-512. Radiation Safety Officer (RSO)

A. A licensee shall have a radiation safety officer (RSO) who is responsible for implementing procedures and regulatory requirements in the daily operation of the radiation safety program.

B. Except as provided in subsection (C), the licensee shall ensure that the RSO satisfies the following minimum requirements:

1. The training and testing requirements in R9-7-543,
2. Two thousand hours of hands-on experience as a qualified radiographer for an industrial radiographic operation, and
3. Formal training in the establishment and maintenance of a radiation safety program.

C. If the licensee uses an individual in the position of RSO who does not have the training and experience required in subsection (B), the licensee shall provide the Department with a description of the individual's training and experience in the field of ionizing radiation and training with respect to the establishment and maintenance of a radiation safety protection program so the Department can determine whether the individual is qualified to perform under subsection (D).

D. The specific duties and authorities of the RSO include, but are not limited to:

1. Establishing and overseeing operating, emergency, and ALARA procedures as required in Article 4 of this Chapter and reviewing them every year to ensure that the procedures in use conform to current Department rules and license conditions;
2. Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught;

3. Overseeing radiation surveys, leak tests, and associated documentation to ensure that the surveys and tests are performed in accordance with the rules and taking corrective measures if levels of radiation exceed established action limits;
4. Overseeing the personnel monitoring program to ensure that devices are calibrated and used properly by occupationally exposed personnel and ensuring that records are kept of the monitoring results and timely notifications are made as required in R9-7-444; and
5. Overseeing operations to ensure that they are conducted safely and instituting corrective actions, which may include ceasing operations if necessary.

R9-7-513. Form of Records

A licensee shall maintain records in accordance with R9-7-405.

R9-7-514. Limits on External Radiation Levels from Storage Containers and Source Changers

The maximum rate limits for storage containers and source changers are 2 millisieverts (200 mRem/hr) at any exterior surface and 0.1 millisieverts (10 mRem/hr) at 1 meter from any exterior surface with the sealed source in the shielded position.

R9-7-515. Locking Radiographic Exposure Devices, Storage Containers, and Source Changers

A. Except at permanent radiographic installations governed by R9-7-539, a licensee shall ensure that each radiographic exposure device has a lock or an outer container with a lock designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The licensee shall ensue that the exposure device or its container, if applicable, is locked (and if a keyed lock, with the key removed) if the device or container is not under the direct surveillance of a radiographer or a radiographer's assistant. During radiographic operations, the radiographer or radiographer's assistant shall secure the sealed source assembly in the shielded position each time the source is returned to the shielded position.

B. A licensee shall ensure that each sealed source storage container and source changer has a lock or an outer container with a lock designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The licensee shall ensure that each storage container and source changer is locked (and if a keyed lock, with the key removed) if the storage container or source changer contains a sealed source and is not under the direct surveillance of a radiographer or a radiographer's assistant.

R9-7-516. Records of Receipt and Transfer of Sealed Sources

A. A licensee shall maintain records that show each receipt and transfer of a sealed source or device that uses DU for shielding and retain each record for three years after it is made.

B. The records shall contain separate entries for each transaction, including the date, name of the individual making the record, radionuclide, number of Becquerels (curies) or mass (for DU), and manufacturer, model, and serial number of each sealed source or device, as applicable.

R9-7-517. Posting

A licensee shall post any area in which industrial radiography is performed as required by R9-7-429. Exceptions listed in R9-7-430 do not apply to industrial radiographic operations.

R9-7-518. Labeling, Storage, and Transportation

A. A licensee shall not use a source changer or a storage container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label that bears the standard trefoil radiation caution symbol and the standard colors for the symbol specifically: magenta, purple, or black on a yellow background, and the label has a minimum diameter of 25 mm and the wording "CAUTION (or DANGER), RADIOACTIVE MATERIAL NOTIFY CIVIL AUTHORITIES (or "NAME OF COMPANY")"

B. A licensee shall not transport licensed material unless the material is packaged and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with 10 CFR 71, January 1, 2004, published by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference, and on file with the Department. This incorporation by reference contains no future editions or amendments.

C. A licensee shall physically secure locked radiographic exposure devices and storage containers behind a locked door to prevent tampering or removal by unauthorized personnel. The licensee shall store licensed material in a manner that will minimize danger from explosion or fire.

D. A licensee shall lock each transport package that contains licensed material and physically secure the package behind the locked doors of the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

R9-7-522. Operating and Emergency Procedures

A. A licensee shall ensure that the operating and emergency procedures include, at a minimum, instructions in the following, as applicable:

1. Handling and use of sealed sources or radiographic exposure devices, so that persons are not exposed to radiation that exceeds the limits in Article 4 of this Chapter;
2. Methods and occasions for conducting radiation surveys;
3. Methods for controlling access to radiographic areas;
4. Methods and occasions for locking and securing radiographic exposure devices, transport and storage containers, and sealed sources;
5. Personnel monitoring and associated equipment;
6. Transportation of sealed sources to field locations, including packing radiographic exposure devices and storage containers in vehicles, placarding vehicles, and maintaining control of the sealed sources during transportation, as required in 49 CFR 171-173, 2002 edition, published October 1, 2002, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, which is incorporated by reference and on file with the Department. This incorporation contains no future editions or amendments;
7. Inspection, maintenance, and operability checks of radiographic exposure devices, survey instruments, transport containers, and storage containers;
8. Actions to be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm rate meter sounds an alarm;
9. Procedures for identifying and reporting defects and noncompliance, as required by R9-7-448 and R9-7-535;
10. Procedures for notifying the RSO and the Department in the event of an accident;
11. Methods for minimizing exposure of persons in the event of an accident;
12. Procedures for recovering a source if the licensee is responsible for source recovery; and
13. Maintenance of records.

B. The licensee shall maintain copies of current operating and emergency procedures until the Department terminates the license. Superseded procedures shall be maintained for three years after being superseded. Additionally, a copy of the procedures shall be maintained at field stations in accordance with R9-7-540.

R9-7-523. Personnel Monitoring

A. A licensee shall not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a direct reading dosimeter, an operating alarm rate meter, and a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor. At permanent radiography installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarm rate meter is not required. A licensee shall:

1. Use a pocket dosimeter with a range from zero to 2 millisieverts (200 millirems). The licensee shall ensure that each dosimeter is recharged at the start of each shift. Electronic personal dosimeters are permitted in place of ion-chamber pocket dosimeters.
2. Assign a personnel dosimeter to each individual, who shall wear the assigned equipment.
3. Replace film badges at least monthly and ensure that other personnel dosimeters are processed and evaluated by an accredited NVLAP processor and replaced at periods that do not exceed three months.
4. After replacement, ensure that each personnel dosimeter is processed as soon as possible.

B. A licensee shall record exposures noted from direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters, at the beginning and end of each shift. The licensee shall maintain the records for three years after the Department terminates the license.

C. A licensee shall check pocket dosimeters and electronic personal dosimeters for correct response to radiation at periods that do not exceed 12 months. The licensee shall record the results of each check and maintain the records for three years after the dosimeter check is performed. The licensee shall discontinue use of a dosimeter if it is not accurate within plus or minus 20 percent of the true radiation exposure.

D. If an individual's pocket dosimeter has an off-scale reading, or the individual's electronic personal dosimeter reads greater than 2 millisieverts (200 millirems), and radiation exposure cannot be ruled out as the cause, a licensee shall process the individual's dosimeter within 24 hours of the suspect exposure. The licensee shall not allow the individual to resume work associated with sources of radiation until the individual's radiation exposure has been determined. Using information from the dosimeter, the licensee's RSO or the RSO's designee shall calculate the affected individual's cumulative radiation exposure as prescribed in Article 4 of this Chapter and include the results of this determination in the personnel monitoring records maintained in accordance with subsection (B).

E. If the personnel dosimeter that is required by subsection (A) is lost or damaged, the licensee shall ensure that the worker ceases work immediately until the licensee provides a replacement personnel dosimeter that meets the requirements in subsection (A) and the RSO or the RSO's designee calculates the exposure for the time period from issuance to discovery of the lost or damaged personnel dosimeter. The licensee shall maintain a record of the calculated exposure and the time period for which the personnel dosimeter was lost or damaged in accordance with subsection (B).

F. The licensee shall maintain dosimetry reports received from the accredited NVLAP personnel dosimeter processor in accordance with subsection (B).

G. For each alarm rate meter a licensee shall ensure that:

1. At the start of each shift, the alarm functions (sounds) properly before an individual uses the device;
2. Each device is set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr); with an accuracy of plus or minus 20 percent of the true radiation dose rate;
3. A special means is necessary to change the preset alarm function on the device; and
4. Each device is calibrated at periods that do not exceed 12 months for correct response to radiation. The licensee shall maintain records of alarm rate meter calibrations in accordance with subsection (B).

R9-7-524. Supervision of a Radiographer's Assistant

If a radiographer's assistant uses a radiographic exposure device, associated equipment, or a sealed source or conducts a radiation survey required by R9-7-533(B) to determine that the sealed source has returned to the shielded position after an exposure, the licensee shall ensure that the assistant is under the personal supervision of a radiographer. For purposes of this Section "personal supervision" means:

1. The radiographer is physically present at the site where the sealed source is being used,
2. The radiographer is available to give immediate assistance if required, and
3. The radiographer is able to observe the assistant's performance directly.

R9-7-525. Notification of Field Work

Each day radioactive material is used for industrial radiography, a licensee shall notify the Department of any planned field radiography. The notice shall be in writing and specify the location of the field work, the name of the supervising individual at the job site, and the expected duration of the work at the job site listed in the notice. A facsimile that provides the required information is sufficient notice.

R9-7-531. Security

During each radiographic operation, the radiographer or radiographer's assistant shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in Article 1, unless:

1. The high radiation area is equipped with a control device or an alarm system as prescribed in R9-7-420(A), or
2. The high radiation area is locked to protect against unauthorized or accidental entry.

R9-7-532. Posting

Notwithstanding any provisions in R9-7-430, areas in which radiography is being performed shall be conspicuously posted as required by R9-7-429(A) and (B).

R9-7-533. Radiation Surveys

A. A licensee shall conduct surveys with a calibrated and operable radiation survey instrument that meets the requirements of R9-7-504.

B. Using a survey instrument that complies with subsection (A), the licensee shall conduct a survey of the radiographic exposure device and the guide tube after each exposure before approaching the device or the guide tube. The survey shall be performed to determine that the sealed source is in the shielded position before the radiographer or radiographer's assistant exchanges films, repositions the exposure head, or dismantles the equipment.

C. The licensee shall conduct a survey of the radiographic exposure device with a calibrated radiation survey instrument any time the source is exchanged or the device is placed in a storage area, as defined in R9-7-102, to ensure that the sealed source is in the shielded position.

D. The licensee shall maintain a record of each exposure device survey conducted before the device is placed in storage under subsection (C), if that survey is the last one performed during the workday. Each record shall be maintained for three years after the record is made.

R9-7-535. Notifications

A. In addition to the reporting requirements specified in Article 4, each licensee shall provide a written report to the Department if any of the following incidents involving radiography equipment occur:
1. Unintentional disconnection of the source assembly from the control cable;
2. Inability to retract the source assembly to the fully shielded position or secure it in this position; or
3. Failure of any component (critical to safe operation of the device) to properly perform its intended function;

B. A licensee shall include the following information in any report submitted under this Section, regarding radiography equipment, or Article 4, regarding an overexposure, if the report concerns the failure of safety components of radiography equipment:
1. A description of the equipment problem;
2. Cause of the incident, if known;
3. Name of manufacturer and model number of the equipment involved in the incident;
4. Place, date, and time of the incident;
5. Actions taken to establish normal operations;
6. Corrective actions taken or planned to prevent reoccurrence; and
7. Qualifications of personnel involved in the incident.

C. Any licensee that conducts radiographic operations, or stores radioactive material at a location not listed on the license or for a period longer than 180 days during a calender year, shall notify the Department of these activities before the 180 days has elapsed.

R9-7-539. Permanent Radiographic Installations

A. If a licensee maintains a permanent radiographic installation that does not fall within the definition of "enclosed radiography" in R9-7-102, the licensee shall ensure that each entrance, used for personnel access to the high radiation area, has either:
1. An entrance control device of the type described in R9-7-420(A)(1) that reduces the radiation level upon entry into the area, or
2. Both conspicuous visible and audible alarm signals to warn of the presence of radiation. The licensee shall ensure that the visible signal is actuated by radiation if a source is exposed and the audible signal is actuated if someone attempts to enter the installation while a source is exposed.

B. A licensee with an alarm signal shall test the alarm signal for proper operation with a radiation source each day before the installation is used for radiographic operations. The test shall include a check of both the visible and audible signals. A licensee with an entrance control device shall test the device monthly. If an entrance control device or alarm signal is operating improperly, the licensee shall immediately label the device or signal as "defective" and repair the device or signal within seven calendar days. The licensee may continue to use the facility during this seven-day period, if the licensee implements continuous surveillance requirements of R9-7-509 and uses an alarming rate meter.

C. A licensee shall maintain each record an alarm system or entrance control device test for three years after the record is made.

R9-7-540. Location of Documents and Records

A. A licensee shall maintain a copy of each record required by this Article and other applicable Articles of this Chapter at a location specified under R9-7-502(I).

B. A licensee shall maintain a copy of each record listed below at each field station and temporary job site;
1. The license that authorizes use of radioactive material;
2. A copy of Articles 4, 5, and 10 of this Chapter;

3. Utilization logs for each radiographic exposure device dispatched from that location, as required by R9-7-507;
4. Records of equipment problems identified in daily checks of equipment, as required by R9-7-508(A);
5. Records of alarm system and entrance control checks as required by R9-7-539;
6. Records of direct-reading dosimeters, such as pocket dosimeters and electronic personnel dosimeters as required by R9-7-523;
7. Operating and emergency procedures as required by R9-7-522;
8. A report on the most recent calibration of the radiation survey instruments in use at the site as required by R9-7-504;
9. A report on the most recent calibration of each alarm rate meter, and operability check of each pocket dosimeter and electronic personnel dosimeter as required in R9-7-523;
10. Most recent survey record as required by R9-7-533;
11. The shipping papers for the transportation of radioactive material required by 10 CFR 71.5, 2003 edition, published January 1, 2003, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, which is incorporated by reference and on file with the Department (this incorporation contains no future editions or amendments); and
12. If operating under reciprocity in accordance with R9-7-320, a copy of the NRC or Agreement State license authorizing the use of radioactive materials.

R9-7-543. Training

A. A licensee shall not allow an individual to act as a radiographer until the individual has received training in the subjects in subsection (G), has participated in a minimum of two months of on-the-job training, and is certified through a radiographer certification program by a independent certifying organization in accordance with the criteria specified in Appendix A.
1. A licensee shall provide the Department with proof of an individuals's certification and a written request that the individual be added to a license as a certified radiographer.
2. A licensee shall maintain proof of certification at the job site where a radiographer is performing field radiography.
3. A licensee that employs certified radiographers in Arizona shall ensure that:
   a. Each radiographer has obtained initial certification within the last five years, and
   b. An uncertified radiographer works only as a radiographer's assistant until certified.
4. A radiographer shall recertify every five years by:
   a. Taking an approved radiography certification examination in accordance with this subsection; or
   b. Providing written evidence that the radiographer is active in the practice of industrial radiography and has participated in continuing education during the previous five-year period.
5. If an individual cannot provide the written evidence required in subsection (4)(b), the individual shall retake the certification examination.
6. A radiographer shall provide the licensee with proof of certification in the form of a card issued by the certifying organization that contains:
   a. A picture of the certified radiographer,
   b. The radiographer's certification number,
   c. The date the certification expires, and
   d. The radiographer's signature.

B. A licensee shall not allow an individual to act as a radiographer until the individual:
1. Has received copies of and instruction in the requirements of this Article; applicable Sections of Articles 4 and 10 and R9-7-107; applicable DOT regulations in 10 CFR 71, January 1, 2003 edition, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, which is incorporated by reference, contains no future editions or amendments, and is on file with Department; the Department license or licenses under which the radiographer will perform industrial radiography; and the licensee's operating and emergency procedures;
2. Has demonstrated an understanding of the licensee's license and operating and emergency procedures by successfully completing a written or oral examination that covers the relevant material;
3. Has received training in:
   a. Use of the licensee's radiographic exposure devices and sealed sources,
   b. Daily inspection of devices and associated equipment, and
   c. Use of radiation survey instruments; and
4. Has demonstrated an understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in subsection (B)(3) by successfully completing a practical examination covering this material.

C. A licensee shall not allow an individual to act as a radiographer's assistant until the individual:
1. Has received copies of and instruction in the requirements of this Article; applicable Sections of Articles 4 and 10 and R9-7-107; applicable DOT regulations in 10 CFR 71, January 1, 2003 edition, by the Office of the Federal Register,

National Archives and Records Administration, Washington, D.C. 20408, which is incorporated by reference, contains no future editions or amendments, and is on file with the Department; the Department license or licenses under which the radiographer's assistant will perform industrial radiography; and the licensee's operating and emergency procedures;

2. Has developed competence to use, under the personal supervision of the radiographer, the licensee's radiographic exposure devices, sealed sources, associated equipment, and radiation survey instruments; and
3. Has demonstrated understanding of the instructions provided under subsection (C)(1) by successfully completing a written test on the subjects covered and has demonstrated competence using the hardware described in subsection (C)(2) by successfully completing a practical examination.

D. A licensee shall provide refresher safety training for each radiographer and radiographer's assistant at intervals not to exceed 12 months.

E. Unless an individual serves as both a radiographer and an RSO, the RSO or the RSO's designee shall design and implement an inspection program to examine the job performance of each radiographer and radiographer's assistant and to ensure that the Department's rules and license requirements, and the licensee's operating and emergency procedures are followed. The inspection program shall:

1. Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals that do not exceed six months; and
2. If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six months, the radiographer shall demonstrate knowledge of the training requirements in subsection (B)(3) and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (C)(2) by a practical examination before participating in a radiographic operation.

F. A licensee shall maintain records of the training required in this Section including certification documents, written and practical examinations, refresher safety training documents, and inspection documents, in accordance with subsection (I).

G. A licensee shall include the following subjects in the training required under subsection (A):

1. Fundamentals of radiation safety, including:
   a. Characteristics of gamma radiation,
   b. Units of radiation dose and quantity of radioactivity,
   c. Hazards of exposure to radiation,
   d. Levels of radiation from licensed material, and
   e. Methods of controlling radiation dose (time, distance, and shielding);
2. Radiation detection instruments, including:
   a. Use, operation, calibration, and limitations of radiation survey instruments;
   b. Survey techniques; and
   c. Use of personnel monitoring equipment;
3. Equipment topics, including:
   a. Operation and control of radiographic exposure equipment, use of remote handling equipment, and use of storage containers, using pictures or models of source assemblies (pigtails);
   b. Storage, control, and disposal of licensed material; and
   c. Inspection and maintenance of equipment;
4. The requirements of pertinent Department rules; and
5. Case histories of accidents in radiography.

H. A licensee shall maintain records of radiographer certification in accordance with subsection (I)(1) and provide proof of certification as required in subsection (A)(1).

I. A licensee shall maintain the following records for three years after each record is made:

1. Records of training for each radiographer and each radiographer's assistant. For radiographers, the records shall include radiographer certification documents and verification of certification status. All records shall include copies of written tests, dates of oral and practical examinations, and names of individuals who conducted and took the oral and practical examinations; and
2. Records of annual refresher safety training and semi-annual inspections of job performance for each radiographer and each radiographer's assistant. The records for the annual refresher safety training shall list topics discussed during training, the date of training, and names of each instructor and attendee. For inspections of job performance, the records shall include a list of the items checked during the inspection and any non-compliance observed by the RSO.

Appendix A. Standards for Organizations that Provide Radiography Certification

Note: For purposes of this Article an "independent certifying organization" means an organization that meets all of the criteria in this Appendix.

I. Requirements for an Organization that Provides Radiographer Certification

To qualify to provide radiographer certification an organization shall:

A. Be a society or association, with members who participate in, or have an interest in, the field of industrial radiography;

B. Not restrict membership because of race, color, religion, sex, age, national origin, or disability;

C. Have a certification program that is open to nonmembers, as well as members;

D. Be an incorporated, nationally recognized organization that is involved in setting national standards of practice within its fields of expertise;

E. Have a staff comparable to other nationally recognized organizations, a viable system for financing its operations, and a policy-and decision-making review board;

F. Have a set of written, organizational by-laws and policies that address conflicts of interest and provide a system for monitoring and enforcing the by-laws and policies;

G. Have a committee, with members who can carry out their responsibilities impartially, review and approve the certification guidelines and procedures, and advise the organization's staff in implementing the certification program;

H. Have a committee, with members who can carry out their responsibilities impartially, review complaints against certified individuals and determine sanctions;

I. Have written procedures describing all aspects of the organization's certification program;

J. Maintain records of the current status of each individual's certification and administration of the certification program;

K. Have procedures to ensure that certified individuals are provided due process with respect to administration of the certification program, including a process for becoming certified and a process for imposing sanctions against certified individuals;

L. Have procedures for proctoring examinations and qualifying proctors. The organization, through these procedures, shall ensure that an individual who proctors an examination is not employed by the same company or corporation (or a wholly-owned subsidiary of the company or corporation) that employs an examinee;

M. Exchange information about certified individuals with the Department, other independent certifying organizations, the NRC, or Agreement States and allow periodic review of its certification program and related records; and

N. Provide a description to the Department of its procedures for choosing examination sites and providing a favorable examination environment.

II. Requirements for a Certification Program

An independent certifying organization shall ensure that its certification program:

A. Requires an applicant for certification to:
1. Obtain training in the subjects listed in R9-7-543(G) or equivalent NRC or Agreement State regulations, and
2. Satisfactorily complete a written examination that covers these subjects;

B. Requires an applicant for certification to provide documentation demonstrating that the applicant has:
1. Received training in the subjects listed in R9-7-543(G) or equivalent NRC or Agreement State regulations;
2. Satisfactorily completed the on-the-job training required in R9-7-543(A); and
3. Received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer;

C. Provides procedures that protect examination questions from disclosure;

D. Provides procedures for denying certification to an applicant and revoking, suspending, and reinstating a certificate;

E. Provides a certification period that is not less than three years or more than five years, procedures for renewing certifications and, if the procedures allow renewals without examination, a system for assessing evidence of recent full-time employment and annual refresher training; and

F. Provides a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

III. Requirements for a Written Examination

An independent certifying organization shall ensure that its examination:

A. Is designed to test an individual's knowledge and understanding of the subjects listed in R9-7-543(G);

B. Is written in a multiple-choice format; and

C. Has psychometrically valid questions drawn from a question bank and based on the material in R9-7-543(G).

Statutory Authority for the Rules in 9 A.A.C. 7, Article 5

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain

certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

30-681. Inspections

A. The department or its duly authorized representatives may enter at all reasonable times on any private or public property for the purpose of determining whether there is compliance with or a violation of this chapter and rules adopted under this chapter, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

B. If the director determines that there is reasonable cause to believe that a radiation source is not in compliance with the licensing requirements of this chapter, the director or the director's designee or agent may enter on and into the premises of any radiation source that is licensed or required to be licensed pursuant to this chapter at any reasonable time to determine compliance with this chapter and rules adopted pursuant to this chapter. An 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 the inspection shows that the radiation source is not adhering to the licensing requirements of this chapter, the director may take action authorized by this chapter. A radiation source whose license has been suspended or revoked in accordance with this subsection is subject to inspection when applying for relicensure or reinstatement of the license.

30-688. Emergency action

A. If the director finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in an order, the director may:

1. Order the summary suspension of a license pending proceedings for revocation or another action. These proceedings shall be promptly instituted and determined.

2. Order the impoundment of sources of radiation in the possession of any person that is not equipped to comply with or that fails to comply with this chapter or any rule adopted pursuant to this chapter.

B. The director may apply to the superior court for an injunction to restrain a person from violating a provision of this chapter or a rule adopted pursuant to this chapter. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The person may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

30-689. Violation; classification

A. Any person who violates any provision of this chapter or any rule, regulation or order placed in effect pursuant thereto by the commission is guilty of a class 2 misdemeanor.

B. The provisions of subsection A shall not apply to any emergency regulation or order unless or until the person so violating such regulation or order has had actual knowledge of the regulation or order.

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.

E-5.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 9, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7, Article 11

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers twenty (20) rules and one (1) appendix in Title 9, Chapter 7, Article 11 related to Industrial Use of X-RAYS, Not Including Analytical X-RAY Systems.

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 11 regulate persons that perform industrial radiography using x-rays. These include companies that are involved in utilities, government buildings, mines, non-federal airports, aerospace manufacturing, computer chip manufacturers, and food/beverage packagers.

In the previous 5YRR approved by Council in November of 2018, the Department planned "to review the rules in the entire Chapter at a later date, possibly after completing the five-year-review reports on all Articles in the Chapter, and may consider a rulemaking at that time to better format the Chapter and if issues with the rules appear to warrant such action and expenditure of resources." The Department has completed reviewing 5YRRs for the Chapter.

Proposed Action

The Department is planning to extensively revise and reorganize the Chapter. To that end, the Department has requested and received approval to begin the rulemaking, however, given the complex and technical nature of the content of the Chapter and the need to coordinate and collaborate with the NRC in drafting revisions to most of the Articles in the Chapter, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025.

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

The Department cites both general and specific statutory authority for these rules.

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

The rules relate to the regulation of radioactive materials and those persons using them: specifically, persons that perform industrial radiography using x-rays. Historic changes include moving the rules and definitions, updating uses, and improving clarity and understandability, which was anticipated to have no economic impact. The Department generally believes that the effects of the rules are consistent with any originally anticipated economic impacts; however, the results of the most recent five year review indicate that the rules would benefit from certain language changes and restructuring to improve clarity. Additionally, two rules are believed to not be as effective and least burdensome as possible: R9-7-1108 and R9-7-1130. The Department believes that these rules would be just as effective and less burdensome if the requirements for calibrated machines were modified and if the alarm rate meter were not required for some types of registrants with specification.

Stakeholders are identified as persons that perform industrial radiography using x-rays, employees of persons with these x-ray systems, clients of these persons, 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 believes that the protective benefits of these rules outweigh the probable costs. The content of the rules generally meets standards established by the International Organization for Standardization ISO 16371-2-2017, and the Department believes that the rules, with the exception of the issues described above, generally impose the least burden and costs to those who are regulated.

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

The Department has not received any written criticism 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 not clear, concise, or understandable and gives the following examples:

- The definitions should be updated and consistent consistent
- The rules should clarify records retention
- Grammar and punctuation of the rules should be updated and amended
- R9-7-1104: rules would be clearer if it was identified that documents in subsections (B) through (I) were part of an application
- R9-7-1114: the requirements need to clearer and consistent and not appear to contradict each other
- R9-7-1118: rule should be reformatted so the subsections do not appear to contradict each other
- R9-7-1120: rule should be reformatted so the subsections do not appear to contradict each other
- R9-7-1130: the requirements for people exposed to radioactivity should be better identified and the term "personnel dosimeter" should replace all the different types of dosimeters.
- R9-7-1140: rules would be clearer if the defined terms were used
- R9-7-1146: rule should be retitled because it also includes requirements for providing proof of certification to the Department, other requirements for a radiographer and radiographer's assistant, and requirements for an inspection program.
- Appendix A: subsections should be combined and similar information is provided in this appendix as in the appendix of Article 5

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 generally effective in achieving its objectives with the following exceptions:

- R9-7-1108: Subsection (A) should be amended to only require one radiation survey instrument
- R9-7-1130: Subsection (A), should not require an alarm rate meter for some registrants who meet the requirement.

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 no federal law applies to these rules.

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

The Department states the rules qualify for an exception under A.R.S. § 41-1037(A)(3), as the issuance of a general permit would not meet the statutory requirement of A.R.S. Title 30, Chapter 4, Article 2.

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers twenty rules and one appendix in Title 9, Chapter 7, Article 11 related to Industrial Use of X-RAYS, Not Including Analytical X-RAY Systems. As stated above, the rule is generally enforced as written and consistent with other rules and statutes. The Department intends to submit a Notice of Final Rulemaking to the Council by December 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

August 2, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 11, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 11, which is due on or before September 29, 2023.

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

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 11. Industrial Use of X-Rays, not Including Analytical X-Ray Systems

August 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657 and 30-673

For R9-7-1102, A.R.S. §§ 30-671 and 30-672 are additional specific statutory authority.

2. The objective of each rule:

Rule	Objective
R9-7-1102	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-1104	To specify the documents an applicant for registration of a radiation machine to be used for industrial purposes is required to submit, and To establish the application review process used by the Department.
R9-7-1106	To establish the minimum security requirements to prevent unauthorized or accidental use of an industrial x-ray system and accidental exposure to x-ray radiation.
R9-7-1108	To specify the minimum number and calibration requirements for radiation survey instruments to be maintained at each location where sources of radiation are present to ensure safety and consistency of procedures.
R9-7-1110	To require a quarterly inventory of all x-ray machines and maintenance of inventory records to ensure consistent monitoring.
R9-7-1112	To specify the content of a utilization log for each x-ray machine to ensure that occupational over-exposure could be investigated for cause.
R9-7-1114	To establish requirements for performing visual and operability checks on equipment and for maintaining records of the checks, and To require written inspection and maintenance procedures for radiation machines and other equipment to protect health and safety of users and others in the vicinity of the radiation machines.
R9-7-1116	To specify requirements for continuous direct visual surveillance of a radiographic operation to protect against unauthorized entry into a high radiation area.
R9-7-1118	To specify requirements for a radiographic operation at a location other than a permanent radiographic installation.
R9-7-1120	To establish the qualifications and duties of a radiation safety officer to ensure a radiation subject expert is available for questions.

R9-7-1126	To require posting in any area in which industrial radiography is performed to inform the general public as well as occupational workers of the presence of radioactive material at a location that does not typically have such a hazard.
R9-7-1128	To specify the establishment, content, and retention of operating and emergency procedures to ensure that occupational workers had access to emergency procedures in the event of an accident.
R9-7-1130	To establish requirements for the monitoring of radiation exposure by personnel and for related actions to protect health and safety.
R9-7-1132	To specify requirements for supervision of a radiographer's assistant to ensure the availability of help from someone with more expertise in the event of an emergency.
R9-7-1134	To establish requirements for a licensee to conduct and document radiation surveys to protect health and safety.
R9-7-1136	To establish requirements for entrance control devices and alarm signals used in a permanent radiographic installation to ensure health and safety.
R9-7-1138	To specify the records to be maintained at the location specified on a registration application and at each field station or temporary job site to ensure the minimum amount of safety information is available in case of an emergency.
R9-7-1140	To specify the conditions that allow a certified cabinet to be exempt from the Article, provided an annual physical radiation survey is conducted on the unit; and To establish requirements for enclosed radiography in x-ray systems that are not exempt, including alarm systems, interlocking doors, and additional surveys.
R9-7-1142	To establish requirements for x-ray systems used to screen baggage or packages to protect the public from unintentional exposure to x-ray radiation.
R9-7-1146	To establish qualifications for a radiographer and for a radiographer's assistant and the documentation of qualifications, To specify an inspection program to examine job performance, and To specify the topics to be covered in the training required for a radiographer.
Appendix A	To specify standards for an independent certifying organization that provides radiography certification.

3. <u>Are the rules effective in achieving their objectives?</u> **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
R9-7-1108	Subsection (A) of the rule would be just as effective and less burdensome if, for most x-ray machines, the requirement for two calibrated and operable radiation survey instruments were replaced with a requirement for at least one radiation survey instrument, as long as a requirement was also added that an x-ray machine could not be used unless a calibrated and operable radiation survey instrument was present at the location and those devices for which the current requirement is necessary were specified.
R9-7-1130	In subsection (A), the rule would be just as effective and less burdensome if an alarm rate meter were not required for some types of registrants and those registrants for which the current requirement is necessary were specified.

4. <u>Are the rules consistent with other rules and statutes?</u> **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 ___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
Multiple	The rules in the Article would be clearer if only one term were used when referring to an x-ray machine. Currently, "x-ray machine" is used in R9-7-1106, R9-7-1110, R9-7-1112, R9-7-1140, and R9-7-1146; "x-ray unit" is used in R9-7-1102; "x-ray system" is used in the Article title, definition of "radiographic operations," R9-7-1140, and R9-7-1142; and "radiation machine" is used in R9-7-1104, R9-7-1114, R9-7-1128, R9-7-1130, R9-7-1132, R9-7-1138, and R9-7-1146.
Multiple	The rules would be clearer if the rules stated that the specified records were required to be maintained for "at least" three years or "at least" two years, as applicable.
Multiple	The rules would be more understandable if they were reformatted and grammatical/ punctuation errors were corrected.
Multiple	The rules would be clearer if the abbreviation "mrem" were used throughout the Article, instead of "millirems" being used in most locations.
R9-7-1102	The rule would be clearer if the defined term were not used as part of the definition, such as for "practical examination." The rule would also be improved by removing duplicate definitions that are in R9-7-102 and moving definitions, common to multiple Articles, into R9-7-102. In addition, requirements, such as those in the definition of "annual refresher safety training," should not be included in a definition, and should be made part of the text of a rule.
R9-7-1104	The rule would be more understandable if it were clearer that the documents in subsections (B) through (I) were part of an application. The rule would also be improved if the rule referenced the timeframes for review in Table A of Article 12. The rule would also be more concise if subsections (C), (D), and (F) were combined.
R9-7-1108	The rule would be more concise if the sentences in subsection (A) were combined. Subsection (B)(2) could be more understandable if the three types of read-outs specified were not in the same subsection.

R9-7-1110	The rule would be improved by clarifying that only open-beam units and mobile closed-beam units require a quarterly inventory, while permanent closed-beam units should not need to be inventoried. Subsections (B) and (C) could also be better formatted.
R9-7-1112	The rule would be clearer if the term "x-ray machine" were consistently used, rather than using just "machine" in some places. In addition, the rule would be clearer if "location" were used in subsection (A)(3) instead of "plant or site."
R9-7-1114	The rule would be clearer if the pronoun "it" in subsections (A) and (C) were replaced with the nouns to which the pronoun refers. Subsections (A) and (B) each contain three separate requirements, one of which "If equipment problems are found, the registrant shall remove the equipment from service until it is repaired" is duplicated in both subsections. The rule would be clearer if the requirements were in different subsections and duplications removed.
R9-7-1118	The rule would be clearer if the rule were reformatted and if the wording in subsection (B) were clarified so it did not appear to contradict requirements in subsection (A) and in R9-7-1116 about the use of industrial radiography in field locations and if the requirement only applied when open-beam units are used.
R9-7-1120	The rule would be clearer if subsection (B) were clarified so it did not appear to contradict subsection (C). The rule would also be improved by clarifying whether the Department has to approve the use of an individual without the required experience and training to act as RSO, and the process/time-frame for approval.
R9-7-1126	The rule would be improved by clarifying that only R9-7-429 (A), (B), and (C) apply and if the reference to R9-7-430 were removed.
R9-7-1128	The rule would be improved by clarifying that the locations at which current and superseded operating and emergency procedures are required to be maintained may differ.
R9-7-1130	The rule would be clearer if the requirements for the registrant, the Radiation Safety Officer, and individuals potentially exposed to radioactivity were better delineated. In addition, the rule would be more understandable, and would conform better with national standards, if the term "personnel dosimeter" replaced the different types of personnel dosimeters currently listed. Subsections (A)(1) and (2) would also be improved if the wording were changed to clarify that a registrant is required to not only provide dosimeters to applicable individuals, but ensure they are used by the individual. These subsections could also be clarified to better specify that the provided dosimeters are to be used by only one individual.
R9-7-1134	The rule would be improved by clarifying how the last survey of the day would be determined.
R9-7-1136	The rule would be clearer if subsection (B) stated that the requirement pertains to a registrant with an alarm system.
R9-7-1140	The rule would be clearer by using the defined terms "certified cabinet x-ray system" and "certifiable cabinet x-ray system" rather than "certified and certifiable cabinet x-ray system." The rule would also be improved by clarifying what happens if a survey done according to subsection (A)(2) reveals a problem. Subsection (C)(8) would be clearer if it included what "operating procedures" the individual should receive a copy of.
R9-7-1142	Since baggage and package inspection systems are present in locations other than "at airlines, railroads, bus terminals, package inspection facilities, or similar facilities," the rule would be improved by replacing this wording with verbiage similar to "near pedestrian traffic or with public access." Similarly, subsection (A) could be improved by replacing "passengers and other members of the public" with "individuals" since those using the x-ray machines should also be protected from exposure. In addition, since a baggage and package inspection system cannot meet both R9-7-1140(A) and (B), subsection (F) should be revised.
R9-7-1146	The rule would be clearer if the phrase "uncertified radiographer" in subsection (A)(3)(b) were replaced with "individual," if the rule clarified in subsection (A)(4)(b) to whom "written

	evidence" is to be provided, and if the citation in subsection (A)(5) were to "subsection (A)(4)(b)" rather than to "subsection (4)(b)." The rule would also be clearer if it were retitled, because the rule also contains requirements for providing proof of certification to the Department, other requirements for a radiographer and radiographer's assistant, and requirements for an inspection program. It is also unclear by whom the written or oral examination specified in subsection (B)(2) or the practical examination in subsection (C)(3) is given. Subsection (E)(2) should also be clarified since an inspection/assessment of performance is to occur at intervals that do not exceed six months.
Appendix A	The rule would be more concise if subsections (I)(G) and (I)(H) were combined, and if "nationally recognized organization" were described or defined. Since this Section duplicates Appendix A in Article 5, this Section could also be repealed if references to it were replaced with references to the Appendix in Article 5.

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:

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 11 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though all rulemakings for the Article were in 12 A.A.C. 1. The rules in Article 11 regulate persons that perform industrial radiography using x-rays. These include companies that are involved in utilities, government buildings, mines, non-federal airports, aerospace manufacturing, computer chip manufacturers, and food/beverage packagers. Many of the entities performing industrial radiography under the rules in Article 11 serve companies in multiple states and are familiar with the regulations common to industrial radiography across the country, standards reflected in these rules. The Department currently licenses approximately 433 entities under Article 11.

The requirements in Article 11 were originally embedded with requirements in Article 5. In a rulemaking effective July 3, 2004, most of the rules for industrial radiography using x-rays were moved into Article 11. Since the rules in Article 11 were adopted, three additional rules were added in 2005, and one of the three revised in 2009. No economic impact statements are available to the Department for these rulemakings, so the economic impact of the Sections made/revised in the rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking, including review of the changes made.

The NFR for the rulemaking effective July 3, 2004 stated that moving the rules for industrial radiography using x-rays from Article 5 into Article 11 was done to improve clarity and that this change "should not result in any economic impact." As part of the rulemaking effective April 3, 2005, two more rules were moved from Article 5 into Article 11, R9-7-1140 from what would now have been R9-7-541 (then R12-1-541) and R9-7-1142

from what would now have been R9-7-542 (then R12-1-542), so that Article 5 now only contains requirements for industrial radiography using sealed sources. In addition, "necessary x-ray related definitions are moved from Article 5 into a new definition rule," now R9-7-1102. According to the NFR, there was "no economic burden associated with moving the rules from Article 5 to Article 11. The substance of the affected rules has not changed." The final rulemaking for rules in the Article was effective August 1, 2009 and included making changes to R9-7-1142 to clarify that x-ray systems may be used for the inspection of packages, as well as baggage. The change was not expected to result in an economic impact. The Department believes that these estimations are generally consistent with the actual costs and benefits of 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 previous 5YRR stated that the Department planned "to review the rules in the entire Chapter at a later date, possibly after completing the five-year-review reports on all Articles in the Chapter, and may consider a rulemaking at that time to better format the Chapter and if issues with the rules appear to warrant such action and expenditure of resources." The Department has completed this course of action with the review of the final 5YRRs for the Chapter, approved by the Council in March 2022. The Department has developed a plan for a rulemaking for the Chapter and has requested and received approval to begin the rulemaking, as required by A.R.S. § 41-1039(A).

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

The rules in Article 11 regulate persons that perform industrial radiography using x-rays and were adopted to specify the minimum standards to protect the health and safety of employees of persons with these x-ray systems, clients of these persons, and the general public. The Department believes that the protective benefits of these rules outweigh the probable costs. The substantive content of the rules generally meets standards established by the International Organization for Standardization ISO 16371-2-2017, and the Department believes that the rules, with the exception of the issues described in this report, generally impose the least burden and costs to regulated persons 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)?

There are currently no requirements for ionizing industrial radiography using x-ray systems in the federal regulations.

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

Although all the rules in the Article were adopted before July 29, 2010, the Department believes the rules are exempt from A.R.S. §§ 41-1037 due to paragraph (A)(3) as the issuance of a general permit would not meet the statutory requirements of A.R.S. Title 30, Chapter 4, Article 2.

14. Proposed course of action

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

As discussed with the Council, the Department is planning to extensively revise and reorganize the Chapter. To that end, the Department has requested and received approval to begin the rulemaking, as required by A.R.S. § 41-1039(A). Given the complex and technical nature of the content of the Chapter and the need to coordinate and collaborate with the NRC in drafting revisions to most of the Articles in the Chapter, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025, as stated in previous five-year-review reports approved by the Council.

ARTICLE 11. INDUSTRIAL USES OF X-RAYS, NOT INCLUDING ANALYTICAL X-RAY SYSTEMS

Section

ARTICLE 11. INDUSTRIAL USES OF X-RAYS, NOT INCLUDING ANALYTICAL X-RAY SYSTEMS

R9-7-1102. Definitions

"Access point" means any door or cover that is designed to be removed or opened for maintenance or service purposes, opened using tools, and used to provide access to the interior of a cabinet x-ray unit.

"Annual refresher safety training" means a review provided by the registrant for its employees on radiation safety aspects of industrial radiography. The review shall include, as applicable, the results of internal inspections, new procedures or equipment, new or revised statutes or rules, accidents, or errors that have occurred, and provide opportunities for employees to ask safety questions.

"Aperture" means any opening in the outside surface of a cabinet x-ray unit, other than a port, which remains open during generation of x-radiation.

"Door" means any barrier that is designed to be movable or opened for routine operation purposes, rather than opened using tools, and used to provide access to the interior of the cabinet x-ray unit.

"Ground fault" means an accidental electrical grounding of an electrical conductor.

"Hands-on experience" means the accumulation of knowledge or skill in any area relevant to radiography.

"Port" means any opening in the outside surface of a cabinet x-ray unit that is designed to remain open, during generation of x-rays, for conveying material that is being irradiated into and out of the cabinet, or for partial insertion of an object for irradiation if the dimensions of the object do not permit complete insertion into the cabinet x-ray unit.

"Practical examination" means a demonstration, through practical application of safety rules and principles of industrial radiography, which includes use of all radiography equipment and tests knowledge of radiography procedures.

"Radiographic operations" means all activities associated with use of a radiographic x-ray system. This includes performing surveys to confirm the adequacy of boundaries, setting up equipment, and conducting any activity inside restricted area boundaries.

R9-7-1104. Registration Requirements

A. The Department shall review an application for registration of a radiation machine for use in industrial radiography and approve the registration if an applicant meets all of the following requirements:

1. The applicant satisfies the general requirements in Article 2 and any special requirements contained in this Article,
2. The applicant submits a program for training radiographer's assistants that complies with R9-7-1146, and
3. The applicant submits procedures for verifying and documenting the certification status of each radiographer and for ensuring that the certification remains valid.

B. An applicant shall submit written operating and emergency procedures, as prescribed in R9-7-1128.

C. An applicant shall submit a description of a program for review of job performance of each radiographer and radiographer's assistant at intervals that do not exceed six months, as prescribed in R9-7-1146(E).

D. An applicant shall submit a description of the applicant's overall organizational structure as it applies to radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

E. An applicant shall submit and list the qualifications of each individual designated as an RSO under R9-7-1120 and indicate which designee is responsible for ensuring that the registrant's radiation safety program is implemented.

F. If an applicant intends to perform "in-house" calibrations of survey instruments, the applicant shall describe each calibration method to be used, the relevant experience of each person who will perform a calibration, and procedures to ensure that all calibrations are performed according to the procedures prescribed in R9-7-1108.

G. An applicant shall identify and describe the location of all field stations and permanent radiographic installations.

H. An applicant shall identify each location where records required by this Chapter will be maintained.

R9-7-1106. Equipment Performance

A registrant shall ensure that each x-ray machine has a lock or other security system designed to prevent unauthorized use or accidental production of radiation and is secured against unauthorized use at all times, except when under the direct surveillance of a radiographer or radiographer's assistant.

R9-7-1108. Radiation Survey Instruments

A. A registrant shall maintain at least two calibrated and operable radiation survey instruments at each location where sources of radiation are present to make radiation surveys required by this Article and Article 4 of this Chapter. Instrumentation required by this Section shall be capable of measuring a range from 0.02 millisieverts (2 millirems) per hour through 0.01 sievert (1 rem) per

hour.

B. A registrant shall ensure that each radiation survey instrument required under subsection (A) is calibrated:

1. At intervals that do not exceed six months, and after instrument servicing, except for battery changes;
2. For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 0.02 and 10 millisieverts (2 and 1000 millirems) per hour; and
3. So that an accuracy within plus or minus 20% of the calibration source can be demonstrated at each point checked.

C. A registrant shall make a record each time a radiation survey instrument is calibrated, and maintain each record for three years after it is made.

R9-7-1110. Quarterly Inventory

A. A registrant shall conduct a quarterly physical inventory to account for all x-ray machines received and possessed under the registration.

B. A registrant shall maintain a record of the quarterly inventory required under subsection (A) for three years after it is made.

C. The record required by subsection (B) shall include the date of the inventory, name of the individual who conducted the inventory, location of each x-ray machine, and manufacturer, model, and serial number of each x-ray machine.

R9-7-1112. Utilization Logs

A. A registrant shall maintain for each x-ray machine a utilization log that provides all of the following information:

1. A description, including the make, model, and serial number of each x-ray machine;
2. The identity and signature of the radiographer using the machine; and
3. The plant or site where the machine is used and dates of use, including each date when the machine is removed from or returned to storage.

B. A registrant shall retain a log required by subsection (A) for three years after the log is made.

R9-7-1114. Inspection and Maintenance of Radiation Machines, Survey Instruments, and Associated Equipment

A. A registrant shall perform visual and operability checks on survey instruments and radiation machines before use on each day the equipment is to be used to ensure that the equipment is in good working condition and required labeling is present. Survey instrument operability checks shall be performed using check sources or other authorized means. If equipment problems are found, the registrant shall remove the equipment from service until it is repaired.

B. A registrant shall have written inspection and maintenance procedures for radiation machines and survey instruments that require inspection and maintenance, at intervals that do not exceed three months or before first use of the equipment and to ensure the proper functioning of components important to safety. Replacement components shall meet design specifications. If equipment problems are discovered, the registrant shall remove the equipment from service until the equipment is repaired.

C. A registrant shall maintain records of equipment problems found in daily checks and quarterly inspections and retain each record for three years after it is made. The record shall include the date of the check or inspection, name of the inspector, equipment involved, any problems found, and any repair or needed maintenance performed.

R9-7-1116. Surveillance

During each radiographic operation a radiographer, or the radiographer's assistant as permitted by R9-7-1118, shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at permanent radiographic installations where all entrances are locked and the registrant is in compliance with R9-7-1136.

R9-7-1118. Industrial Radiographic Operations

A. If industrial radiography is performed at a location other than a permanent radiographic installation, a registrant shall ensure that the radiographer is accompanied by at least one other radiographer or radiographer's assistant, qualified under R9-7-1146. The additional radiographer or radiographer's assistant shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. The registrant shall not allow industrial radiography if only one qualified individual is present.

B. A registrant shall ensure that each industrial radiographic operation is conducted at a location of use authorized on the registration of a permanent radiographic installation, unless another permanent location is specifically authorized by the Department.

R9-7-1120. Radiation Safety Officer (RSO)

A. A registrant shall have a radiation safety officer (RSO) who is responsible for implementing procedures and regulatory requirements in the daily operation of the radiation safety program.

B. A registrant shall ensure that the RSO has satisfied the following minimum requirements:

1. The training and testing requirements in R9-7-1146;
2. Two thousand hours of hands-on experience as a qualified radiographer for an industrial radiographic operation; and
3. Formal training in the establishment and maintenance of a radiation safety program.

C. A registrant may use an individual in the position of RSO who does not have the training and experience required in subsection (B), if the registrant provides the Department with a description of the individual's training and experience in the field of ionizing radiation and training with respect to the establishment and maintenance of a radiation safety protection program.

D. The specific duties and authorities of the RSO include, but are not limited to:

1. Establishing and overseeing operating, emergency, and ALARA procedures as required in Article 4 of this Chapter, and reviewing the procedures every year to ensure that they conform to current Department rules and registration conditions;
2. Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught;
3. Overseeing radiation surveys and associated documentation to ensure that the surveys are performed in accordance with the rules and taking corrective measures if levels of radiation exceed established action limits;
4. Overseeing the personnel monitoring program to ensure that monitoring devices are calibrated and used properly by occupationally exposed personnel and ensuring that records are kept of the monitoring results and timely notifications are made as required in R9-7-444; and
5. Overseeing operations to ensure that they are conducted safely and instituting corrective actions, which may include ceasing operations if necessary.

R9-7-1126. Posting

A registrant shall post any area in which industrial radiography is being performed as required by R9-7-429. Exceptions listed in R9-7-430 do not apply to industrial radiographic operations.

R9-7-1128. Operating and Emergency Procedures

A. A registrant shall have operating and emergency procedures that include, at minimum, instructions in the following, as applicable:

1. Use of radiation machines, so that persons are not exposed to radiation that exceeds the limits in Article 4 of this Chapter;
2. Methods and occasions for conducting radiation surveys;
3. Methods for controlling access to radiographic areas;
4. Methods and occasions for locking and securing a radiation machine;
5. Personnel monitoring and associated equipment;
6. Inspection, maintenance, and operability checks of a radiation machine and survey instruments;
7. Actions to be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm rate meter sounds an alarm;
8. Procedures for identifying and reporting defects and noncompliance, as required by R9-7-448;
9. The procedure for notifying the RSO and the Department in the event of an accident;
10. Minimizing exposure of persons in the event of an accident, and
11. Maintenance of records.

B. The registrant shall maintain copies of current operating and emergency procedures until the Department terminates the registration. Superseded procedures shall be maintained for three years after a change is made. Additionally, records shall be maintained in accordance with R9-7-1138.

R9-7-1130. Personnel Monitoring

A. An individual shall not act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, the individual wears, on the trunk of the body, a direct reading dosimeter, an operating alarm rate meter, and either a film badge, a TLD, or an optically stimulated luminescence (OSL) dosimeter. At permanent radiography installations where other required alarm or warning devices are in routine use, an alarm rate meter is not required.

1. A registrant shall provide pocket dosimeters that have a range from zero to 2 millisieverts (200 millirems) and ensure that the dosimeters are recharged at the start of each shift. Electronic personnel dosimeters are permitted in place of ion-chamber pocket dosimeters.
2. The registrant shall assign a film badge, TLD, or OSL dosimeter to one individual, who shall wear the assigned equipment.
3. The registrant shall replace film badges at least monthly and replace TLDs or OSL dosimeters at least quarterly.
4. After replacement, the registrant shall ensure that each film badge or TLD is processed as soon as possible.

B. A radiographer or radiographer's assistant shall record exposures noted from direct reading dosimeters, such as pocket dosimeters or electronic personnel dosimeters, at the beginning and end of each shift.

C. A registrant shall check each pocket dosimeter or electronic personnel dosimeter at least yearly for correct response to radiation, and discontinue use of a dosimeter if it is not accurate within plus or minus 20% of the true radiation exposure.

D. If an individual's pocket dosimeter has an off-scale reading, or the electronic personnel dosimeter reads greater than 2 millisieverts (200 millirems), and radiation exposure cannot be ruled out as the cause, a registrant shall send the individual's film badge, TLD, or OSL dosimeter for processing within 24 hours. The registrant shall not allow the individual to work with a radiation machine until the individual's radiation exposure is determined. Using the information from the badge or dosimeter, the RSO or the RSO's designee shall calculate the affected individual's cumulative radiation exposure, as prescribed in Article 4 of this Chapter and include the results in records maintained in accordance with subsection (G).

E. If an individual's monitoring device is lost or damaged, the individual shall cease work immediately until the registrant provides a replacement film badge, TLD, or OSL dosimeter and the RSO or the RSO's designee calculates the exposure for the time period from issuance to discovery of a lost or damaged film badge, TLD, or OSL dosimeter. The registrant shall include the calculated exposure and the time period for which the film badge, TLD, or OSL dosimeter was lost or damaged in the records maintained in accordance with subsection (G).

F. For each alarm rate meter a registrant shall ensure that:

1. At the start of a shift each individual with an alarm rate meter checks that the alarm functions (sounds) before using the device;
2. Each device is set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr) with an accuracy of plus or minus 20% of the true radiation dose rate;
3. A special means is necessary to change the preset alarm function on the device; and
4. Each device is calibrated at periods that do not to exceed 12 months for correct response to radiation

G. Each registrant shall maintain the following personnel monitoring records:

1. Each dosimeter reading and the yearly operability check required by subsections (B) and (C) for three years after each record is made;
2. A record of each alarm rate meter calibration for three years after the record is made;
3. Any report received from the film badge, TLD, or OSL processor. The registrant shall maintain these records until the Department terminates the registration; and

4. Any estimation of an exposure evidenced by an off-scale personnel direct-reading dosimeter or a lost or damaged film badge, TLD, or OSL dosimeter. The records shall be maintained until the Department terminates the registration.

R9-7-1132. Supervision of a Radiographer's Assistant

If a radiographer's assistant uses a radiation machine or conducts a radiation survey required by R9-7-1134(B), the registrant shall ensure that the assistant is under the personal supervision of a radiographer. For purposes of this Section "personal supervision" means:

1. The radiographer is physically present at the site where the radiation machine is being used;
2. The radiographer is available to give immediate assistance if required; and
3. The radiographer is able to observe directly the assistant's performance.

R9-7-1134. Radiation Surveys

A. A registrant shall conduct surveys with a calibrated and operable radiation survey instrument that meets the requirements of R9-7-1108.

B. A registrant shall conduct a survey of a radiographic machine any time the machine is placed in storage to ensure that the machine will not expose personnel to radiation.

C. A registrant shall maintain a record of each exposure survey conducted before a machine is placed in storage under subsection (B), if that survey is the last one performed during the workday. Each record shall be maintained for three years after it is made.

R9-7-1136. Permanent Radiographic Installations

A. If a registrant maintains a permanent radiographic installation that does not fall within the definition of "enclosed radiography" in R9-7-102, the registrant shall ensure that each entrance used for personnel access to the high radiation area has either:

1. An entrance control device of the type described in R9-7-420(A)(1), which reduces the radiation level upon entry into the area, or
2. Both conspicuous visible and audible alarm signals to warn of the presence of radiation. The registrant shall ensure that the visible signal is actuated by radiation if the x-ray tube is energized and the audible signal is actuated if a person attempts to enter the installation while the x-ray tube is energized.

B. A registrant shall test the alarm system for proper operation with a radiation source each day before the installation is used for radiographic operations. The test shall include a check of both the visible and audible signals. The registrant shall test each device referenced in subsection (A)(1)

monthly. If an entrance control device or alarm signal is operating improperly, the registrant shall immediately label the device or signal as "defective" and repair the device or signal within seven calendar days. The registrant may continue to use the facility during this seven-day period, if the registrant implements continuous surveillance requirements of R9-7-1116 and uses an alarm rate meter.

C. A registrant shall maintain each record of alarm system and entrance control device tests for three years after the record is made.

R9-7-1138. Location of Documents and Records

A. A registrant shall maintain a copy of each record required by this Article and other applicable Articles of this Chapter at the location specified on the registration application.

B. A registrant shall maintain a copy of the following at each field station and temporary job site:

1. The registration that authorizes use of a radiation machines;
2. A copy of Articles 4, 10, and 11 of this Chapter;
3. Utilization logs for each radiation machine dispatched from that location, as required by R9-7-1112;
4. Records of equipment problems identified in daily checks of equipment, as required by R9-7-1114;
5. Records of alarm system and entrance control device checks, as required by R9-7-1136;
6. Records of direct-reading dosimeters such as pocket dosimeters and electronic personnel dosimeters, as required by R9-7-1130;
7. Operating and emergency procedures, as required by R9-7-1128;
8. A report on the most recent calibration of the radiation survey instruments in use at the site, as required by R9-7-1108;
9. A report on the most recent calibration of each alarm rate meter and operability check of each pocket dosimeter, or electronic personnel dosimeter, as required by R9-7-1130;
10. Most recent survey record, as required by R9-7-1134; and
11. If a registrant is operating in the state under R9-7-207, a copy of the out-of-state machine registration and a written authorization from the Department to operate in the state.

R9-7-1140. Enclosed Radiography

A. The Department has determined that any certified or certifiable cabinet x-ray system, as defined in Article 1, is exempt from the requirements of Article 11, provided that both of the following conditions are met:

1. The registrant makes, or causes to be made, an evaluation of each certified and certifiable cabinet x-ray system, at intervals that do not exceed 12 months, to determine whether the system conforms to the standards for certified and certifiable cabinet x-ray systems defined in Article 1. Records of each evaluation shall be maintained for three years from the date the record is created; and
2. The registrant performs a physical radiation survey with a survey instrument calibrated within the preceding 12 months and designed for the energy range and levels of radiation that will be assessed.

B. A registrant with a cabinet x-ray system that is not exempt under subsection (A) shall comply with the recordkeeping requirements of this Article and the following special requirements. The registrant shall:

1. Ensure that radiation levels measured at 5 centimeters (2 inches) from any accessible exterior surface of the enclosure do not exceed 50 microsievert (0.5 milliroentgen) in one hour for any combination of technical factors (i.e., mA, kVp);
2. Ensure that access to the interior of the enclosure is possible only through interlocked doors or panels that prevent production of radiation unless all interlocked doors or panels are securely closed. The registrant shall ensure that opening a door or panel results in immediate termination of radiation production and subsequent reactivation of the x-ray tube is only possible at the control panel;
3. Provide visible warning signals, activated only during production of radiation, at the control panel and at each access point to the interior of the enclosure;
4. Before using an x-ray system make, or cause to be made, an initial evaluation of the x-ray system to determine compliance with this Article, and subsequently evaluate the x-ray system at intervals that do not exceed three months. The registrant shall maintain a record of each evaluation for two years, and
5. Using instrumentation that complies with R9-7-1108, perform a physical radiation survey to satisfy the requirements of subsection (B)(4).

C. A registrant with a shielded room x-ray systems shall comply with the recordkeeping requirements of this Article and the following special requirements. The registrant shall:

1. Shield each x-ray room so that every location on the exterior meets the requirements for an "unrestricted area" as specified in R9-7-416;
2. Provide access to the interior of a shielded x-ray room only through doors or panels that are interlocked. The registrant shall ensure that radiation production is possible only when all interlocked doors and panels are securely closed, opening of any interlocked door or

panel results in immediate termination of radiation production; and subsequent reactivation of the x-ray tube is only possible at the control panel;

3. Provide each access point with two interlocks, each on a separate circuit, so that failure of one interlock will not affect the performance of the other interlock;
4. Provide visible warning signals, activated only during production of radiation at the control panel and each access point to the shielded room;
5. Make, or cause to be made, an initial evaluation of each shielded room x-ray system to determine compliance with this Article, and subsequently evaluate the x-ray system at intervals that do not exceed three months. The registrant shall maintain a record of each evaluation for two years;
6. Perform radiation surveys to determine exposure with an instrument that meets the requirements of R9-7-1108;
7. Inspect electrical interlocks and warning devices for correct operation before each use, and maintain a record of each inspection for two years;
8. Not permit an individual to operate an x-ray machine for shielded room radiography unless the individual has received a copy of, and instruction in, the operating procedures and demonstrated competence in the safe use of the equipment;
9. Ensure that an individual does not occupy the interior of any shielded room x-ray system during production of radiation;
10. Provide personnel monitoring devices that meet the requirements of R9-7-1130 to each shielded room x-ray machine operator, and require that each operator use the devices;
11. Maintain records of:
    a. Quarterly inventories for mobile systems, as prescribed in R9-7-1110; and
    b. Utilization logs for all systems, as prescribed in R9-7-1112; and
12. Maintain records for three years from the date of the quarterly inventory or utilization log.

D. A registrant shall connect an enclosed radiography machine to the electrical system in a manner that will prevent a ground fault from generating x-radiation.

R9-7-1142. Baggage and Package Inspection Systems

A. For x-ray systems designed to screen carry-on baggage or packages at airlines, railroads, bus terminals, package inspection facilities, or similar facilities, a registrant shall ensure the x-ray system has an operator present at the control area in a position that permits surveillance of the ports and doors during generation of x-radiation to prevent exposure to passengers and other members of the public.

B. For an exposure or preset succession of exposures of one-half second or greater duration, a registrant shall use a system that enables the operator to terminate the exposure or preset succession of exposures at any time.

C. For an exposure or preset succession of exposures of less than one-half second duration, a registrant shall use a system that allows the operator to complete the exposure in progress, but prevent additional exposures.

D. A registrant shall operate a baggage or package inspection system according to the manufacturer's instructions.

E. A registrant shall not disconnect or otherwise tamper with the safety systems of a baggage or package inspection system, except for maintenance purposes.

F. In addition to the requirements in this Section, a registrant using a baggage or package inspection system shall meet the requirements in R9-7-1140(A), (B), and (D).

R9-7-1146. Training

A. A registrant shall not allow an individual to act as a radiographer until the individual has received training in the subjects in subsection (G), has participated in a minimum of two months of on-the-job training, and is certified through a radiographer certification program by a independent certifying organization in accordance with the criteria specified in Appendix A.

1. A registrant shall provide the Department with proof of an individuals's certification upon request.
2. A registrant shall maintain proof of an individual's certification at the job site where the individual is performing field radiography.
3. A registrant that employs a certified radiographer in Arizona shall ensure that:
    a. The radiographer has obtained initial certification or recertification within the last five years; and
    b. An uncertified radiographer works only as a radiographer's assistant until certified.
4. A radiographer shall recertify every five years by:
    a. Taking an approved radiography certification examination in accordance with this subsection; or
    b. Providing written evidence that the radiographer is active in the practice of industrial radiography and has participated in continuing education during the previous five-year period.
5. If an individual cannot provide the written evidence required in subsection (4)(b), the individual shall retake the certification examination.

6. A radiographer shall provide the registrant with proof of certification in the form of a card issued by the certifying organization that contains:
    a. A picture of the certified radiographer,
    b. The radiographer's certification number,
    c. The date the certification expires, and
    d. The radiographer's signature.

B. A registrant shall not allow an individual to act as a radiographer until the individual:

1. Receives copies of and instruction in the requirements of this Article, applicable Sections of Articles 4 and 10 and R9-7-107, the Department registration or registrations under which the individual will perform industrial radiography, and the registrant's operating and emergency procedures;
2. Demonstrates an understanding of the registrant's registration and operating and emergency procedures by successful completion of a written or oral examination that covers the relevant material;
3. Receives training in:
    a. Use of the registrant's radiation machine,
    b. Daily inspection of the radiation machine, and
    c. Use of radiation survey instruments; and
4. Demonstrates an understanding of the use of the radiation machines and survey instruments described in subsection (B)(3) by successful completion of a practical examination covering this material.

C. A registrant shall not allow an individual to act as a radiographer's assistant until the individual:

1. Receives copies of and instruction in the requirements of this Article, applicable Sections of Articles 4 and 10 and R9-7-107, the Department registration or registrations under which the radiographer will perform industrial radiography, and the registrant's operating and emergency procedures;
2. Develops competence to use, under the personal supervision of the radiographer, the registrant's radiation machine and radiation survey instruments; and
3. Demonstrates understanding of the instructions provided under subsection (C)(1) by successfully completing a written test on the subjects covered and demonstrates competence using the hardware described in subsection (C)(2) by successfully completing a practical examination.

D. A registrant shall provide refresher safety training for each radiographer and radiographer's assistant at intervals that do not exceed 12 months.

E. Except where an individual serves both as a radiographer and an RSO, the RSO or the RSO's designee shall design and implement an inspection program to examine the job performance of each radiographer and radiographer's assistant and ensure that the Department's rules and registration requirements, and the registrant's operating and emergency procedures, are followed. The inspection program shall:

1. Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals that do not exceed six months; and
2. Provide that, if a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six months since the last inspection, each radiographer shall demonstrate knowledge of the training requirements in subsection (B)(3) and each radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (C)(2) by a practical examination before these workers can participate in a radiographic operation.

F. A registrant shall maintain records of the training required in this Section, including certification documents, written and practical examinations, refresher safety training documents, and inspection documents, in accordance with subsection (I).

G. A registrant shall include the following subjects in the training required under subsection (A):

1. Fundamentals of radiation safety, including:
    a. Characteristics of x-ray radiation;
    b. Units of radiation dose and quantity of radioactivity;
    c. Hazards of exposure to radiation;
    d. Levels of radiation from x-ray machines; and
    e. Methods of controlling radiation dose (time, distance, and shielding);
2. Radiation detection instruments, including:
    a. Use, operation, calibration, and limitations of radiation survey instruments;
    b. Survey techniques; and
    c. Use of personnel monitoring equipment;
3. Equipment topics, including:
    a. Operation and control of radiation machines; and
    b. Inspection and maintenance of each radiation machine and survey instrument;
4. The requirements of pertinent Department rules; and
5. Case histories of accidents in radiography.

H. A registrant shall maintain records of radiographer certification in accordance with subsection (I)(1)

and provide proof of certification as required in subsection (A)(1).

I. A registrant shall maintain the following records for three years after each record is made:

1. Records of training for each radiographer and each radiographer's assistant. For radiographers, the records shall include radiographer certification documents and verification of certification status. All records shall include copies of written tests, dates of oral and practical examinations, and names of individuals who conducted and took the oral and practical examinations; and
2. Records of annual refresher safety training and semi-annual inspections of job performance for each radiographer and each radiographer's assistant. The records for the annual refresher safety training shall list topics discussed during training, the date of training, and names of each instructor and attendee. For inspections of job performance, the records shall include a list of items checked during the inspection and any non-compliance observed by the RSO.

Appendix A. Standards for Organizations that Provide Radiography Certification

Note: For purposes of this Article an "independent certifying organization" means an organization that meets all of the criteria in this Appendix.

I. Requirements for an Organization that Provides Radiographer Certification

To qualify to provide radiography certification, an organization shall:

A. Be a society or association, with members who participate in, or have an interest in, the field of industrial radiography;

B. Not restrict membership because of race, color, religion, sex, age, national origin, or disability;

C. Have a certification program that is open to nonmembers, as well as members;

D. Be an incorporated, nationally recognized organization that is involved in setting national standards of practice within its fields of expertise;

E. Have a staff comparable to other nationally recognized organizations, a viable system for financing its operations, and a policy-and decision-making review board;

F. Have a set of written, organizational by-laws and policies that address conflicts of interest and provide a system for monitoring and enforcing the by-laws and policies;

G. Have a committee, with members who can carry out their responsibilities impartially, review and approve the certification guidelines and procedures, and advise the organization's staff in implementing the certification program;

H. Have a committee, with members who can carry out their responsibilities impartially, review complaints against certified individuals, and determine sanctions;

I. Have written procedures that describe all aspects of the organization's certification program;

J. Maintain records of the current status of each individual's certification and administration of the certification program;

K. Have procedures to ensure that certified individuals are provided due process with respect to administration of the certification program, including a process for becoming certified and a process for imposing sanctions against certified individuals;

L. Have procedures for proctoring examinations and qualifying proctors. The organization, through these procedures, shall ensure that an individual who proctors an examination is not employed by the same company or corporation (or a wholly-owned subsidiary of the company or corporation) that employs an examinee;

M. Exchange information about certified individuals with the Department, other independent certifying organizations, the NRC, or Agreement States and allow periodic review of its certification program and related records; and

N. Provide a description to the Department of its procedures for choosing examination sites and providing a favorable examination environment.

II. Requirements for a Certification Program

An independent certifying organization shall ensure that its certification program:

A. Requires an applicant for certification to:

1. Obtain training in the subjects listed in R9-7-1146(G), and
2. Satisfactorily complete a written examination that covers these subjects;

B. Require an applicant for certification to provide documentation demonstrating that the applicant has:

1. Received training in the subjects listed in R9-7-1146(G);
2. Satisfactorily completed the on-the-job training required in R9-7-1146(A); and
3. Received verification from a registrant that the applicant has demonstrated the capability of independently working as a radiographer;

C. Provides procedures that protect examination questions from disclosure;

D. Provides procedures for denying certification to an applicant and revoking, suspending, and reinstating a certificate;

E. Provides a certification period that is not less than three years or more than five years, procedures for renewing certifications and, if the procedures allow renewals without examination, a system for assessing evidence of recent full-time employment and annual refresher training; and

F. Provides a timely response to inquiries, by telephone or letter, from members of the public, about an

individual's certification status.

III. Requirements for a Written Examination

An independent certifying organization shall ensure that its examination:

A. Is designed to test an individual's knowledge and understanding of the subjects listed in R9-7-1146(G) or equivalent NRC or Agreement State requirements;

B. Is written in a multiple-choice format; and

C. Has psychometrically valid questions drawn from a question bank and based on the material in R9-7-1146(G).

Statutory Authority for the Rules in 9 A.A.C. 7, Article 11

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain

certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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.

E-6.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 9, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 6

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers eighteen (18) rules in Title 9, Chapter 10, Article 6 related to Hospices. The Department is authorized 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. The Director is also allowed to classify and sub-classify 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. Under R9-10-102(A), hospice service agencies and hospice inpatient facilities are classified as health care institutions. The rules in this Article pertain to hospice inpatient facilities and services agencies and include requirements relating to facility administration, personnel, quality management, contracted services, personnel, care planning, patient admission, patient transfer, patient rights, recordkeeping, hospice services, medication services, infection control, food services, emergency and safety standards, environmental standards, and physical plant standards.

In the 5YRR approved by Council in November of 2018, the Department planned on amending the rules identified in the report once the statutory changes to A.R.S. § 36-425 as amended by Laws 2017, Ch. 122, became effective. The Department completed this course of action in October 2019.

Proposed Action

The Department intends to submit a Notice of Final Rulemaking to the Council and amend the rules in Article 6 to comply with recent statutory changes as well as address the items mentioned in this report 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:**

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. Moreover, 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, facility owners, physicians and other health care providers, facility patients, 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 in 9 A.A.C. 10, Article 6 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 has not received any written criticism 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 generally clear, concise, and understandable with the following exceptions:

- R9-10-612: the rule could be improved by consolidating and removing duplicative language
- R9-10-615: the rule could be improved by correcting grammatical errors

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 with the following exceptions:

- R9-10-603: rules are inconsistent with A.R.S. § 36-425.04, which requires the Department to inform and educate client families on the proper disposal of schedule II-controlled substances; and A.R.S. § 36-407.02, as administrative policies and procedures should be implemented to allow a patient to have daily in-person visitors visitation by a clergy member.
- R9-10-610: the rules are inconsistent with A.R.S. § 36-407.02, as administrative policies and procedures should be implemented to allow a patient to have daily in-person visitors visitation by a clergy member.

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

The Department indicates the rules are generally effective in achieving its objectives with the following exception:

- R9-10-615: the most up to date dietary guidelines should be referenced

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

The Department indicates that the rules are enforced as written.

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

The Department states federal law does not apply to these rules.

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

The Department states the rules qualify for an exception under A.R.S. § 41-1037(A)(2), as the rules require the issuance of a specific agency authorization as authorized by A.R.S. § 36-405.

11. Conclusion

This Five Year Review Report from the Department of Health Services covers eighteen rules in Title 9, Chapter 10, Article 6 related to Hospices. The rules in this article pertain to hospice inpatient facilities and hospice service agencies. As indicated above, the rules are enforced as written and generally clear, concise, and understandable. The Department intends to submit a Notice of Final Rulemaking to the Council by February 2024.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

August 1, 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 6, Five-Year-Review Report for Health Care Institutions: Licensing – Hospices

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 6, Hospices, which is due on August 31, 2023.

The Department reviewed the rules in 9 A.A.C. 10, Article 6, with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

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

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

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services -

Health Care Institutions: Licensing

Article 6. Hospices

August 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
R9-10-601	The objective of the rule is to set out definitions clarifying and interpreting the terms contained in Title 9, Chapter 10, Article 6.
R9-10-602	The objective of the rule is to set out additional license application requirements pertaining to applications for hospice services agencies and hospice inpatient facilities.
R9-10-603	The objectives of the rule are to: a. Set out the qualifications, duties, and designation procedures for a hospice facility's administrator, medical director, and director of nursing; b. Mandate the adoption and annual review of a quality management program according to A.A.C. R9-10-604; c. Ensure that a facility's administrator establishes, documents, and implements policies and procedures to protect the health and safety of a patient that cover a facility's administrative functions including, but not limited to: job descriptions, duties, and qualifications; orientation and in-service education; complaint submission; patient rights; health care directives; medical records; and contracted services; d. Ensure that hospice services are established, documented, and implemented that cover patient screening, admission, transfer, discharge planning, discharge, hospice services, informed consent, infection control, telemedicine, and personnel response to a patient's sudden, intense, or out-of-control behavior; e. Require that hospice inpatient facilities establish, document, and implement policies and procedures covering patient visitation, use and display of a patient's personal belongings, and environmental services affecting patient care; f. Mandate that hospice facilities review policies and procedures at least once every three years.
R9-10-604	The objectives of the rule are to:

	a. Require that a hospice facility's administrator establish, document, and implement a quality management plan that, among other things, evaluates patient services and incidents occurring at a hospice facility; b. Mandate that a hospice administrator submit a documented report to the governing authority that include concerns about the delivery of services related to patient care and any changes made by the facility taken as a result of the identified concerns.
R9-10-605	The objectives of the rule are to: a. Ensure that contracted services are provided in accordance with Title 9, Chapter 10, Article 6. b. Require that a hospice administrator maintain documentation of current contracted services.
R9-10-606	The objectives of the rule are to: a. Prescribe qualifications, skills, and knowledge required for each type of personnel member at a hospice facility; b. Ensure that personnel member's skills and knowledge are verified and documented; c. Guarantee that sufficient personnel members are present at a hospice inpatient facility during operating hours; d. Set out requirements relating to staff orientation and in-service education; e. Require that personnel members having direct interaction with a patient provide evidence of freedom from infectious tuberculosis; f. Require that hospice facilities maintain personnel records.
R9-10-607	The objective of the rule is to establish requirements a hospice facility must follow prior to and at the time of a patient's admission.
R9-10-608	The objectives of the rule are to: a. Mandate that a hospice facility administrator develop a care plan for each patient; b. Require that a patient, patient's family, or patient's representative is given an opportunity to participate in the patient's care plan; c. Ensure that hospice services are provided to a patient according to the patient's care plan; d. Provide that a patient's care plan be reviewed and updated at least every 30 calendar days; e. Mandate that a patient's physician authenticate the patient's care plan with a signature within 14 calendar days after the care plan is initially developed or reviewed.
R9-10-609	The objective of the rule is to establish requirements a hospice facility must follow when facilitating the transfer of a patient due to emergency.
R9-10-610	The objectives of the rule are to: a. Provide notice of patient rights to hospice patients and patient's representatives; b. Lay out the specific acts that a patient shall not be subjected to while receiving care in a hospice facility; c. Require that a hospice facility procure consent from a patient or patient's representative prior to the initiation of treatment or release of a patient's records; d. Prohibit discrimination against patients based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis.

R9-10-611	The objectives of the rule are to: a. Require that a medical record is established and maintained for each patient in accordance with A.R.S. Title 12, Chapter 13, Article 7.1; b. Ensure that entries in a patient's medical record are recorded and authenticated by authorized personnel; c. Require that medication orders be dated when the order is entered and authenticated by a medical practitioner; d. Establish physical safeguards for electronically stored medical records; e. Prescribe the contents of a patient's medical record; f. Detail when a patient's medical record shall be made available to the individual to whom it pertains.
R9-10-612	The objectives of the rule are to: a. Establish a hospice facility's scope of services including medical services, nursing services, nutritional services, medical social services, bereavement counseling, spiritual counseling services, home health aide services, respite care services, and supportive serviced (defined in A.R.S. § 36-151); b. Ensure that policies and procedures for medication administration are reviewed and approved by a medical practitioner; c. Set out responsibilities for a hospice facility's medical director and director of nursing pertaining to hospice services.
R9-10-613	The objectives of the rule are to: a. Ensure that policies and procedures for medication services are implemented that cover the processes including, but not limited to, providing medication information to patients; preventing, responding to, and reporting medication errors; ensuring that a patient's medication regimen is routinely reviewed; documenting medication administration; monitoring patient medication self-administration; b. Require that a medical practitioner review and approve policies and procedures pertaining to medication administration; c. Set out rules a hospice facility must abide by in the circumstance where they provide pharmaceutical services on the premises; d. Establish requirements for medication storage at a hospice inpatient facility.
R9-10-614	The objectives of the rule are to: a. Require that a hospice facility administrator implement an infection control program; b. Prescribe a retention schedule for infection control documents housed by a hospice facility; c. Require that a hospice facility administrator establish, document, and implement policies and procedures regarding environmental health and infection control.
R9-10-615	The objectives of the rule are to: a. Ensure that patients are provided nutrition that meets their specific dietary needs and preferences; b. Set out standards meant to avoid spoilage, filth, or other contamination of food products obtained, prepared, served, and stored at a hospice inpatient facility; c. Require that a hospice inpatient facility with a capacity of more than 20 beds acquire a license or permit as a food establishment under Title 9, Chapter 8, Article 1.
R9-10-616	The objectives of the rule are to:

	a. Require that the administrator of a hospice inpatient facility develop, document, and maintain a disaster plan; b. Ensure that a hospice inpatient facility's disaster plan is reviewed once every 12 months; c. Mandate that a disaster drill is conducted on each shift at least once every three months; d. Require that the administrator of a hospice facility obtain a fire inspection and take any action on any issues raised on said report.
R9-10-617	The objectives of the rule are to: a. Establish, document, and implement policies and procedures for environmental standards in hospice inpatient facilities; b. Ensure that a hospice inpatient facility's premises and equipment are kept clean and disinfected; c. Implement a pest control program; d. Mandate a temperature range that heating and cooling systems must maintain at all times; e. Set out standards for general environmental standards relating to soiled linen and clothing, lighting, hot and cold water, oxygen containers, poisonous and toxic materials, flammable liquids and hazardous materials, and pets or animals.
R9-10-618	The objective of the rule is to set out physical plant standards for hospice inpatient facility covering facility equipment, sleeping accommodations, bathrooms, and showers.

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
R9-10-615	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 ___** **No _X_**

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

Rule	Explanation
R9-10-603	The rules are inconsistent with A.R.S. § 36-425.04, which requires the Department to adopt policies and procedures to inform and educate client families on the proper disposal of schedule II-controlled substances.
R9-10-603	The rules are inconsistent with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 296 and Ch. 179. The rules should be amended to implement administrative policies and procedures to allow a patient to have a daily in-person visitor of the patient's choice as well as the patient's right to visitation by a clergy member.
R9-10-610	The rules are inconsistent with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 296 and Ch. 179. The rules should allow for the patient's right to have a daily in-person visitor of the patient's choice as well as the patient's right to visitation by a clergy member.

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
R9-10-612	The rule is clear, concise, and understandable, but could be improved by consolidating and removing duplicative language in subsection (4)(b).
R9-10-615	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (C)(2).

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

If yes, please fill out the table below:

Rule	Explanation

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

Arizona Revised Statutes ("A.R.S.") § 36-405(A) requires that the Director of the Arizona Department of Health Services ("Department") 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 shall relate 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. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify 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.

Under Arizona Administrative Code ("A.A.C.") R9-10-102(A), hospice service agencies and hospice inpatient facilities are classified as health care institutions. Under A.R.S. §36-401(27), a "'[h]ospice service agency' means an agency or organization, or a subdivision of that agency or organization, that is engaged in providing hospice services at the place of residence of its clients." As defined in A.A.C. R9-10-101(109), a "'[h]ospice 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." Rules pertaining to hospice inpatient facilities and hospice service agencies are contained in A.A.C. Title 9,

Chapter 10, Article 6. The rules include requirements relating to facility administration, personnel, quality management, contracted services, personnel, care planning, patient admission, patient transfer, patient rights, recordkeeping, hospice services, medication services, infection control, food services, emergency and safety standards, environmental standards, and physical plant standards.

The rules governing hospice service agencies and hospice inpatient facilities contained in A.A.C. Title 9, Chapter 10, Article 6 were enacted through an exempt rulemaking in October 2013 at 19 A.A.R. 2015. Through the 2013 rulemaking, the former rules applying to hospice service agencies and hospice inpatient facilities under A.A.C. Title 9, Chapter 10, Article 8 were replaced in whole with the current A.A.C. Title 9, Chapter 10, Article 6 rules governing hospice service agencies and hospice inpatient facilities. 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; and final expedited rulemaking, at 25 A.A.R. 3481 effective November 5, 2019. 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 who are directly affected by, bear the costs of, or directly benefit from the rules include the Department, facility owners, physicians and other health care providers, facility patients, and the general public.

In FY2023, the Department received 84 initial hospice service agency applications. The Department received a request to close one inpatient hospice facility, but licenses for the remaining 17 inpatient hospice facilities are valid. In the last fiscal year, the Department received 81 complaints against hospice service agencies and conducted 10 investigations. The Department did not receive any complaints against inpatient hospice facilities. Based on the complaints and investigations conducted, the Department initiated 68 enforcement actions.

In the expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019, R9-10-617 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 hospices 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 R9-10-618 to update the physical plant health and safety codes and standards incorporated by reference in R9-10-104.01. The Department believes these changes provided a significant benefit to hospices by having updated rules with clearer and more consistent requirements.

In the 2019 regular rulemaking at 25 A.A.R. 1583, two Sections, R9-10-602 and R9-10-607 were amended to implement Laws 2017, Ch. 122, as well as to increase the 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. In R9-10-602, language relating to an “initial license” was removed to only reference a general “license.” Additionally, language in R9-10-607 was revised from “supportive care” to “supportive services” for better clarity and consistency throughout the Article. As estimated, the

Department believes that these changes in the rules for hospices may have provided a significant benefit by eliminating renewal licensure and for having clearer more concise rules.

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.

In the 2018 Five-Year-Review Report, the Department stated that there was no plan to amend the rules in 9 A.A.C. 10, Article 6 until statutory changes to A.R.S. § 36-425 as amended by Laws 2017, Ch. 122, are effective. The Department completed this course of action 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 6 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 6.

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 some of the rules in 9 A.A.C. 10, Article 6 to comply with recent statutory changes and to address other items mentioned in this report. These described changes will improve the effectiveness of the rules and the health and safety of patients receiving care at a hospice. Therefore, the Department plans to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by February 2024.

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 6. HOSPICES

R9-10-601. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article unless otherwise specified:

1. "Medical social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness, finances, or personal issues and may include problem-solving, interventions, and identification of resources to address the patient's or the patient's family's concerns.
2. "Palliative care" means medical services or nursing services provided to a patient that is not curative and is designed for pain control or symptom management.

R9-10-602. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a hospice service agency or hospice inpatient facility shall include on the application:

1. For an application as a hospice service agency:
   a. The hours of operation for the hospice's administrative office, and
   b. The geographic region to be served by the hospice service agency; and
2. For an application as a hospice inpatient facility, the requested licensed capacity.

R9-10-603. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of the hospice;
2. Establish, in writing:
   a. A hospice's scope of services, and
   b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management plan according to R9-10-604;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:
   a. Expected not to be present:
      i. At a hospice service agency's administrative office for more than 30 calendar days, or
      ii. On a hospice inpatient facility's premises for more than 30 calendar days; or
   b. Not present:
      i. At a hospice service agency's administrative office for more than 30 calendar days, or
      ii. On a hospice inpatient facility's premises for more than 30 calendar days; and
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 administrator and identify the name and qualifications of the new administrator.

B. An administrator:
1. Is directly accountable to the governing authority of a hospice for the daily operation of the hospice and all services provided by or through the hospice;
2. Has the authority and responsibility to manage the hospice;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the hospice's premises and accountable for the:
   a. Hospice service agency when the administrator is not present at the hospice service agency's administrative office, or
   b. Inpatient hospice facility when the administrator is not on hospice inpatient facility's premises; and
4. Designates a personnel member to provide direction for volunteers.

C. An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   c. Include how a personnel member may submit a complaint relating to patient care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Include a method to identify a patient to ensure the patient receives hospice services as ordered;

f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
g. Cover specific steps for:
i. A patient to file a complaint, and
ii. The hospice service agency or hospice inpatient facility to respond to a patient's complaint;
h. Cover health care directives;
i. Cover medical records, including electronic medical records;
j. Cover a quality management program, including incident reports and supporting documentation; and
k. Cover contracted services;

2. Policies and procedures for hospice services are established, documented, and implemented to protect the health and safety of a patient that:
a. Cover patient screening, admission, transfer, discharge planning, and discharge;
b. Cover the provision of hospice services;
c. Include when general consent and informed consent are required;
d. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
e. Cover dispensing, administering, and disposing of medication;
f. Cover infection control; and
g. Cover telemedicine, if applicable;

3. For a hospice inpatient facility, policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
a. Cover visitation of a patient, including:
i. Allowing visitation by individuals 24 hours a day, and
ii. Allowing a visitor to bring a pet to visit the patient;
b. Cover the use and display of a patient's personal belongings; and
c. Cover environmental services that affect patient care;

4. Policies and procedures are reviewed at least once every three years and updated as needed;
5. Policies and procedures are available to personnel members, employees, volunteers, and students; and
6. Unless otherwise stated:
a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
b. When documentation or information is required by this Chapter to be submitted on behalf of a hospice, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the hospice.

D. An administrator shall designate, in writing, a:
1. Physician as the medical director who has the authority and responsibility for providing direction for the medical services provided by the hospice, and
2. Registered nurse as the director of nursing who has the authority and responsibility for managing nursing services provided by the hospice.

E. An administrator shall ensure that the following are conspicuously posted:
1. The current Department-issued license;
2. The current telephone number of the Department; and
3. The location at which the following are available for review:
a. A copy of the most recent Department inspection report;
b. A list of the services provided by the hospice; and
c. A written copy of rates and charges, as required in A.R.S. § 36-436.03 .

R9-10-604. Quality Management

An administrator shall ensure that:
1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
a. A method to identify, document, and evaluate incidents;
b. A method to collect data to evaluate services provided to patients;
c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient 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 patient 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 patient 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 patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-605. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-606. Personnel

A. An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of physical health services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the patients receiving physical health services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides physical health services, and
   b. According to policies and procedures;
3. Sufficient personnel members are available and, for a hospice inpatient facility, present on the hospice inpatient facility's premises, with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the hospice's scope of services,
   b. Meet the needs of a patient, and
   c. Ensure the health and safety of a patient;
4. Orientation occurs within the first week of providing hospice services and includes:
   a. Informing personnel about Department rules for licensing and regulating hospices and where the rules may be obtained,
   b. Reviewing the process by which a personnel member may submit a complaint about patient care to a hospice, and
   c. Providing the information required by hospice policies and procedures;
5. Personnel receive in-service education according to criteria established in hospice policies and procedures;
6. In-service education documentation for a personnel member includes:
   a. The subject matter,
   b. The date of the in-service education, and
   c. The signature of each individual who participated in the in-service education; and
7. A personnel member, or an employee or a volunteer who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the hospice service facility or hospice inpatient facility, and
   b. As specified in R9-10-113.

B. An administrator shall ensure that record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
   b. The individual's education and experience applicable to the individual's job duties;
   c. The individual's completed orientation and in-service education as required by policies and procedures;
   d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures; and
   e. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(7).

C. An administrator shall ensure that personnel records are:
1. Maintained:
   a. Throughout the individual's period of providing services in or for the hospice, and
   b. For at least 24 months after the last date the individual provided services in or for the hospice; and
2. For a personnel member who has not provided physical health services at or for the hospice during the previous 12 months, provided to the Department within 72 hours after the Department's request.

R9-10-607. Admission

A. Before admitting an individual as a patient, an administrator shall obtain:
1. The name of the individual's physician;

2. Documentation that the individual has a diagnosis by a physician that indicates that the individual has a specific, progressive, normally irreversible disease that is likely to cause the individual's death in six months or less; and
3. Documentation from the individual or the individual's representative acknowledging that:
   a. Hospice services include palliative care and supportive services and are not curative, and
   b. The individual or individual's representative has received a list of services to be provided by the hospice.

B. At the time of admission, a physician or registered nurse shall:
1. Assess a patient's medical, social, nutritional, and psychological needs; and
2. As applicable, obtain informed consent or general consent.

C. Before or at the time of admission, a personnel member qualified according to policies and procedures shall assess the social and psychological needs of a patient's family, if applicable.

R9-10-608. Care Plan

A. An administrator shall ensure that a care plan is developed for each patient:
1. Based on the:
   a. Assessment of the:
      i. Patient; and
      ii. Patient's family, if applicable;
   b. Hospice service agency's or inpatient hospice facility's scope of service;
2. With participation from a:
   a. Physician,
   b. Registered nurse, and
   c. Another personnel member as designated in R9-10-612(A)(4); and
3. That includes:
   a. The patient's diagnosis;
   b. The patient's health care directives;
   c. The patient's cognitive awareness of self, location, and time;
   d. The patient's functional abilities and limitations;
   e. Goals for pain control and symptom management;
   f. The type, duration, and frequency of services to be provided to the patient and, if applicable, the patient's family;
   g. Treatments the patient is receiving from a health care institution or health care professional other than the hospice, if applicable;
   h. Medications ordered for the patient;
   i. Any known allergies;
   j. Nutritional requirements and preferences; and
   k. Specific measures to improve the patient's safety and protect the patient against injury.

B. An administrator shall ensure that:
1. A request for participation in a patient's care plan is made to the patient or patient's representative;
2. An opportunity for participation in the patient's care plan is provided to the patient, patient's representative, or patient's family; and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the patient's medical record.

C. An administrator shall ensure that:
1. Hospice services are provided to a patient and, if applicable, the patient's family according to the patient's care plan;
2. A patient's care plan is reviewed and updated:
   a. Whenever there is a change in the patient's condition that indicates a need for a change in the type, duration, or frequency of the services being provided;
   b. If the patient's physician orders a change in the care plan; and
   c. At least every 30 calendar days; and
3. A patient's physician authenticates the care plan with a signature within 14 calendar days after the care plan is initially developed and whenever the care plan is reviewed or updated.

R9-10-609. Transfer

Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before the transfer;
   b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
   c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
3. Documentation in the patient's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the patient during a transfer.

R9-10-610. Patient Rights

A. An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures include:
   a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
   b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:
1. A patient is treated with dignity, respect, and consideration;
2. A patient 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 hospice's personnel members, employees, volunteers, or students; and
3. A patient or the patient's representative:
   a. Except in an emergency, either consents to or refuses treatment;
   b. May refuse or withdraw consent for treatment before treatment is initiated;
   c. Except in an emergency, is informed of proposed treatment alternatives, associated risks, and possible complications;
   d. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a hospice for identification and administrative purposes;
   e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
      i. Medical record, or
      ii. Financial records;
   f. Is informed of:
      i. The components of hospice services provided by the hospice;
      ii. The rates and charges for the components of hospice services before the components are initiated and before a change in rates, charges, or services;
      iii. The hospice's policy on health care directives; and
      iv. The patient complaint process; and
   g. Is informed that a written copy of rates and charges, as required in A.R.S. § 36-436.03, may be requested.

C. A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in treatment and care for personal needs;
4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the hospice inpatient facility is not authorized or not able to provide physical health services needed by the patient;
6. To participate or have the patient's representative participate in the development of, or decisions concerning, treatment;
7. To participate or refuse to participate in research or experimental treatment; and
8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

R9-10-611. Medical Records

A. An administrator shall ensure that:
1. A patient's medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
   a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
   b. Dated, legible, and authenticated; and
   c. Not changed to make the initial entry illegible;
3. An order is:
   a. Dated when the order is entered in the patient's medical record and includes the time of the order;
   b. Authenticated by a medical practitioner according to policies and procedures; and

c. If the order is a verbal order, authenticated by the medical practitioner issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to an individual:
a. Authorized according to policies and procedures to access the patient's medical record;
b. If the individual is not authorized according to policies and procedures, with the written consent of a patient or the patient's representative; or
c. As permitted by law; and
6. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If a hospice maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
a. The patient's name,
b. The patient's address,
c. The patient's telephone number,
d. The patient's date of birth, and
e. Any known allergy;
2. The admission date and, if applicable, the date that the patient stopped receiving services from the hospice;
3. The name and telephone number of the patient's physician;
4. If applicable, the name and contact information of the patient's representative and:
a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
b. If the patient's representative;
i. Is a legal guardian, a copy of the court order establishing guardianship; or
ii. 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;
5. The admitting diagnosis;
6. If applicable, documented general consent and informed consent, by the patient or the patient's representative;
7. Documentation of medical history;
8. A copy of the patient's living will, health care power of attorney, or other health care directive, if applicable;
9. Orders;
10. The assessment required in R9-10-607(B)(1);
11. Care plans;
12. Progress notes for each patient contact, including:
a. The date of the patient contact,
b. The services provided,
c. A description of the patient's condition, and
d. Instructions given to the patient or patient's representative;
13. Documentation of hospice services provided to the patient;
14. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
15. Documentation of coordination of patient care;
16. Documentation of contacts with the patient's physician by a personnel member;
17. The discharge summary, if applicable;
18. If applicable, transfer documentation from a sending health care institution; and
19. Documentation of a medication administered to the patient that includes:
a. The date and time of administration;
b. The name, strength, dosage, and route of administration;
c. For a medication administered for pain, when initially administered or when administered on a PRN basis:
i. An assessment of the patient's pain before administering the medication, and
ii. The effect of the medication administered;
d. For a psychotropic medication, when initially administered or when administered on a PRN basis:
i. An assessment of the patient's behavior before administering the psychotropic medication, and
ii. The effect of the psychotropic medication administered;
e. The identification, signature, and professional designation of the individual administering the medication; and
f. Any adverse reaction a patient has to the medication.

R9-10-612. Hospice Services

A. An administrator shall ensure that the following are included in the hospice services provided by the hospice:
1. Medical services;

2. Nursing services;
3. Nutritional services, including menu planning and the designation of the kind and amount of food appropriate for a patient;
4. Medical social services, provided as follows:
   a. By a personnel member qualified according to policies and procedures to coordinate medical social services; and
   b. If a personnel member provides medical social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, by a personnel member who is licensed under A.R.S. Title 32, Chapter 33, Article 5;
5. Bereavement counseling for a patient's family for at least one year after the death of the patient; and
6. Spiritual counseling services, consistent with a patient's customs, religious preferences, cultural background, and ethnicity.

B. In addition to the services specified in subsection (A), an administrator of a hospice service agency shall ensure that the following are included in the hospice services provided by the hospice:
1. Home health aide services;
2. Respite care services; and
3. Supportive services, as defined in A.R.S. § 36-151.

C. An administrator shall ensure that the medical director provides direction for medical services provided by or through the hospice.

D. A medical director shall ensure that:
1. A patient's need for medical services is met, according to the patient's care plan and the hospice's scope of services; and
2. If a patient is receiving medical services not provided by or through the hospice, hospice services are coordinated with the physician providing medical services to the patient.

E. A director of nursing shall ensure that:
1. A registered nurse or practical nurse provides nursing services according to the hospice's policies and procedures;
2. A sufficient number of nurses are available to provide the nursing services identified in each patient's care plan;
3. The care plan for a patient is implemented;
4. A personnel member is only assigned to provide services the personnel member can competently perform;
5. A registered nurse:
   a. Assigns tasks in writing to a home health aide who is providing home health aide service to a patient,
   b. Provides direction for the home health aide services provided to a patient, and
   c. Verifies the competency of the home health aide in performing assigned tasks;
6. A registered dietitian or a personnel member under the direction of a registered dietitian plans menus for a patient;
7. A patient's condition and the services provided to the patient are documented in the patient's medical record after each patient contact;
8. A patient's physician is immediately informed of a change in the patient's condition that requires medical services; and
9. The implementation of a patient's care plan is coordinated among the personnel members providing hospice services to the patient.

R9-10-613. Medication Services

A. An administrator shall ensure that policies and procedures for medication services:
1. Include:
   a. A process for providing information to a patient about medication prescribed for the patient including:
      i. The prescribed medication's anticipated results,
      ii. The prescribed medication's potential adverse reactions,
      iii. The prescribed medication's potential side effects, and
      iv. Potential adverse reactions that could result from not taking the medication as prescribed;
   b. Procedures for preventing, responding to, and reporting:
      i. A medication error,
      ii. An adverse reaction to a medication, or
      iii. A medication overdose;
   c. Procedures to ensure that a patient's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs;
   d. Procedures for:
      i. Documenting medication administration; and
      ii. Monitoring a patient who self-administers medication;
   e. Procedures for assisting a patient in obtaining medication; and
   f. If applicable, procedures for providing medication administration off the premises; and
2. Specify a process for review through the quality management program of:
   a. A medication administration error, and
   b. An adverse reaction to a medication.

B. If a hospice provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
   a. Are reviewed and approved by a medical practitioner;
   b. Specify the individuals who may:
      i. Order medication, and
      ii. Administer medication;
   c. Ensure that medication is administered to a patient only as prescribed; and

d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
3. A medication administered to a patient:
a. Is administered in compliance with an order, and
b. Is documented in the patient's medical record.

C. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
2. A current toxicology reference guide is available for use by personnel members;
3. If pharmaceutical services are provided on the premises:
a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by the hospice's policies and procedures is established to:
i. Develop a drug formulary,
ii. Update the drug formulary at least every 12 months,
iii. Develop medication usage and medication substitution policies and procedures, and
iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical practitioner specifically orders otherwise;
b. The pharmaceutical services are provided under the direction of a pharmacist;
c. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
d. A copy of the pharmacy license is provided to the Department upon request.

D. When medication is stored at a hospice inpatient facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient 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 patients who received recalled medication; and
d. Storing, inventorying, and dispensing controlled substances.

E. An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the hospice's director of nursing.

R9-10-614. Infection Control

An administrator shall ensure that:
1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
a. A method to identify and document infections;
b. Analysis of the types, causes, and spread of infections and communicable diseases;
c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases; and
d. Documenting infection control activities including:
i. The collection and analysis of infection control data,
ii. The actions taken relating to infections and communicable diseases, and
iii. Reports of communicable diseases to the governing authority and state and county health departments;
2. Infection control documents are maintained for at least 12 months after the date of the documents;
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
a. Handling and disposal of biohazardous medical waste;
b. Sterilization and disinfection of medical equipment and supplies;
c. Use of personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a patient;
e. Training of personnel members in infection control practices; and
f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures; and
5. A personnel member washes hands or use a hand disinfection product after each patient contact and after handling soiled linen, soiled clothing, or potentially infectious material.

R9-10-615. Food Services for a Hospice Inpatient Facility

A. An administrator of a hospice inpatient facility shall ensure that:
1. Meals and snacks provided by the hospice inpatient facility are served according to a patient's dietary needs and preferences;
2. Meals and snacks for each day are planned using:
a. The applicable guidelines in http://www.health.gov/dietaryguidelines/2010.asp, and
b. Preferences for meals and snacks obtained from patients;

3. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
4. Water is available and accessible to patients at all times, unless otherwise stated in a patient's care plan.

B. An administrator of a hospice inpatient facility 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 patient, 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;
   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 contains a thermometer, accurate to plus or minus 3° F, 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.

C. An administrator shall ensure that:
1. For a hospice inpatient facility with a licensed capacity of more than 20 beds, the hospice inpatient facility:
   a. Has a license or permit as a food establishment under 9 A.A.C. 8, Article 1, and
   b. Maintains a copy of the hospice inpatient facility's food establishment license or permit;
2. If the hospice inpatient facility contracts with food establishment, as defined in 9 A.A.C. 8, Article 1, to prepare and deliver food to the hospice inpatient facility a copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the hospice inpatient facility; and
3. Food is stored, refrigerated, and reheated to meet the dietary needs of a patient.

R9-10-616. Emergency and Safety Standards for a Hospice Inpatient Facility

A. An administrator of a hospice inpatient facility shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
   a. When, how, and where patients will be relocated, including:
      i. Instructions for the evacuation or transfer of patients,
      ii. Assigned responsibilities for each employee and personnel member, and
      iii. A plan for providing continuing services to meet patient's needs;
   b. How each patient's medical record will be available to individuals providing services to the patient during a disaster;
   c. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
   d. A plan for obtaining food and water for individuals present in the hospice inpatient facility or the hospice inpatient 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 a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
   a. The date and time of the disaster plan review;
   b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented; and
5. An evacuation path is conspicuously posted on each hallway of each floor of the hospice inpatient facility.

B. An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the fire inspection report, and
3. Maintain documentation of a current fire inspection.

R9-10-617. Environmental Standards for a Hospice Inpatient Facility

A. An administrator of a hospice inpatient facility shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
   a. Cleaning and storing of soiled linens and clothing,
   b. Housekeeping procedures that ensure a clean environment, and

c. Isolation of a patient who may spread an infection;
2. The premises and equipment are:
a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness or infection; and
b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury or illness;
3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
4. Equipment used at the hospice inpatient 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 the hospice inpatient facility's policies and procedures; and
c. Used according to the manufacturer's recommendations;
5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
6. Garbage and refuse are:
a. Stored in covered containers lined with plastic bags, and
b. Removed from the premises at least once a week;
7. Soiled linen and clothing are:
a. Collected in a manner to minimize or prevent contamination;
b. Bagged at the site of use; and
c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
8. Heating and cooling systems maintain the hospice inpatient facility at a temperature between 70° F and 84° F at all times;
9. Common areas:
a. Are lighted to assure the safety of patients, and
b. Have lighting sufficient to allow personnel members to monitor patient activity;
10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the hospice inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
13. Except for medical supplies needed by a patient, combustible or flammable liquids and hazardous materials are stored by the hospice inpatient facility in the original labeled containers or safety containers in a locked area inaccessible to patients;
14. If pets or animals are allowed in the hospice inpatient facility, pets or animals are:
a. Controlled to prevent endangering the patients and to maintain sanitation, and
b. Licensed consistent with local ordinances;
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 all applicable state laws and rules.

B. An administrator of a hospice inpatient facility shall ensure that a patient is allowed to use and display personal belongings.

R9-10-618. Physical Plant Standards for a Hospice Inpatient Facility

A. An administrator shall ensure that a hospice inpatient facility complies with applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01.

B. An administrator of a hospice inpatient facility shall ensure that the premises and equipment are sufficient to accommodate:
1. The services stated in the hospice inpatient facility's scope of services, and
2. An individual accepted as a patient by the hospice inpatient facility.

C. An administrator of a hospice inpatient facility shall ensure that a patient's sleeping area:
1. Is shared by no more than four patients;
2. Measures at least 80 square feet of floor space per patient, not including a closet;
3. Has walls from floor to ceiling;
4. Contains a door that opens into a hallway, common area, or outdoors;
5. Is at or above ground level;
6. Is vented to the outside of the hospice inpatient facility;
7. Has a working thermometer for measuring the temperature in the sleeping area;
8. For each patient, has a:
a. Bed,
b. Bedside table,
c. Bedside chair,
d. Reading light,
e. Privacy screen or curtain, and

f. Closet or drawer space;
9. Is equipped with a bell, intercom, or other mechanical means for a patient to alert a personnel member;
10. Is no farther than 20 feet from a room containing a toilet and a sink;
11. Is not used as a passageway to another sleeping area, a toilet room, or a bathing room;
12. Contains one of the following to provide sunlight:
a. A window to the outside of the hospice inpatient facility, or
b. A transparent or translucent door to the outside of the hospice inpatient facility; and
13. Has coverings for windows and for transparent or translucent doors that provide patient privacy.

D. An administrator of a hospice inpatient facility shall ensure that there is:
1. For every six patients, a toilet room that contains:
a. At least one working toilet that flushes and has a seat;
b. At least one working sink with running water;
c. Soap for hand washing;
d. Paper towels or a mechanical air hand dryer;
e. Grab bars attached to a wall that an individual may hold onto to assist the individual in becoming or remaining erect;
f. A mirror;
g. Lighting;
h. Space for a personnel member to assist a patient;
i. A bell, intercom, or other mechanical means for a patient to alert a personnel member; and
j. An operable window to the outside of the hospice inpatient facility or other means of ventilation;
2. For every 12 patients, at least one working bathtub or shower accessible to a wheeled shower chair, with a slip-resistant surface, located in a toilet room or in a separate bathing room;
3. For a patient occupying a sleeping area with one or more other patients, a separate room in which the patient can meet privately with family members;
4. Space in a lockable closet, drawer, or cabinet for a patient to store the patient's private or valuable items;
5. A room other than a sleeping area that can be used for social activities;
6. Sleeping accommodations for family members;
7. A designated toilet room, other than a patient toilet room, for personnel and visitors that:
a. Provides privacy; and
b. Contains:
i. A working sink with running water,
ii. A working toilet that flushes and has a seat,
iii. Toilet tissue,
iv. Soap for hand washing,
v. Paper towels or a mechanical air hand dryer,
vi. Lighting, and
vii. A window that opens or another means of ventilation;
8. If the hospice inpatient facility has a kitchen with a stove or oven, a mechanism to vent the stove or oven to the outside of the hospice inpatient facility; and
9. Space designated for administrative responsibilities that is separate from sleeping areas, toilet rooms, bathing rooms, and drug storage areas.

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.

BOARD OF PODIATRY EXAMINERS
Title 4, Chapter 25, Article 1-6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 21, 2023**

SUBJECT: **BOARD OF PODIATRY EXAMINERS**
Title 4, Chapter 25, Articles 1-6

Summary

This Five-Year Review Report (5YRR) from the Board of Podiatry Examiners (Board), covers eighteen (18) rules and one (1) table in Title 4, Chapter 25, Articles 1 through 6 regarding the licensing and regulation of doctors of podiatric medicine. Specifically, Article 1 contains rules relating to definitions, postdoctoral or residency program approval, fees, and time frames for approvals; Article 2 relates to examinations of applicants; Article 3 relates to applications for regular podiatry license, applications for podiatrist's license by comity, and license renewals; Article 4 contains rules regarding rehearing or review; Article 5 relates to continuing education hours, including approvals, documentation, and waivers; and Article 6 contains rules regarding requirements for prescribing and dispensing drugs and devices, including registration, recordkeeping, reporting shortages, and renewals.

Proposed Action

The Board made amendments as proposed in the prior 5YRR which became effective in September 2020. The Board also initiated rulemaking to amend several additional rules and to establish a new Article 7 which the Council approved in June 2022. However, it was discovered that a statute needed to be amended before Article 7 could become effective. The amendments

and new Article 7 became effective in August 2023. The Board indicates that they are not proposing any further changes to the rules at this time.

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

The Board cites both general and specific statutory authority for these rules.

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

According to the Board, the economic impact has not differed from what was estimated when they were last amended in 2022-2023. The amendments clarify the requirements for podiatric medical assistants, eliminate outdated rules and keep the rules consistent with statute. The rules are designed to enhance safety of the public in receiving services from podiatrists.

Stakeholders include the Board, podiatrists, podiatric medical assistants, and the public.

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

The Board believes the benefits from clarifying the rules, increasing safety for the public through guidance on podiatric assistants and keeping the rules consistent with statute outweigh the costs of the rulemaking to the Board. Moreover, the Board states that rulemaking has minimal encumbrance on the regulated population.

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

The Board indicates that they have not received any written criticisms of the rules in the last five years.

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

The Board indicates that the rules are clear, concise, and understandable.

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

The Board indicates that the rules are consistent with other rules and statutes.

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

The Board indicates that the rules are effective in achieving their objectives.

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

The Board indicates that the rules are enforced as written.

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

The Board indicates that the rules are not more stringent than 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 Board indicates that they do not issue general permits and that the issuance of an alternative type of permit, license, or authorization is specifically authorized by statute.

11. Conclusion

This 5YRR from the Board covers eighteen (18) rules and one (1) table in Title 4, Chapter 25, Articles 1 through 6 regarding the licensing and regulation of doctors of podiatric medicine. The Board indicates that the rules are generally clear, concise, and understandable; consistent with other rules and statutes; and enforced as written.

Council staff recommends approval of this report.

Katie Hobbs,
Governor

Arizona State Board of Podiatry Examiners

"Protecting the Public's Health"

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July 6, 2023

Nicole Sornsin, GRRC Chair
Arizona Department of Administration
100 North 15th Ave., Ste. 305
Phoenix, AZ 85007

re: Five-year rule review report for Arizona Administrative Code Title 4, Chapter 5

Dear Ms. Sornsin:

The Arizona Board of Podiatry (Board) examiners wishes to inform the Governor's Regulatory Review Council that it does not have nor has it adopted substantive policy statements in FY23 or FY24. The Board continues to comply with the provisions of A.R.S. §41-1091(B)(C).

Please find attached the Board's five-year rule report for your review and approval.

If you have questions please feel free to contact me at heather.broaddus@podiatry.az.gov or 602-542-8151.

Sincerely,
Heather Broaddus
Executive Director

ARIZONA STATE BOARD OF PODIATRY EXAMINERS
FIVE-YEAR REVIEW REPORT
A.A.C. TITLE 4, CHAPTER 25
ARTICLES 1, 2, 3, 4, 5 and 6

FIVE –YEAR REVIEW REPORT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 25. ARIZONA STATE BOARD OF PODIATRY EXAMINERS
ARTICLES 1, 2, 3, 4, 5 AND 6

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R4-25-601. Reserved
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R4-25-605. Registration Renewal

FIVE-YEAR-REVIEW SUMMARY

The Arizona Board of Podiatry Examiners (Board) was created in 1941 as the Board of Chiropody and was renamed the Board of Podiatry Examiners in 1964. The Board is comprised of five members; three podiatrists and two public members. The Board licenses and regulates doctors of podiatric medicine who specialize in the diagnosis and treatment of the foot, ankle and lower leg. The Board evaluates the professional competency of podiatrists seeking to be licensed in the State of Arizona. Further, the Board promotes continued competency and fitness by investigating complaints against podiatrists, holding hearings, monitoring the activities of its licensees and enforcing the standards of practice for the podiatric profession as set forth by law.

The Board acts in accordance with the highest standards of ethics, accountability, efficiency, and openness. It believes that by the vigorous enforcement of the law, it protects the public and ensures that the highest quality of comprehensive podiatric medical care is available to the citizens of Arizona and that it is delivered by qualified podiatric practitioners.

The Board continues to meet its objective and purpose through licensure and regulation of podiatrists, and recently underwent rulemaking to make substantial amendments to its rules to revise outdated or ineffective rules and to provide guidance for statutes that became effective regarding podiatric medical assistants in the 2022 legislative session by adding section 7 to the Board's rules. The Board's rule package was previously approved by the Governor's Regulatory Review Council and was submitted to the Secretary of State's Office as the final notice of rulemaking on June 19, 2023. The Board's rule package became effective August 18, 2023.

The Board's statutory authority is in A.R.S. §32-801 *et seq*. The Board has 18 rules and one table in Title 4, Chapter 25, Articles 1, 2, 3, 4, 5 and 6. The rules were promulgated to protect the health and safety of patients who receive treatment from podiatrists.

INFORMATION IDENTICAL FOR ALL RULES

The following information is the same for all the Board of Podiatry (Board) rules:

1. General and specific statutes authorizing the rule;

   All of the rules have general authority under A.R.S. §32-804, which states that the Board "may adopt rules and regulations consistent with and necessary to carry out the provisions of this chapter."

2. Agency Enforcement Policy
   All of these rules have been enforced consistently during the past five years through control of interpretation and application by agency staff of the Board. The following report will detail those rules in which discrepancies, if any, in the enforcement may appear. The Board has not

received any requests for rule waivers during this time period.

3. Summary of the written criticisms or analysis of the rule
The Board has not received any written criticisms or outside analysis of the rules in the last five years.

4. Estimated economic, small business and consumer impact statement
The Board estimated the following economic impact of the rules when they were last amended in 2022-2023:

The economic, small business, and consumer impact statement contains the information necessary for compliance with A.R.S. §§41-1035, 1052 and 1055.

1. Increased Revenue / Decreased Costs:
There are no increased revenues. The Board believes that clarifying the requirements for podiatric medical assistants and eliminating outdated rules will benefit the Board staff, podiatrists, and the public.

2. Decreased Revenue / Increased Costs:
There are no decreased revenues. The Board believes that clarifying the requirements for podiatric medical assistants and eliminating outdated rules will benefit the Board staff, podiatrists, and the public.

3. Do the probable benefits outweigh the probable costs?
The benefits from clarifying the rules, increasing safety for the public through providing guidance on podiatric medical assistants and keeping rules consistent with statute outweigh the cost of the rulemaking to the Board.

4. Small business impact reduction analysis:
The rulemaking has no reducible impact on small business or consumers. It is designed to enhance safety of the public in receiving services from podiatrists and has minimal encumbrance on the regulated population.

The impact has not differed from the estimate since that time period.

5. Has the agency received any business competitiveness analyses of the rules:
None at this time.

6. Has the agency completed the course of action indicated in the agency's previous five-year-review report?
Yes, the Board amended its rules accordingly and the rules became effective in September 2020.

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

8. 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 are in compliance with the general permit requirements of A.R.S. §41-1037.

9. Proposed course of action:
   There was no legislation in the 2023 session that required the Board to amend its rules.

10. Compliance with A.R.S. §41-1037
    In addition, pursuant to A.R.S. §41-1056(A)(10), it has been determined that the rule as amended does not have a corresponding federal law and is therefore not more stringent than any corresponding federal law. An analysis under A.R.S. 41-1037 is not necessary because the Agency does not issue general permits and the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

INFORMATION ON INDIVIDUAL RULES:

Article 1. General Provisions

R4-25-101. Definitions

Authorization of the rule by existing statutes:
A.R.S. §32-804

Objective of the rule:
To define terms used in the rules to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-102. Postdoctoral, or Residency Program Approval

Authorization of the rule by existing statutes:
A.R.S. §32-826(A)

Objective of the rule:
To ensure that all applicants have the requirement of a residency for licensure.

Effectiveness in achieving the objective:

The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-103. Fees

Authorization of the rule by existing statutes:
A.R.S. §41-1077; A.R.S. §§32-822; 826, 827 and 830

Objective of the rule:
To establish and clarify specific fees for an initial application and license renewal.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-104. Time-frames for Approvals

Authorization of the rule by existing statutes:
A.R.S. §41-1072; A.R.S. §32-822; A.R.S. §32-827; A.R.S. §32-829

Objective of the rule:
To establish and clarify specific timeframes for completing an initial application, license renewal and approval of Continuing Education (CE).

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

Table 1 (Time-frames in days)

Authorization of the rule by existing statutes:
A.R.S. §41-1072 through 1079; A.R.S. §§32-822, 826, 827, 829 and 871

Objective of the rule:
To provide time frames for the Board to approve or deny an initial application, license renewal application and approval of continuing education.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

Article 2. Examinations

R4-25-201. Licensure by Examination

Authorization of the rule by existing statutes:
A.R.S. §§32-826 and 827

Objective of the rule:
To specify what information and documentation must be submitted to the Board when applying for a license to practice the profession of Podiatry using the examination scores of a National Board of examination in Podiatry.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

Article 3. Licenses

R4-25-301. Application for a Regular Podiatry License

Authorization of the rule by existing statutes:
A.R.S. §32-822

Objective of the rule:
To establish criteria for requirements for licensure of a podiatrist.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-302. Application for a Podiatrist's License by Comity

Authorization of the rule by existing statutes:
A.R.S. §32-827

Objective of the rule:
This rule sets standards for an applicant who has lawfully practiced podiatry in the state or country from which he or she applied for not less than five years within the seven years immediately preceding his or her application for a license in this state assuming the requirements in such state or country were, at the date of registration or licensing, substantially equal to those then in force in this state.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-21-306. License Renewal

Authorization of the rule by existing statutes:
A.R.S. §32-829

Objective of the rule:

To provide criteria for a licensee to renew his or her active license.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. The rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

Article 4. Rehearing or Review

R4-25-401. Rehearing or Review

Authorization of the rule by existing statutes:
A.R.S. Title 41, Chapter 6, Article 10
Objective of the rule:
To describe how a party in a contested case may appeal a final decision made by the Board.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

Article 5. Continuing Education

R4-25-501. Continuing Education Hours Required

Authorization of the rule by existing statutes:
A.R.S. §32-3107

Objective of the rule:
To establish criteria for the requirements of continuing medical education and limit the type, kind and number of continuing medical education hours that may be taken in any one area of practice.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-502. Approval of Continuing Education

Authorization of the rule by existing statutes:
A.R.S. §32-829

Objective of the rule:
To establish criteria for Board approved educational courses or programs.

Effectiveness in achieving the objective:
To determine if the required type and number of continuing medical education hours is met. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-503. Documentation

Authorization of the rule by existing statutes:
A.R.S. §32-829

Objective of the rule:
To determine if the required type and number of continuing medical education hours is met.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:

The rule is clear, concise, and understandable.

R4-25-505. Waiver of Continuing Education

Authorization of the rule by existing statutes:
A.R.S. §32-829

Objective of the rule:
To grant authority to the Board to review emergency situations that may occur to licensees which may prevent a timely completion of mandated continuing education programs and allow special accommodation for completion of required hours for that renewal period.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

Article 6. Dispensing Drugs and Devices

R4-25-602. Registration Requirements

Authorization of the rule by existing statutes:
A.R.S. §32-871

Objective of the rule:
To establish a registration process for prescribing of drugs and devices.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. The rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-603. Prescribing and Dispensing Requirements

Authorization of the rule by existing statutes:
A.R.S. §32-871

Objective of the rule:
To establish the process and requirements for prescribing and dispensing of drugs and devices to a patient.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-604. Recordkeeping and Reporting Shortages

Authorization of the rule by existing statutes:
A.R.S. §32-871

Objective of the rule:
To set the minimum level of record keeping pursuant to the national standard of care and properly report such findings.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. Rule was amended in 2020.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

R4-25-605. Registration Renewal

Authorization of the rule by existing statutes:
A.R.S. §32-871 and A.R.S. §36-2608

Objective of the rule:
To require annual reviews of registration to dispense drugs and devices.

Effectiveness in achieving the objective:
The rule meets its objective and is effective as written. The rule was amended in 2023.

Consistency with state and federal statutes and rules:
The entire rule is consistent with both state and federal statutes.

Rules enforced as written:
Yes

Clarity, conciseness, and understandability:
The rule is clear, concise, and understandable.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 25. BOARD OF PODIATRY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

R4-25-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "Administer" has the same meaning as in A.R.S. § 32-1901.
2. "Comity" means the procedure for granting an Arizona license to an applicant who is licensed as a podiatrist in another state of the United States.
3. "Controlled substance" has the same meaning as in A.R.S. § 32-1901.
4. "Council" means the Council of Podiatric Medical Education, an organization approved by the American Podiatric Medical Association to govern podiatric education.
5. "Credit hour" means 60 minutes of participation in continuing education.
6. "Day" means calendar day.
7. "DEA" means The Drug Enforcement Administration in the Department of Justice
8. "DEA Registration" means the DEA Controlled Substance Registration required and permitted by 21 U.S.C. 823 of the Controlled Substances Act.
9. "Device" has the same meaning as in A.R.S. § 32-1901 and includes a prescription-only device defined in A.R.S. § 32-1901.
10. "Directly supervise" has the same meaning as "direct supervision" in A.R.S. § 32-871(D).
11. "Dispense" has the same meaning as in A.R.S. § 32-871(F).
12. "Distributor" has the same meaning as in A.R.S. § 32-1901.
13. "Drug" has the same meaning as in A.R.S. § 32-1901 and includes a controlled substance, a narcotic drug defined in A.R.S. § 32-1901, a prescription medication, and a prescription-only drug.
14. "Informed consent" means a document signed by a patient or patient's representative that authorizes treatment to the patient after the treating podiatrist informs the patient or the patient's representative of the following:
    a. A description of the treatment;
    b. A description of the expected benefits of the treatment;
    c. Alternatives to the treatment;
    d. Associated risks of the treatment, including potential side effects and complications; and
    e. The patient's right to withdraw authorization for the treatment at any time.
15. "Party" has the same meaning as in A.R.S. § 41-1001.
16. "Patient" means an individual receiving treatment from a podiatrist.
17. "Prescription medication" has the same meaning as in A.R.S. § 32-1901.
18. "Prescription-only device" has the same meaning as in A.R.S. § 32-1901.
19. "Prescription-only drug" has the same meaning as in A.R.S. § 32-1901.
20. "Prescription order" has the same meaning as in A.R.S. § 32-1901.
21. "Regular podiatry license" means a license issued pursuant to the provisions of A.R.S. § 32-826(A).
22. "Representative" means a legal guardian, an individual acting on behalf of another individual under written authorization from the individual, or a surrogate according to A.R.S. § 36-3201.
23. "Treatment" means podiatric medical, surgical, mechanical, manipulative, or electrical treatment according to A.R.S. § 32-801.

Historical Note

Former Section R4-25-06 renumbered and amended as Section R4-25-01 effective August 30, 1978 (Supp. 78-4). Amended effective April 3, 1980 (Supp. 80-2). Former Section R4-25-01 renumbered and amended as Section R4-25-101 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

R4-25-102. Postdoctoral, or Residency Program Approval

A. For purposes of satisfying the requirements of A.R.S. § 32-826(A), a postdoctoral or residency program approved by the Council is approved by the Board.

B. A postdoctoral or residency program provisionally approved or placed on probation by the Council is approved by the Board until the Council makes a final adverse determination of the status of the postdoctoral or residency program.

Historical Note

Adopted effective March 16, 1981 (Supp. 81-2). Former Section R4-25-02 renumbered and amended as Section R4-25-102 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-103. Fees

The Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. Application for license according to A.R.S. §§ 32-822(A) and 32-825, $450.00.
2. Application for license according to A.R.S. § 32-827, $450.00.
3. License issuance, $225.00.
4. Annual renewal, $275.00.
5. Penalty fee for late renewal after July 30, $150.00 in addition to the regular renewal fee.
6. Certification of a licensee to authorities of another state or country, $10.00.
7. For initial registration to dispense drugs and devices, $200.00.
8. For annual renewal of registration to dispense drugs and devices, $100.00.
9. Application for temporary license and issuance of license, $100.00
10. Application for telehealth registration and issuance of registration, $50.00.

Historical Note

Former Rule 3; Repealed effective August 30, 1978 (Supp. 78-4). Adopted as an emergency effective December 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective April 9, 1981 (Supp. 81-2). Former Section R4-25-03 repealed, new Section R4-25-03 adopted effective April 18, 1984 (Supp. 84-2). Former

Section R4-25-03 renumbered without change as Section R4-25-103 effective November 18, 1986 (Supp. 86-6). Amended effective May 7, 1990 (Supp. 90-2). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 479, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2). Fee in subsection (10) as published in the *Register* and in the proposed rulemaking corrected to $50 as submitted in final rulemaking in file R23-116.

R4-25-104. Time-frames for Approvals

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Board is set forth in Table 1.

1. The administrative completeness review time-frame begins:
   a. For approval of a podiatry license, when the Board receives the application packet required in R4-25-303;
   b. For approval of a registration to dispense drugs, when the Board receives the application packet required in R4-25-602;
   c. For approval of an application for renewal of a license or dispensing registration, when a licensee submits an application packet to the Board; or
   d. For approval of continuing education, when the Board receives a request for approval.
2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 4, Chapter 7 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 4, Chapter 7 and this Chapter.

D. The Board shall consider an application withdrawn if, within 365 days from the application submission date, the applicant fails to supply the missing information under subsection (B)(2) or (C)(1).

E. An applicant who does not wish an application withdrawn may request a denial in writing within 365 days from the application submission date.

F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time-frame's last day.

Historical Note

Former Rule 4; Repealed effective August 30, 1978 (Supp. 78-4). Adopted effective March 13, 1986 (Supp. 86-2). Former Section R4-25-04 renumbered without change as Section R4-25-104 effective November 18, 1986 (Supp. 86-6). Section repealed effective July 27, 1995 (Supp. 95-3). New Section adopted by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-105. Repealed

Historical Note

Former Rule 5; Repealed effective August 30, 1978 (Supp. 78-4). Former Section R4-25-05 renumbered without change as Section R4-25-105 effective November 18, 1986 (Supp. 86-6).

R4-25-106. Renumbered

Historical Note

Former Rule 6; Former Section R4-25-06 renumbered and amended as Section R4-25-01 effective August 30, 1978 (Supp. 78-4). Former Section R4-25-06 renumbered without change as Section R4-25-106 effective November 18, 1986 (Supp. 86-6).

R4-25-107. Repealed

Historical Note

Former Rule 7; Repealed effective August 30, 1978 (Supp. 78-4). Former Section R4-25-07 renumbered without change as Section R4-25-107 effective November 18, 1986 (Supp. 86-6).

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular Podiatry License (R4-25-301)	A.R.S. § 32-826	60	30	30
License by Comity (R4-25-302)	A.R.S. § 32-827	60	30	30
Dispensing Registration (R4-25-602)	A.R.S. § 32-871	60	30	30
License Renewal (R4-25-306)	A.R.S. § 32-829	60	15	45
Registration Renewal (R4-25-605)	A.R.S. § 32-871	60	30	30
Continuing Education Approval (R4-25-502)	A.R.S. § 32-829	60	15	45

Historical Note

New Table 1 adopted by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

ARTICLE 2. EXAMINATIONS

R4-25-201. Examination of Applicants

A. An applicant who does not meet the requirements in A.R.S. § 32-827 for licensure by comity shall pass the National Board Written Examinations with a grade of 75% or more.

B. An applicant licensed to practice podiatry in a state other than Arizona who is applying to the Board for a license by comity and who passed The National Board Written Examinations in a state other than Arizona with a score of 75% or more within five years of the application submission date meets the examination requirements of A.R.S. § 32-823.

Historical Note

Adopted as an emergency effective April 21, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-2). Adopted effective August 30, 1978 (Supp. 78-4). Amended subsection (A) effective March 16, 1981 (Supp. 81-2). Former Section R4-25-20 renumbered and amended as Section R4-25-201 effective November 18, 1986 (Supp. 86-6). Section repealed, new Section adopted effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-202. Repealed

Historical Note

Adopted effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Section repealed by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1).

R4-25-203. Repealed

Historical Note

Adopted effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Repealed by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

ARTICLE 3. LICENSES

R4-25-301. Application for a Regular Podiatry License

A. An applicant for a regular license shall submit:
1. An application form approved by the Board, signed and dated by the applicant that contains questions approved by the Board.
2. Two passport-type photographs of the applicant taken not more than six months before the date of application;
3. A photocopy of the diploma issued to the applicant upon completion of podiatric school;
4. A photocopy of the residency certificate issued to the applicant upon completion of residency; and
5. The fee required in R4-25-103.

B. An applicant shall arrange to have a transcript of examination scores of a national board examination in podiatry sent directly to the Board office by the professional examination service preparing the examination.

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Amended effective April 3, 1980 (Supp. 80-2). Former Section R4-25-30 renumbered without change as Section R4-25-301 effective November 18, 1986 (Supp. 86-6). Section repealed effective July 27, 1995 (Supp. 95-3). New Section adopted by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

R4-25-302. Application for a Podiatrist's License by Comity

A. Under A.R.S. § 32-827, an applicant for a podiatrist's license by comity shall submit to the Board, an application form approved by the Board, signed and dated by the applicant that contains questions approved by the Board and the following:
1. A photocopy of a current podiatric license in good standing issued in another state or jurisdiction;
2. Written documentation of having been engaged in the practice of podiatric medicine for five of seven years immediately preceding the application;
3. Two passport-type photographs of the applicant taken not more than six months before the date of application;
4. The fee required in R4-25-103.

B. An applicant shall arrange to have a transcript of examination scores of a national board examination in podiatry sent directly

to the Board office by the professional examination service preparing the examination.

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Former Section R4-25-31 renumbered and amended as Section R4-25-302 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

R4-25-303. Expired

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Amended effective February 5, 1979 (Supp. 79-1). Former Section R4-25-32 renumbered and amended as Section R4-25-303 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). former Section R4-25-303 renumbered to R4-25-305, new Section R4-25-303 adopted by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 727, effective November 28, 2013 (Supp. 14-1).

R4-25-304. Repealed

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Former Section R4-25-33 renumbered without change as Section R4-25-304 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Section repealed by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1).

R4-25-305. Expired

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Amended effective February 5, 1979 (Supp. 79-1). Section R4-25-305 renumbered from R4-25-303 by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 727, effective November 28, 2013 (Supp. 14-1).

R4-25-306. License Renewal

On or before June 30 of each year, a licensee shall submit the renewal fee required in R4-25-103, and

1. A renewal application approved by the Board that contains questions approved by the Board.
2. The written report required in R4-25-503 for continuing education, including an attestation of attendance signed by the licensee.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

ARTICLE 4. REHEARING OR REVIEW

R4-25-401. Rehearing or Review

A. Except as provided in subsection (G), a party who is aggrieved by a decision issued by the Board may file with the Board no later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known home or business address or five days after the decision is mailed by certified mail to the party or the party's attorney.

B. A party filing a motion for rehearing or review may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion or amended motion by any other party for rehearing or review is filed. The Board may require a party to file a supplemental memorandum explaining the issues raised in the motion or response and may permit oral argument.

C. The Board may grant a rehearing or review of the decision for any of the following reasons materially affecting the moving party's rights:

1. Irregularity in the Board's administrative proceedings or an abuse of discretion that deprived the party of a fair hearing,
2. Misconduct of the Board or the prevailing party,
3. Accident or surprise that could not have been prevented by ordinary prudence,
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing,
5. Excessive or insufficient penalties,
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing, or
7. That the decision is not supported by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing or review on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify the ground for the rehearing or review.

E. No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reason in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.

F. When a motion for rehearing or review is based upon affidavits, a party shall serve the affidavits with the motion. An opposing party may, within 10 days after service, serve opposing affidavits. The Board may extend the time for serving opposing affidavits for no more than 20 days for good cause or by written stipulation of the parties. The Board may permit reply affidavits.

G. If the Board makes specific findings that the immediate effectiveness of a decision is necessary to preserve the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for rehearing or review. If a decision is issued as a final decision without an opportunity for a rehearing or review, an aggrieved party that makes an application for judicial review of the decision shall make the application within the time limits permitted for an application for judicial review of the Board's final decision at A.R.S. § 12-904.

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Former Section R4-25-40 renumbered and amended as Section

R4-25-401 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2).

ARTICLE 5. CONTINUING EDUCATION

R4-25-501. Continuing Education Hours Required

A. Unless a licensee obtains a waiver according to R4-25-505, the licensee shall complete 25 hours or more of continuing education credit hours every fiscal year.

B. A licensee who has been licensed for less than 12 months before license renewal shall complete two continuing education credit hours for each month of licensure.

C. For a licensee authorized to prescribe schedule II controlled substances and who has a valid DEA registration, at least three hours of the 25 hours required in subsection (A) shall be obtained in the area of opioid-related, substance use disorder-related or addiction-related continuing education.

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Former Section R4-25-50 renumbered and amended as Section R4-25-501 effective November 18, 1986 (Supp. 86-6). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-502. Approval of Continuing Education

A. A licensee may submit a written request to the Board for approval of continuing education before submission of a renewal application.

B. A request under subsection (A) shall contain:
1. A brief summary of the continuing education;
2. The educational objectives of the continuing education;
3. The date, time, and place of the provision of the continuing education;
4. The name of the individual providing the continuing education, if available; and
5. The name of the organization providing the continuing education, if applicable.

C. In determining whether to approve continuing education, the Board shall consider whether the continuing education:
1. Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;
2. Is developed and provided by an individual with knowledge and experience in the subject area; and
3. Contributes directly to the professional competence of a licensee.

D. The Board may accept a maximum of 10 continuing education credit hours or less for the following:
1. Teaching a graduate level course approved by the American Podiatry Medical Association,
2. Self-study which can include the following:
   a. Reading educational literature that relates to the practice of podiatry.
   b. A work or study group that relates to the practice of podiatry.
   c. Having authored or co-authored a book, book chapter, or article in a peer-reviewed journal that was published within the last year and that relates to the practice of podiatry.
3. Serving as a Board member or Complaint consultant for the Board.

E. The Board shall approve or deny a request for approval according to the time-frames set forth in R4-25-104 and Table 1.

F. According to A.R.S. § 32-829(E), if approval of a continuing education request is denied, a licensee has 60 days from the date of the denial to meet the continuing education requirements.

G. Any opioid-related course that is approved by the Arizona State Board of Podiatry Examiners, Arizona State Board of Pharmacy, Arizona Board of Osteopathic Examiners, Arizona Medical Board or the Arizona State Board of Nursing is approved by the Board.

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Amended effective April 3, 1980 (Supp. 80-2). Former Section R4-25-51 renumbered and amended as Section R4-25-502 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-503. Documentation

A. A licensee shall submit a written report of completed continuing education with a renewal application that includes:
1. The name of the licensee,
2. The title of each continuing education,
3. A description of the continuing education's content and educational objectives,
4. The date of completion of each continuing education,
5. The number of credit hours of each continuing education, and
6. A statement signed by the licensee verifying the information in the report.

B. The Board may audit continuing education reports every 12 months for conformance with A.R.S. § 32-829 and this Article:
1. Randomly; or
2. Selectively for licensees who previously submitted reports that did not conform with the requirements in A.R.S. § 32-829 or this Article.

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Former Section R4-25-52 renumbered and amended as Section R4-25-503 effective November 18, 1986 (Supp. 86-6). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2).

R4-25-504. Repealed

Historical Note

Adopted effective August 30, 1978 (Supp. 78-4). Former Section R4-25-53 renumbered and amended as Section R4-25-504 effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Section repealed by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2).

R4-25-505. Waiver of Continuing Education

A. A licensee who is unable to complete 25 hours of continuing education for any of the reasons in A.R.S. § 32-829(C) may submit a written request for a waiver to the Board by August 31 that contains:
1. The name, address, and telephone number of the licensee;
2. The report required in R4-25-503;

3. An explanation of why the licensee was unable to meet the Board's continuing education requirements that includes one of the reasons in A.R.S. § 32-829(C); and
4. The signature of the licensee.

B. The Board shall send written notice of approval or denial of the request for waiver within seven days of receipt of the request.

C. If the Board denies a request for a waiver, a licensee has 60 days from the date of the denial to meet the requirements for continuing education.

Historical Note

Adopted effective November 18, 1986 (Supp. 86-6). Amended effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2).

ARTICLE 6. DISPENSING DRUGS AND DEVICES

R4-25-601. Reserved

R4-25-602. Registration Requirements

An individual currently licensed as a podiatrist in this state who wishes to dispense drugs and devices shall register with the Board by submitting all of the following:

1. The podiatrist's current Drug Enforcement Administration Certificate of Registration issued by the Department of Justice under 21 U.S.C. 801 et seq.;
2. The fee required in R4-25-103; and
3. An application form provided by the Board, signed and dated by the podiatrist, that contains questions approved by the Board.

Historical Note

Adopted effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1000, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

R4-25-603. Prescribing and Dispensing Requirements

A podiatrist shall:

1. Not dispense schedule II controlled substances that are opioids.
2. Not dispense a drug unless the drug is obtained from a manufacturer or distributor licensed in any state or jurisdiction;
3. Ensure that a drug or device is dispensed only to a patient being treated by the podiatrist;
4. Before dispensing a drug, provide a patient with a written prescription order that:
   a. Contains the following statement in bold type: "This prescription may be filled by the prescribing podiatrist or by a pharmacy of your choice," and
   b. Is signed by the podiatrist;
5. Directly supervise each individual involved in preparing a drug that is dispensed;
6. Ensure that a drug is:
   a. Dispensed in a prepackaged container or in a light resistant container with a consumer safety cap; and
   b. Labeled with the following information:
      i. The podiatrist's name, address, and telephone number;
      ii. The date the drug is dispensed;
      iii. The patient's name; and
      iv. The name, strength of the drug, and directions for the drug's use;
7. Ensure that the original prescription order for a drug is countersigned and dated by the individual who prepared the drug for dispensing;
8. Before a drug or device is dispensed to a patient:
   a. Review the drug or device to ensure compliance with the prescription order;
   b. Ensure the patient is informed of the following:
      i. The name of the drug or device,
      ii. Directions for taking the drug or using the device,
      iii. Precautions for the drug or device, and
      iv. Directions for storing the drug or device;
9. Document in the medical record the following for each patient:
   a. Name of the drug or device dispensed,
   b. Strength of the drug dispensed,
   c. Date the drug or device is dispensed, and
   d. Therapeutic reasons for dispensing the drug or device;
10. Maintain an inventory record for each drug that contains:
    a. Name of the drug,
    b. Strength of the drug,
    c. Date the drug was received by the podiatrist,
    d. Amount of the drug received by the podiatrist,
    e. Name of the manufacturer and distributor of the drug, and
    f. A unique identifying number provided by the manufacturer or distributor of the drug;
11. Store a drug in a locked cabinet or room and:
    a. Establish a written policy for access to the locked cabinet or room, and
    b. Make the written policy available to the Board or its authorized agent with within 72 hours of a Board request;
12. Ensure that a drug is stored at temperatures recommended by the manufacturer of the drug; and
13. Maintain a dispensing log, separate from the inventory record for each drug dispensed that includes the:
    a. Name of the drug,
    b. Strength of the drug,
    c. Amount of the drug,
    d. Patient's name,
    e. Date the drug was dispensed, and
    f. The name and signature of the podiatrist who dispensed the drug.

Historical Note

Adopted effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-604. Recordkeeping and Reporting Shortages

A. A prescription order written by a podiatrist for a drug shall:

1. Contain the:
   a. Name of the patient,
   b. Date the prescription order is written, and
   c. Name and signature of the podiatrist;
2. Be numbered consecutively; and
3. Be maintained separately from a medical record.

B. A podiatrist shall maintain an invoice of a drug purchased from a manufacturer or distributor for three years from the date purchased.
C. A podiatrist shall maintain the inventory record in R4-25-603(9) and the dispensing log in R4-25-603(12) for seven years from the date of entry.
D. A podiatrist who discovers that a drug identified in the podiatrist's inventory record cannot be accounted for shall:
1. Within 48 hours of discovery or the next business day if a weekend or holiday, whichever is later, notify the appropriate law enforcement agency and the federal Drug Enforcement Administration; and
2. Provide written notification to the Board within seven days from the date of the discovery, including the name of the law enforcement agency notified.

E. A podiatrist shall report controlled substances dispensing as required per A.R.S. § 36-2608.

Historical Note
Adopted effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 1501, effective September 6, 2020 (Supp. 20-3).

R4-25-605. Registration Renewal
A. A podiatrist shall renew a registration no later than June 30 of each year by submitting to the Board:
1. An application form provided by the Board, signed and dated by the podiatrist, that contains questions approved by the Board.
2. The fee required in R4-25-103.

B. If a podiatrist fails to submit the information required in subsection (A) and the registration renewal fee required in R4-25-103 by June 30, the podiatrist's registration expires. If a registration expires, the podiatrist shall:
1. Immediately cease dispensing drugs or devices, and
2. Register pursuant to R4-25-602 before dispensing drugs and devices.

Historical Note
Adopted effective July 27, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1846, effective July 19, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

ARTICLE 7. PODIATRIC MEDICAL ASSISTANTS

R4-25-701. Approval of Podiatric Medical Assistant Clinical Certification and Radiology Certification
A. For purposes of this Section, a Board-approved clinical certification program is a program accredited by the American Society of Podiatric Medical Assistants.
B. For purposes of this Section, a Board-approved radiology certification program is a program accredited by the American Society of Podiatric Medical Assistants.

Historical Note
New Section made by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

R4-25-702. Podiatric Medical Assistants – Authorized Procedures
A. A podiatric medical assistant not working under the direct supervision of a licensed podiatric physician may:
1. Order supplies, store supplies, stock treatment rooms;
2. Clean treatment rooms;
3. Answer phones;
4. Schedule appointments;
5. Check patients in.

B. A podiatric medical assistant working under the direct supervision of a licensed podiatric physician may:
1. Obtain medical history from a patient;
2. Obtain and record vital signs of a patient;
3. Explain treatment procedures to a patient;
4. Take off a patient's shoes and put the patient's shoes back on;
5. Clip toenails on a patient;
6. Apply bandages to the feet of a patient;
7. Prepare a patient for a procedure;
8. Take x-rays if the podiatric medical assistant is certified in radiology as described in R4-25-701(B). A podiatric medical assistant shall not take x-rays if the podiatric medical assistant does not meet the requirement of R4-25-701(B);
9. The supervising licensed podiatric physician shall ensure that the podiatric medical assistant is properly trained and shall be responsible for all acts or missions of a podiatric medical assistant.

Historical Note
New Section made by final rulemaking at 29 A.A.R. 1551 (July 14, 2023), effective August 18, 2023 (Supp. 23-2).

32-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of podiatry examiners.

2. "Electrical treatment" means using electricity in diagnosing or treating an ailment of the foot or leg by electrodes, lights, rays, vibrators or a machine run by electricity.

3. "Leg" means that part of the lower limb between the knee and the foot.

4. "Letter of concern" means an advisory letter to notify a podiatrist that while there is insufficient evidence to support a disciplinary action the board believes the podiatrist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the podiatrist's license.

5. "License" means a license to practice podiatry.

6. "Manipulative treatment" means using the hand or machinery in treating the foot or leg.

7. "Mechanical treatment" means applying a mechanical appliance of whatever material to the foot or leg, or to the shoe or other footgear.

8. "Medical treatment" means recommending, prescribing or locally applying a therapeutic agent for relief of a foot or leg ailment.

9. "Podiatric medical assistant" means an unlicensed person who has completed an education program approved by the board, who assists in a podiatric medical practice under the supervision of a podiatrist and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of podiatric medicine.

10. "Podiatrist" is synonymous with podiatric physician and surgeon and means a person who, within the limits of this chapter, is registered and licensed to practice podiatry by means of performing full body physical examinations within the profession's scope of practice and diagnosing or medically, surgically, mechanically, manipulatively or electrically treating ailments of the human foot and leg but not amputating the leg or entire foot or administering an anesthetic other than local.

11. "Podiatry" is synonymous with chiropody and means diagnosing or medically, surgically, mechanically, manipulatively or electrically treating ailments of the human foot and leg but not amputating the leg or entire foot or administering an anesthetic other than local.

12. "Surgical treatment" means using a cutting instrument to treat an ailment of the foot or leg.

32-804. Rule making powers

The board may adopt rules and regulations consistent with and necessary to carry out the provisions of this chapter.

32-822. Application for licensure

A. An applicant for a podiatry license shall file with the state board of podiatry examiners an application that is accompanied by the required fee on a form prescribed and furnished by the board. The application shall contain evidence of the applicant's necessary qualifications as the board requires and shall be signed and sworn to by the applicant.

B. An applicant for a license pursuant to section 32-827 shall file with the board an application for a license pursuant to section 32-827 that is accompanied by the required fee on a form prescribed and furnished by the board. The application shall contain evidence of the applicant's necessary qualifications as the board requires and shall be signed and sworn to by the applicant.

C. Each application submitted pursuant to this section shall contain the oath of the applicant that:

1. All of the information contained in the application and accompanying evidence or other credentials submitted is true and correct.

2. The credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which the applicant is aware and that the applicant is the lawful holder of the credentials.

3. The applicant has read and understands the board's statutes and rules.

D. All applications, completed or otherwise, together with all attendant evidence, credentials and other proof submitted with the applications are the property of the board.

E. The board shall inform an applicant, promptly and in writing, of any deficiency existing in the application for licensure under this article that prevents the application from being processed.

F. An applicant who disagrees with the board's denial of a license shall be granted a hearing on request before the board at its next regular meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies that are the basis of the denial do not exist.

32-826. Issuance of license

A. The board shall issue a license to practice podiatry to every person who pays the required fee and furnishes satisfactory proof of successfully completing a thirty-six-month residency program.

B. Each license shall be signed by the president and secretary of the board and bear the seal of the board.

C. The board shall deny a license to an applicant who satisfies all of the licensing requirements of this article if that applicant does not submit the license issuance fee within twelve months after the date of application. An applicant who fails to submit the fee within this time shall reapply for licensure pursuant to this article.

32-827. Comity

The board may issue a license to an applicant if the applicant has been licensed to practice podiatry in another state or country from which the applicant applies if:

1. The requirements in the other state or country, at the date of registration or licensing, were substantially equal to those then in force in this state.

2. The applicant has lawfully practiced podiatry in the other state or country for at least five years within the seven years immediately preceding the application for a license in this state.

3. The applicant complies with all other requirements set forth in this chapter for a license.

32-829. Renewal or cancellation of license; change of address; continuing education

A. Except as provided in section 32-4301, a license to practice podiatry expires on June 30 of each year. To renew the license the licensee shall submit the renewal fee prescribed in section 32-830 and present evidence satisfactory to the board that in the year preceding the application for renewal the licensee attended at least twenty-five hours of board approved continuing education courses or programs. A licensee who does not renew a license on or before July 30 shall also pay a penalty fee as prescribed in section 32-830 for late renewal. The board shall cancel a license if the licensee does not renew it on or before August 31. A person who practices podiatry in this state after the person's license is cancelled is in violation of this chapter.

B. A person whose license is cancelled may reapply for a license to practice podiatry as provided in this chapter.

C. On written application the board may waive the requirement provided in subsection A of this section for those licensees who submit satisfactory proof that they were prevented from attending educational programs because of disability, military service or absence from the continental United States.

D. Each licensee shall promptly and in writing inform the board of the licensee's current office address and of each change in office address within thirty days.

E. If the board finds that an applicant for license renewal has not met the board's continuing education requirements, it may allow the licensee an additional sixty days to meet those requirements after which time the applicant is ineligible for license renewal.

32-830. Fees

A. The board shall establish and collect fees not to exceed:

1. For initial application for licensure, which includes the initial registration to dispense drugs and devices, $1,000.

2. For application for a license pursuant to section 32-827 by a podiatrist from another state or country, which includes the initial registration to dispense drugs and devices, $500.

3. For issuing a license, $500.

4. For annual renewal of a license, which includes the annual renewal of registration to dispense drugs and devices, $500.

5. For certifying a licensed podiatrist to authorities of another state or country, $50.

6. For late renewal of a license after July 30 through August 31, $150.

B. The board may establish and collect fees for the following:

1. Providing a duplicate wallet card.

2. Providing a duplicate wall certificate.

3. Copying records, documents, letters, minutes, applications, files and policy statements.

4. Providing a licensee list.

5. Providing audio files.

32-871. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A podiatrist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the podiatrist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing podiatrist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing podiatrist enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing podiatrist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a podiatrist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing podiatrist or by a pharmacy of your choice."

D. A podiatrist shall dispense for profit only to the podiatrist's own patient and only for conditions being treated by that podiatrist. The podiatrist shall provide direct supervision of a nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a podiatrist is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a podiatrist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

32-3107. Continuing education requirements; evidence of effectiveness

Any legislative proposal which contains a continuing education requirement for a health profession shall be accompanied by evidence that such a requirement has been proven effective for the health profession.

36-2608. Reporting requirements; waiver; exceptions

A. If a medical practitioner dispenses a controlled substance listed in section 36-2513, 36-2514, 36-2515 or 36-2516 or the rules adopted pursuant to chapter 27, article 2 of this title, or if a prescription for a controlled substance listed in any of those sections or naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug

administration is dispensed by a pharmacy in this state, a health care facility in this state for outpatient use or a board-permitted nonresident pharmacy for delivery to a person residing in this state, the medical practitioner, health care facility or pharmacy must report the following information as applicable and as prescribed by the board by rule:

1. The name, address, telephone number, prescription number and United States drug enforcement administration controlled substance registration number of the dispenser.

2. The name, address and date of birth of the person for whom the prescription is written.

3. The name, address, telephone number and United States drug enforcement administration controlled substance registration number of the prescribing medical practitioner.

4. The name, strength, quantity, dosage and national drug code number of the schedule II, III, IV or V controlled substance or naloxone hydrochloride or other opioid antagonist dispensed.

5. The date the prescription was dispensed.

6. The number of refills, if any, authorized by the medical practitioner.

B. Except as provided in subsection D of this section, a dispenser must use the latest version of the standard implementation guide for prescription monitoring programs published by the American society for automation in pharmacy to report the required information.

C. The board shall allow the reporter to transmit the required information by electronic data transfer if feasible or, if not feasible, on reporting forms as prescribed by the board. The reporter shall submit the required information once each day.

D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting by submitting a written request to the board. The board shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form as prescribed by the board by rule.

E. The board by rule may prescribe the prescription form to be used in prescribing a schedule II, III, IV or V controlled substance if the board determines that this would facilitate the reporting requirements of this section.

F. The reporting requirements of this section do not apply to the following:

1. A controlled substance that is administered directly to a patient.

2. A controlled substance that is dispensed by a medical practitioner at a health care facility licensed by this state if the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with not more than two seventy-two-hour cycles within any fifteen-day period.

3. A controlled substance sample.

4. The wholesale distribution of a schedule II, III, IV or V controlled substance. For the purposes of this paragraph, "wholesale distribution" has the same meaning prescribed in section 32-1981.

5. A facility that is registered by the United States drug enforcement administration as a narcotic treatment program and that is subject to the recordkeeping provisions of 21 Code of Federal Regulations section 1304.24.

G. A pharmacist who dispenses naloxone hydrochloride or another opioid antagonist to an individual pursuant to section 32-1979 shall report the information listed in subsection A, paragraphs 1, 2, 3 and 5 of this section and the name, strength, quantity, dosage and national drug code number as prescribed by the board by rule pursuant to subsection A of this section.

H. Naloxone hydrochloride or any other opioid antagonist shall not be viewable in the patient utilization report.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency 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.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency 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.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency 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.

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.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

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.

ARIZONA MEDICAL BOARD
Title 4, Chapter 16, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 21, 2023**

SUBJECT: **ARIZONA MEDICAL BOARD**
Title 4, Chapter 16, Article 5

Summary

This Five-Year Review Report (5YRR) from Arizona Medical Board (Board), covers ten (10) rules in Title 4, Chapter 16, Article 5 regarding Executive Director Duties. Specifically, Article 5 contains rules relating to circumstances where an executive director may require a physician to submit to a competency evaluation and investigational interview, requirements for a direct referral to a formal interview, requests for inactive status or license cancellation, interim consent agreements, resolving cases through mediation, referring to a formal hearing, dismissal of a complaint, standards for denying license to an applicant, non-disciplinary consent agreements, and the manner for appealing actions to the Board.

Proposed Action

The Board made amendments as proposed in the prior 5YRR which became effective in February 2020. The amendments included adding definitions applicable to Article 5 and making the rules more clear, concise, and understandable. The Board indicates that they are not proposing any further changes to the rules at this time.

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

The Board cites both general and specific statutory authority for these rules.

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

The Board states that the rules in Article 5 were amended in 2020 (See 25 A.A.R. 3705) to make them clearer and more understandable. In addition, the Board indicates that in the EIS prepared for the 2020 rulemaking, the Board indicated the rules have a direct impact on Board operations and an indirect effect on a licensee against whom a complaint is filed, who is otherwise under investigation by the Board, or who requests inactive status or license cancellation. The rules also indirectly effect an applicant who does not meet statutory requirements. The Board states that in FY23, there were 29,106 physicians licensed by the Board.

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

The Board believes that the costs and benefits of the reviewed rules accrue to the Board. The Board determined the benefits from delegating ministerial activities to the executive director are outweighed by the costs of having the executive director perform these activities. Delegating ministerial activities to the executive director does not negatively impact members of the regulated community who are able to appeal any decision of the executive director of the Board.

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

The Board 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 Board indicates that the rules are clear, concise, and understandable.

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

The Board indicates that the rules are consistent with other rules and statutes.

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

The Board indicates that the rules are effective in achieving their objectives.

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

The Board indicates that the rules are enforced as written.

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

The Board indicates that the rules are not more stringent than 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 Board indicates that all of the reviewed rules were made after July 29, 2010, but that none of them require issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from Arizona Medical Board, covers ten (10) rules in Title 4, Chapter 16, Article 5 regarding Executive Director Duties. The Board indicates that the rules are generally clear, concise, and understandable; consistent with other rules and statutes; and enforced as written.

Council staff recommends approval of this report.

Arizona Medical Board
1740 W. Adams, Phoenix, AZ 85007 • website: www.azmd.gov
Phone (480) 551-2700 • Toll Free (877) 255-2212 • Fax (480) 551-2707

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 Medical Board
Five-year-review Report
4 A.AC. 16, Article 5 (Executive Director Duties)

Dear Ms. Sornsin:

The referenced report is attached. It is due under an extension at the end of this month.

The Board certifies it complies with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Patricia McSorley, at 480-551-2791 or Patricia.Mcsorley@azmd.gov.

Sincerely,

Patricia McSorley
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 16. Arizona Medical Board
Article 5. Executive Director Duties

INTRODUCTION

A.R.S. § 32-1403(A) indicates the primary duty of the Board is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine through licensure, regulation, and rehabilitation. A.R.S. § 32-1403(A)(10) authorizes the Board to delegate the Board's authority under A.R.S. § 32-1405 or 32-1451 to the Board's executive director. A.R.S. § 32-1405 establishes the duties of the executive director including some duties that require delegation from the Board. The reviewed rules establish the manner in which the executive director is to fulfill delegated responsibilities.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1404(D)

1. Specific statute authorizing the rule:

   R4-16-501. Medical Competency Examination; Investigational Interview: A.R.S. §§ 32-1405(C)(12) and 32-1451(C)
   R4-16-502. Direct Referral to Formal Interview: A.R.S. § 32-1405(C)(27)
   R4-16-503. Request for Inactive Status or License Cancellation: A.R.S. § 32-1405(C)(26)
   R4-16-504. Interim Consent Agreement: A.R.S. § 32-1405(C)(25)
   R4-16-505. Mediated Case: A.R.S. § 32-1405(C)(23)
   R4-16-506. Referral to Formal Hearing: A.R.S. § 32-1405(C)(22)
   R4-16-507. Dismissal of Complaint: A.R.S. § 32-1405(C)(21)
   R4-16-508. Denial of License: A.R.S. § 32-1405(C)(5) and (C)(28)
   R4-16-509. Non-disciplinary Consent Agreement: A.R.S. § 32-1451(F)
   R4-16-510. Appealing Executive Director Actions: A.R.S. § 32-1405(E)

2. Objective of the rules:

The purpose of all the rules is to increase the efficiency of the Board in fulfilling its statutory responsibilities by delegating ministerial responsibilities to the executive director.

R4-16-501. Medical Competency Examination; Investigational Interview: The objective of the rule is to specify the circumstances under which the executive director may require a physician to submit to a competency evaluation and requirements for requesting a physician attend an investigational interview.

R4-16-502. Direct Referral to Formal Interview: The objective of the rule is to specify requirements for direct referral of a case to a formal interview.

R4-16-503. Request for Inactive Status or License Cancellation: The objective of the rule is to specify the conditions under which the executive director shall grant a request for inactive status or license cancellation.

R4-16-504. Interim Consent Agreement: The objective of the rule is to specify the circumstances under which the executive director may enter an interim consent agreement with a physician.

R4-16-505. Mediated Case: The objective of the rule is to require the executive director to close a case resolved through mediation.

R4-16-506. Referral to Formal Hearing: The objective of the rule is to specify the circumstances under which the executive director may refer a case directly for formal hearing.

R4-16-507. Dismissal of Complaint: The objective of the rule is to specify the circumstances under which the executive director may dismiss a complaint.

R4-16-508. Denial of License: The objective of the rule is to specify the standards for the executive director to deny a license to an applicant.

R4-16-509. Non-disciplinary Consent Agreement: The objective of the rule is to specify the circumstances under which the executive director may enter into a non-disciplinary consent agreement with a physician.

R4-16-510. Appealing Executive Director Actions: The objective of the rule is to specify the manner in which a person may appeal to the Board an action taken by the executive director.

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

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

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Yes

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

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

The rules in Article 5 were amended in 2020 (See 25 A.A.R. 3705) to make the rules more clear and understandable. In the EIS prepared with the 2020 rulemaking, the Board indicated the rules have direct effect on Board operations and indirect effect on a licensee against whom a complaint is filed, who is otherwise under investigation by the Board, or who requests inactive status or license cancellation. The rules also indirectly affect an applicant who does not meet statutory requirements of licensure.

In FY23, there were 29,106 physicians licensed by the Board.

During FY23, the executive director did not deny a license to an applicant because the applicant failed to meet statutory requirements.

In FY23, the Board opened 1160 complaints against licensees. The executive director dismissed 404 complaints because it was determined the complaints were without merit. Of the remaining complaints, the executive director referred 28 directly to a formal interview because quality of care was an issue and referred 19 directly to a formal hearing. In FY23, the executive director entered two interim practice limitations, which are non-disciplinary consent agreements, and 17 interim practice restriction agreements, which are disciplinary actions.

A person aggrieved by an action taken by the executive director under the authority delegated by the Board may appeal the action to the Board. During FY23, 42 appeals were made to the Board under this provision. The Board sent two appealed cases back for further investigation. After the investigation, the Board upheld the executive director's dismissal of the complaints in both cases.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR: Yes
In a 5YRR approved by the Council on April 2, 2019, the Board indicated it would complete a rulemaking adding definitions applicable to Article 5 and amending the rules to make them more clear and understandable. The rulemaking went into effect on February 1, 2020.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:
The costs and benefits of the reviewed rules accrue to the Board. The Board determined the benefits from delegating ministerial activities to the executive director are outweighed by the cost of having the executive director perform these activities. Delegating ministerial activities to the executive director does not negatively impact members of the regulated community who are able to appeal any decision of the executive director to the Board.

12. Are the rules more stringent than corresponding federal laws? No
There is no federal law applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
All of the reviewed rules were made after July 29, 2010, but none requires issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:
The Board intends to take no action regarding the reviewed rules.

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

R4-16-501. Medical Competency Examination; Investigational Interview

A. The executive director may require a physician, who is under investigation by the Board, to submit to a mental, physical, oral, or written medical competency examination after the following:
1. Reviewing the allegations and investigator's summary of findings; and
2. Consulting with and receiving the agreement of the Board's supervising medical consultant that an examination is necessary.

B. The executive director may request a physician to attend an investigational interview to answer questions regarding a complaint against the physician. Before issuing a request for an investigational interview, the executive director shall review the allegations and facts to determine whether an interview is necessary to provide information the Board needs to adjudicate the case. The executive director shall consult with and receive the agreement of either the investigation supervisor or supervising medical consultant that an investigational interview is necessary before requesting one.

C. The executive director shall report to the Board at each regularly scheduled Board meeting a summary of the number and type of evaluations ordered and completed since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-501 recodified to R4-16-601; New Section R4-16-501 recodified from R4-16-401 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-502. Direct Referral to Formal Interview

The executive director shall refer a case to a formal interview on a future Board meeting agenda if the investigative staff, lead Board member, and in cases involving quality of care, supervising medical consultant, concur after review of the case that a formal interview is appropriate.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-502 recodified to R4-16-602; New Section R4-16-502 recodified from R4-16-402 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

Editor's Note: At the time of publication, A.R.S. § 32-1401(26) (referenced in R4-16-503) was A.R.S. § 32-1401(24). Laws 2003, Ch. 59, § 1, effective 90 days after the close of the First Regular Session of the Forty-sixth Legislature, will change the subparagraph citation to A.R.S. § 32-1401(26) (Supp. 03-2). This Section was subsequently recodified to a different Section in this Chapter. Refer to the historical notes for more information (05-1).

R4-16-503. Request for Inactive Status or License Cancellation

A. If a physician requests inactive status or license cancellation, meets the requirements of A.R.S. § 32-1431 or § 32-1433, and is not participating in the program defined under A.R.S. § 32-1452, the executive director shall grant the request.

B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians granted inactive or cancelled license status since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-503 recodified to R4-16-603; New Section R4-16-503 recodified from R4-16-403 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-504. Interim Consent Agreement

The executive director may enter into an interim consent agreement with a physician if there is evidence that a restriction is needed to mitigate imminent danger to public health and safety and the investigative staff, supervising medical consultant, and lead Board member concur after review of the case that a consent agreement is appropriate.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-504 recodifed to R4-16-605; New Section R4-16-504 recodified from R4-16-404 at 11 A.A.R. 1283, effective

March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-505. Mediated Case

A. The executive director shall close a case resolved through mediation.

B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were resolved through mediation since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-505 recodifed to R4-16-606; New Section R4-16-505 recodified from R4-16-405 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-506. Referral to Formal Hearing

A. The executive director may directly refer a case to a formal hearing if the investigative staff, supervising medical consultant, and lead Board member concur after review of the physician's case that a formal hearing is appropriate.

B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were referred to formal hearing since the preceding Board meeting and whether the referral is for revocation or suspension or the result of an out-of-state disciplinary action or due to complexity of the case.

Historical Note

New Section R4-16-506 recodified from R4-16-406 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-507. Dismissal of Complaint

A. The executive director, with concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate.

B. The executive director shall provide to the Board at each regularly scheduled Board meeting a report that contains the information specified in A.R.S. § 32-1405(C)(21).

Historical Note

New Section R4-16-507 recodified from R4-16-407 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-508. Denial of License

A. The executive director shall deny a license to an applicant who does not meet statutory requirements for licensure if the executive director, investigative staff and supervising medical consultant concur after reviewing the application that the applicant does not meet the statutory requirements.

B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose applications were denied since the preceding Board meeting.

Historical Note

New Section R4-16-508 recodified from R4-16-408 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-509. Non-disciplinary Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-1451(F) with a physician to limit the physician's practice or rehabilitate the physician if there is evidence that a licensee is mentally or physically unable to engage safely in the practice of medicine and the investigative staff, supervising medical consultant, and lead Board member concur after review of the case that a consent agreement is appropriate.

Historical Note

New Section R4-16-509 recodified from R4-16-409 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-510. Appealing Executive Director Actions

A. Any person aggrieved by an action taken by the executive director under the authority delegated in this Article may appeal that action to the Board. The aggrieved person shall file a written request with the Board no later than:

1. Thirty days after notification of the action, if personally served; or

2. Thirty-five days after the date on the notification, if mailed.

B. The aggrieved person shall provide, in the written request, evidence showing:

1. An irregularity in the investigative process or the executive director's review deprived the party of a fair decision;
2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or
3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.

C. The fact that the aggrieved party does not agree with the executive director's action is not grounds for a review by the Board.

D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.

E. If a written request is submitted that meets the requirements of subsection (B):

1. The Board shall consider the written request at its next regularly scheduled meeting.
2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.

Historical Note

New Section R4-16-510 recodified from R4-16-410 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.

2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.

3. Developing and recommending standards governing the profession.

4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination whether the applicant meets the requirements for licensure pursuant to this chapter.

5. Disciplining and rehabilitating physicians.

6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.

7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.

8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.

9. Establishing fees and penalties as provided pursuant to section 32-1436.

10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

11. Determining whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician pursuant to 21 United States Code section 823(g)(2)(G)(ii).

B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.

E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.

F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for appointing the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

32-1404. Meetings; quorum; committees; rules; posting

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1405. Executive director; compensation; duties; appeal to the board

A. Subject to title 41, chapter 4, article 4, the committee on executive director selection and retention established by section 32-1403 shall appoint an executive director of the board who shall serve at the pleasure of the committee. The executive director shall not be a board member, except that the board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of the federation of state medical boards of the United States.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board. An investigator shall complete a nationally recognized investigator training program within one year of date of hire. Until an investigator completes a training program, the investigator shall work under the supervision of an investigator who has completed a training program.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the medical practice act for consideration by the legislature.

4. Subject to title 41, chapter 4, article 4, employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.

7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.

10. Prepare an annual budget.

11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.

12. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice medicine.

13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.

14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.

15. Enter into contracts for goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.

16. Execute board directives.

17. Manage and supervise the operation of the Arizona regulatory board of physician assistants.

18. Issue licenses to physician assistant applicants who meet the requirements of chapter 25 of this title.

19. Represent the board with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.

20. On behalf of the Arizona medical board, enter into stipulated agreements with persons under the jurisdiction of either the Arizona medical board or the Arizona regulatory board of physician assistants for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

21. Review all complaints filed pursuant to section 32-1451. The executive director shall submit all medical complaints alleging harm as a result of patient care to a medical consultant for review. The executive director shall submit to the medical consultant only those medical complaints that involve a standard of care issue and that require medical training and expertise to determine whether a violation has occurred. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit a report of the cases dismissed with the complaint number, the name of the physician and the investigation timeline to the board for review at its regular board meetings.

22. If delegated by the board, directly refer cases to a formal hearing.

23. If delegated by the board, close cases resolved through mediation.

24. If delegated by the board, issue advisory letters.

25. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

26. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to sections 32-1431 and 32-1433.

27. If delegated by the board, refer cases to the board for a formal interview.

28. Perform all other administrative, licensing or regulatory duties required by the board.

29. Disseminate any information received from the office of ombudsman-citizens aide to the board at its regular board meetings.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director pursuant to subsection C, paragraphs 21 through 27 of this section or section 32-1422, subsection E may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1451. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements

A. The board on its own motion may investigate any evidence that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. On written request of a complainant, the board shall review a complaint that has been administratively closed by the executive director and take any action it deems appropriate. Any person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board or the executive director shall notify the doctor as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a doctor to practice in that health care institution are denied, revoked, suspended or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of medicine, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if a doctor under investigation resigns or if a doctor resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

C. The board or, if delegated by the board, the executive director shall require, at the doctor's expense, any combination of mental, physical or oral or written medical competency examinations and conduct necessary investigations, including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program. This subsection does not establish a cause of action against any person, facility or program that conducts an assessment, examination or investigation in good faith pursuant to this subsection.

D. If the board finds, based on the information it receives under subsections A and B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board or a board committee may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. Require the licensee to complete designated continuing medical education courses.

3. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

F. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense.

G. The board shall not disclose the name of the person who provided information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

H. If after completing its investigation the board believes that the information is or may be true, it may request a formal interview with the doctor. If the doctor refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pending formal revocation proceedings or other action authorized by this section.

I. If after completing the formal interview the board finds the information provided under subsection A of this section is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.

2. Require the licensee to complete designated continuing medical education courses.

3. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.

4. Enter into an agreement with the doctor to restrict or limit the doctor's practice or professional activities or to rehabilitate, retrain or assess the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection F of this section.

5. File a letter of reprimand.

6. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

7. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary suspension for not to exceed twelve

months, restriction of the doctor's license to practice medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the term of probation, a consent agreement or a stipulated agreement. A licensee shall pay the costs associated with probation monitoring each year during which the licensee is on probation. The board may adjust this amount on an annual basis. The board may allow a licensee to make payments on an installment plan if a financial hardship occurs. A licensee who does not pay these costs within thirty days after the due date prescribed by the board violates the terms of probation.

J. If the board finds that the information provided in subsection A of this section warrants suspension or revocation of a license issued under this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than one thousand dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document.

M. Any doctor of medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

N. If the board acts to modify any doctor of medicine's prescription writing privileges, the board shall immediately notify the state board of pharmacy of the modification.

O. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

P. The board may divide into review committees of not less than three members, including a public member. The committees shall review complaints not dismissed by the executive director and may take the following actions:

1. Dismiss the complaint if a committee determines that the complaint is without merit.

2. Issue an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.

3. Conduct a formal interview pursuant to subsection H of this section. This includes initiating formal proceedings pursuant to subsection J of this section and imposing civil penalties pursuant to subsection K of this section.

4. Refer the matter for further review by the full board.

Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

R. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days of that date.

S. A physician who submits an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings and opinions expressed by the physician as a result of the examination. For the purposes of this subsection, "independent medical examination" means a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

T. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

U. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

V. In determining the appropriate action under this section, the board may consider a direct or indirect competitive relationship between the complainant and the respondent as a mitigating factor.

E-9.

GREATER ARIZONA DEVELOPMENT AUTHORITY
Title 20, Chapter 8, Articles 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: **November 9, 2023**

SUBJECT: **GREATER ARIZONA DEVELOPMENT AUTHORITY**
Title 20, Chapter 8, Article 1 & 2

Summary

This Five Year Review Report (5YRR) from the Greater Arizona Development Authority (GADA) or (Board) covers eight (8) rules in Title 20, Chapter 8, Articles 1 & 2. Article 1 relates to Technical Assistance and Article 2 relates to Financial Assistance.

The purpose of the Board is to assist local and tribal governments and special districts with the development of public infrastructure, by providing technical and financial assistance. The Board leverages funding for infrastructure projects, helps to accelerate project development, and lowers the costs of financing. In the previous 5YRR approved by Council in May of 2018, the Board did not propose a course of action as the Board indicated the rules were clear, concise, and understandable; effective in achieving their objectives; and enforced as written.

Proposed Action

The Board intends to submit a Notice of Final Rulemaking to the Council by January 31, 2024.

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

The Board cites both general and statutory authority for these rules.

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

The Greater Arizona Development Authority reports that the economic, small business and consumer impact of the rules has not changed from that projected in the Economic, Small Business and Consumer Impact Statement submitted for the 2010 rulemaking.

Stakeholders include GADA and applicants for the Technical Assistance and Financial Assistance programs.

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?**

GADA determined the probable benefits of the rules outweigh their probable costs and the rules impose the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective.

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

The Board 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 Board states the rules should be amended to reflect changes in the Agency in charge of GADA.

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

The Board states the rules are consistent with other rules and statutes.

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

The Board states the rules are effective in achieving its objectives.

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

The Board states the rules are generally enforced as written with the following exceptions:

- R20-8-102 & R20-8-202 are not enforced due to lack of available funding

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

The Board indicates that no federal law applies to these rules.

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

The Board states that these rules do not require the issuance of a regulatory permit, license, or other agency authorization.

11. **Conclusion**

This Five Year Review Report from the Greater Arizona Development Authority covers eight rules in Title 20, Chapter 8, Articles 1 & 2. Article 1 relates to Technical Assistance and Article 2 relates to Financial Assistance. As stated above, the rules are generally clear, concise and understandable; enforced as written; and consistent with other rules and statutes.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Greater Arizona Development Authority *Administered by the*

Arizona Finance Authority
Executive Director Gregg Ghelfi | Governor Katie Hobbs

100 North 7th Avenue • Suite 400 • Phoenix, Arizona 85007
Main: (602) 845-1200 • Email: gada@oeo.az.gov

October 18, 2023

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

RE: Greater Arizona Development Authority, Title 20, Chapter 8, Five Year Review Report

Dear Ms. Sornsin,

Please find enclosed the Five Year Review Report of the Greater Arizona Development Authority ("GADA") for Title 20, Chapter 8, which is due on June 28, 2023, per granted extension.

GADA did not review the rules referenced above with the intention that those rules expire under A.R.S. 41-1056(J).

GADA hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Angie Valenzuela at 602-845-1783 or angiev@azcommerce.com.

Sincerely,

Gregg Ghelfi

Executive Director
Arizona Finance Authority

Greater Arizona Development Authority
Five-Year Review Report

A.A.C. Title 20, Chapter 8

Submitted to the

Governor's Regulatory Review Council

June 2023

Introduction

Created in 1997, the Greater Arizona Development Authority (GADA) received a one-time $20 million appropriation in order to (1) leverage funding for infrastructure projects, (2) help accelerate project development and (3) lower costs of financing.

Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) resulted in statutory changes to A.R.S. Title 41, Chapter 18 and the addition of A.R.S. Title 41, Chapter 53 effectively transferring GADA to the newly established Arizona Finance Authority (the "Authority"). The Authority is governed by a five-member Board of Directors appointed by the Governor. Pursuant to A.R.S. § 41-2252, governance of GADA is under the AFA Board of Directors. On June 14, 2023, the Governor appointed a Director to lead the Authority and act on GADA matters. Prior to the recent appointment, the Executive Director of the Water Infrastructure Finance Authority (WIFA) was delegated to act on GADA matters; however, recent legislation removed WIFA from the Authority's governance.

GADA's mission is to assist Arizona communities and tribal governments with the development of public infrastructure projects that enhance community and economic development. GADA can achieve these tenets through its Technical and Financial Assistance programs. By utilizing the Technical Assistance program, Arizona communities can develop public infrastructure projects in the pre-construction phase. Through the Financial Assistance program, communities can obtain long-term financing for these projects.

GADA's program activity has been limited in recent years due to lack of financial support from state appropriations resulting in the number of participants decreasing as loans mature.

A copy of the rules being reviewed in this report is included in Attachment A.

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

   A.R.S. § 41-2251 to § 41-2263 directs the Authority to create rules governing the awarding of technical and financial assistance. All GADA's rules stem from this statutory authority.

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

   Article 1. Technical Assistance

   A.A.C. R20-8-101 Definitions: The intent of this rule is to define the terms used throughout Article 1.

   A.A.C. R20-8-102 Application Process: This rule formalizes the process of opening a new round of technical assistance. It also provides a list of items that the Authority requests as part of an application.

   A.A.C. R20-8-103 Eligibility Criteria: The purpose of this rule is to set forth the eligibility criteria for receipt of technical assistance.

   A.A.C. R20-8-104 Priority; Approval and Disapproval; Appeal: These rules set forth the process of prioritizing technical assistance applications, making technical assistance

awards based on the prioritization, and handling any appeal of prioritization or award.

Article 2. Financial Assistance

A.A.C. R20-8-201 Definitions: The intent of this rule is to define the terms used throughout Article 2.

A.A.C. R20-8-202 Application Process: This rule is intended to formalize the process of opening a new round of financial assistance. It also provides a list of items that the Authority may request as part of an application for financial assistance.

A.A.C. R20-8-203 Eligibility Criteria: The objective of this rule is to set forth the eligibility criteria for the receipt of financial assistance.

A.A.C. R20-8-204 Priority; Approval and Disapproval; Funding; Appeal: The purpose of this rule is to establish the process of prioritizing financial assistance applications, making financial assistance awards, and handling any appeal of prioritization or awards.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA believes the rules are effective in achieving their objectives. GADA bases this conclusion on the fact it has historically fulfilled its statutory responsibilities.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

The rules in 20 A.A.C. Chapter 8 are consistent with A.R.S. Title 41, Chapter 18. These statutes are included in Attachment B.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

The rules in 20 A.A.C. Chapter 8 have been enforced as written, with exception to the opening of annual funding rounds (A.A.C. R20-8-102 & A.A.C. R20-8-202) due to the lack of available funding.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA has analyzed the clarity, conciseness and understandability of its rules and concluded that the rules are clear, concise, and understandable except that Rules R20-8-101 and R20-8-201 need to be changed to reflect changes in the Agency in charge of GADA.

7. Has the agency received written criticisms of the rules within the last five years?

Yes No X

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA has not received any written criticisms of the rule within the five years immediately preceding this five-year review report.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

The economic, small business and consumer impact of the rules has not changed from that projected in the Economic, Small Business and Consumer Impact Statement submitted for the 2010 rulemaking. A copy of the 2010 Economic, Small Business and Consumer Impact Statement is included in Attachment C.

9. Has the agency received any business competitiveness analyses of the rules?

Yes No X

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA has not received any business competitiveness analyses of the rules.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

There was no proposed course of action identified for GADA in the previous five-year-review report.

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

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA determined the probable benefits of the rules outweigh their probable costs and the rules impose the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws?

Yes No X

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

This is a state program and is governed by state 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:

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

These rules do not require the issuance of a regulatory permit, license, or other agency authorization.

14. Proposed course of action

In accordance with A.A.C. R1-6-301(B), GADA reports that the following information is identical for all GADA rules:

GADA plans to submit the Notice of Final Rule Making to address the following administrative technical edits by January 31, 2024, to correct references to prior agencies/ authority's that are no longer relevant.

- R20-8-101. Definitions (Technical Assistance) incorrectly references the Department of Commerce and should be updated.
  "Staff" means the Director and other employees of the Arizona Finance Authority Department of Commerce.

- R20-8-201. Definitions (Financial Assistance) incorrectly references the Water Infrastructure Finance Authority and should be updated.
  "Staff" means the Director and other employees of the Arizona Finance Authority.

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY

(Authority: A.R.S. § 41-2252)

ARTICLE 1. TECHNICAL ASSISTANCE

ARTICLE 2. FINANCIAL ASSISTANCE

ARTICLE 1. TECHNICAL ASSISTANCE

R20-8-101. Definitions

In addition to the definitions prescribed in A.R.S. § 41-2251, the following definitions apply in this Article:

"Administrative fee" means any and all costs or expenses associated with processing, preparing or executing a technical assistance application or related transaction, including costs and expenses associated with staff, the Board, professional services, service providers, vendors or other entities involved in the transaction.

"Administratively complete" means that an applicant has completed the application for technical assistance and provided all of the information and documents that staff determines are applicable.

"Applicant" means a political subdivision, special district, Indian tribe, or tribal subdivision that applies to the Authority for technical assistance.

"Economic impact summary" means an economic analysis that establishes the economic context for a project based on information provided by the applicant.

"Project" means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which technical assistance is being requested or provided.

"Project Assistance Account" means an account within the Technical Assistance Program of the Authority designed to provide technical assistance for eligible infrastructure projects that are in the final phases of project development.

"Project Development Account" means an account within the Technical Assistance Program of the Authority designed to provide technical assistance to eligible infrastructure projects that are in the early or exploratory phases of project development.

"Staff" means the Executive Director and other employees of the Department of Commerce.

"Technical assistance round" means a period of time established by the Board during which applications for technical assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

Historical Note

Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 5 A.A.R. 1312, effective April 15, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 1317, effective March 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in the opening paragraph was updated. Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).

R20-8-102. Application Process

A. The Board shall annually establish a due date by which applications for technical assistance from either the Project Development Account or the Project Assistance Account, or both accounts, shall be submitted for each technical assistance round, and the number of technical assistance rounds to be held in a given state fiscal year. To the extent it deems necessary, the Board may extend the due date by which applications for technical assistance are to be submitted.

B. The Authority shall notify potential applicants in writing by electronic or other means of the due date for applications at least 60 days before applications are due. Other interested persons may submit requests to the Authority to be placed on a notification list to be utilized by the Authority.

C. An applicant shall provide to the Authority by the established due date for applications on a form provided by the Authority the following information:

1. Contact information for the applicant, including name, address, and telephone number;
2. A description of the type of technical assistance being requested and an estimate of the cost of the technical assistance;
3. A detailed description of the project;
4. A summary of the anticipated economic impact the project will have on the community as estimated by the applicant;
5. The estimated starting date, completion date, and projected cost of the infrastructure project for which the technical assistance is being requested;
6. The projected sources and uses of funds for the infrastructure project, including public and private in-kind contributions;
7. A list of professional and outside service providers who have worked with the applicant on any part of the project;
8. An indication of whether the application is for monies from the Project Development Account or the Project Assistance Account; and
9. The amount of the applicant's cash contribution to the technical assistance project.

D. In addition to the application required in subsection (C), an applicant shall provide to the Authority by the established due date for applications the following information:

1. An adopted planning document specific to the locality of the project for which the technical assistance is being requested that includes the project, such as a capital improvement plan, local strategic plan, general plan,

comprehensive plan or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
2. If the project is listed on the priority list of the Water Infrastructure Finance Authority or on the Department of Transportation's Five-Year State Plan, a document evidencing this fact; and
3. A resolution from the governing body of the applicant stating the following:
   a. The project is in the best interests of the residents,
   b. The estimated economic impact on the community, and
   c. The commitment of a local cash contribution; or
4. If the applicant is a tribal subdivision;
   a. A resolution from the tribal council in support of the tribal subdivision's technical assistance application, or
   b. Certification by the tribal council that the tribal subdivision may enter into intergovernmental agreements with state agencies without further tribal council action;
5. The applicant's financial statements for the most recent three years.

E. Staff shall analyze each application received on or prior to the due date for applications for technical assistance to determine whether the application is administratively complete and whether an applicant meets the eligibility criteria prescribed in R20-8-103. Applications for technical assistance that are determined to be both administratively complete and eligible for technical assistance under R20-8-103 shall be submitted to the Board for prioritization and possible funding. Applications that are either not administratively complete or do not meet the criteria in R20-8-103 shall not be submitted to the Board.

Historical Note

Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 5 A.A.R. 1312, effective April 15, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 1317, effective March 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1).

R20-8-103. Eligibility Criteria

Applicants for the Project Assistance Account must satisfy all of the requirements in A.R.S. § 41-2256 in addition to the items below. To be eligible to receive technical assistance, an applicant shall satisfy all of the following criteria:

1. The applicant is a political subdivision, Indian tribe, tribal subdivision, or special district;
2. The technical assistance requested is for the development of an infrastructure project;
3. The application is administratively complete;
4. The applicant provides evidence that the project has public support;
5. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, general plan, comprehensive plan or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
6. The cost of the technical assistance does not exceed 10% of the total cost of the final project;
7. The applicant does not have an open award for technical assistance from the Authority;
8. The applicant is not requesting technical assistance for a project that has already received funds from the Financial Assistance Program; and
9. Applicants are responsible for the payment of all administrative fees and penalties associated with technical assistance. Administrative fees shall be paid on or before 90 days from the date on the Authority's invoice. Administrative fees remaining unpaid after 90 days from the date of the Authority's invoice shall be subject to penalties of five percent per annum. Applicants with outstanding administrative fees or penalties are not eligible for technical or financial assistance.

Historical Note

Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 5 A.A.R. 1312, effective April 15, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 1317, effective March 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in the opening paragraph was updated. Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).

R20-8-104. Priority; Approval and Disapproval; Appeal

A. During each technical assistance round, the Board shall determine the order and priority of infrastructure projects, for both the Project Development Account and the Project Assistance Account, for which an eligible application for technical assistance has been received. Application scores shall be prioritized based on a percentage of the points received to total points possible.

B. For the Project Development Account, the Board shall use a scale of 100 points maximum for all applications based on subsection (B)(1) and (2). The minimum number of points required to be eligible for consideration for award by the Board shall be 70 percent or 70 points. Applicants scoring less than 70 percent will be notified in writing by electronic or other means. A score of 70 percent or higher does not guarantee funding.

1. Applications for monies from the Project Development Account shall be assigned points under the following categories in descending order of importance:
   a. Population as of the latest decennial census – only one of the following:
      i. Cities or towns having a population up to and including 50,000 or counties having a population up to and including 200,000 - 30 points; or
      ii. Tribes and special districts - 30 points; or
      iii. Cities or towns having a population of more than 50,000 or counties having a population of more than 200,000 - 0 points.
   b. Evidence of the project's impact on the community based on all of the following:
      i. The project addresses health, safety, and welfare issues - Up to 15 points; and
      ii. The economic impact summary prepared by the applicant - Up to 10 points; and

iii. The applicant has not previously received funding from the Project Development Account within the past five years - 5 points.

c. Evidence of local support for the project based on the following:
i. The adopted planning document specific to the locality or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant - Up to 15 points.
ii. The amount of the cash contribution provided by the applicant to the technical assistance project - Up to 10 points.

d. Evidence that financial capacity to operate and maintain the project will be researched and developed as part of the requested technical assistance - Up to 15 points.

2. The prioritization using points assigned under subsection (B)(1) is as follows:
a. The tied application with the higher score under subsection (B)(1)(a) shall have priority over other applications;
b. If the tied applications have the same score under subsection (B)(1)(a), the application with the higher score under subsection (B)(1)(b) shall have priority over the other applications;
c. If the tied applications have the same score under subsections (B)(1)(a) and (b), the application with the higher score under subsection (B)(1)(c) shall have priority over the other applications;
d. If the tied applications have the same score under subsections (B)(1)(a), (b), and (c), the application with the higher score under subsection (B)(1)(d) shall have priority over the other applications; and
e. If tied applications have the same score under subsections (B)(1)(a), (b), (c), and (d), the Board shall determine the priority of the applications.

C. For the Project Assistance Account, the Board shall use a scale consisting of 95 points maximum for tribal applications and a scale consisting of 100 points maximum for all other applications based on subsections (C)(1) and (2) of this Section. The minimum number of points required to be eligible for consideration for award by the Board shall be 70 percent, or 70 points. Tribal applications must receive 66.5 points to be eligible for consideration for award. Applicants scoring less than 70 percent will be notified in writing by electronic or other means. A score of 70 percent or higher does not guarantee funding.

1. Applications for monies from the Project Assistance Account shall be assigned points under the following categories in descending order of importance:
a. Evidence of local support for the project up to 35 points:
i. An adopted planning document specific to the locality or evidence that the project has been discussed in meetings or study sessions of the governing body of the applicant - Up to 15 points; and
ii. The project has public or private partnerships that provide financial or in-kind services - Up to 10 points; and
iii. The project has received a resolution of support from the governing body of the applicant - 5 points; and
iv. The project has received voter authorization. The Authority's statutes do not require tribal governments to obtain voter authorization for infrastructure projects. Therefore, technical assistance applications received from tribal governments will be based on an adjusted 95-point scale, as described in subsection (C) - 5 points.

b. Evidence of the project's impact on the community based on all of the following - Up to 30 points:
i. The economic impact summary prepared by the applicant - Up to 15 points;
ii. The project addresses health, safety, and welfare issues - Up to 10 points; and
iii. The applicant has not previously received funding from the Project Assistance Account in the past five years - Up to 5 points.

c. Evidence of a permanent funding source for the project - Up to 20 points:
i. The project is a likely candidate for a financial assistance loan from the authority - Up to 10 points, and
ii. A revenue stream has been identified to pay for the project - 5 points, and
iii. A funding source has been identified for the project - 5 points.

d. Evidence of sufficient financial capacity to operate and maintain the project - Up to 15 points.

2. The prioritization using points assigned under subsection (C)(1) is as follows:
a. The tied application with the higher score under subsection (C)(1)(a) shall have priority over other applications;
b. If the tied applications have the same score under subsection (C)(1)(a), the application with the higher score under subsection (C)(1)(b) shall have priority over the other applications;
c. If the tied applications have the same score under subsections (C)(1)(a) and (b), the application with the higher score under subsection (C)(1)(c) shall have priority over the other applications;
d. If the tied applications have the same score under subsections (C)(1)(a), (b), and (c), the application with the higher score under subsection (C)(1)(d) shall have priority over the other applications;
e. If the tied applications have the same score under subsections (C)(1)(a), (b), (c), and (d), the Board shall determine the priority of the applications.

D. The Board shall approve or disapprove each eligible application for technical assistance based upon the priority list and available funding for technical assistance. The Board shall not consider applications scoring less than 70 percent for either the Project Development Account or the Project Assistance Account. Applicants scoring less than 70 percent will be notified in writing by electronic or other means. A score of 70 percent does not guarantee funding. The Board may fund all or a portion of a technical assistance request.

E. The Authority shall notify in writing by electronic or other means each applicant of the Board's determination within 90 days after the date that all applications for technical assistance are due.

F. For each project approved for technical assistance funding, the Authority shall establish a date by which the commitment of the Authority to provide technical assistance expires. The Authority shall not provide technical assistance for an approved project scoring 70 percent or more if the applicant does not complete all agreements with the Authority on or before that date.

G. The Authority shall bypass a project within a technical assistance round and offer funding to the next highest ranking project if the project is not ready to proceed within six months after the award date.

H. An applicant whose project for technical assistance is disapproved or determined to be ineligible may appeal. The Authority shall use the Uniform Administrative Hearing Procedures of A.R.S. Title 41, Chapter 6, Article 10, to govern the initiation and conduct of formal adjudicative proceedings before the Authority.

Historical Note
Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 5 A.A.R. 1312, effective April 15, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 1317, effective March 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1).

Table A. Repealed

Historical Note
New Table adopted by final rulemaking at 5 A.A.R. 1312, effective April 15, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 1317, effective March 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Table repealed by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1).

Table B. Repealed

Historical Note
New Table adopted by final rulemaking at 6 A.A.R. 1317, effective March 14, 2000 (Supp. 00-1). Table repealed by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1).

ARTICLE 2. FINANCIAL ASSISTANCE

R20-8-201. Definitions

In addition to the definitions prescribed in A.R.S. § 41-2251, the following definitions apply in this Article:

"A rating" means an applicant has been assigned a credit rating of A1, A2, or A3 by Moody's or A+, A, or A- by Standard & Poor's.

"Access to capital" means an applicant's ability to obtain funding based on the security of the revenues to be pledged, the general financial condition of the applicant and other factors outside of the applicant's control.

"Administrative fee" means any and all costs and expenses associated with processing, preparing or executing a financial assistance application or related bond transaction, including costs and expenses associated with staff, the Board, professional services, service providers, vendors or other entities involved in the transaction.

"Administratively complete" means that an applicant has completed the application for financial assistance and provided all of the information and documents that the staff determines are applicable.

"Applicant" means a political subdivision, special district, or Indian tribe that applies to the Authority for financial assistance.

"Baa rating" means an applicant has been assigned a credit rating of Baa1, Baa2, or Baa3 by Moody's.

"BBB rating" means an applicant has been assigned a credit rating of BBB+, BBB, or BBB- by Standard & Poor's.

"Category I" means a rating indication assigned by Moody's that applies to applicants that have credit ratings determined to fall into category of A3 or higher.

"Category II" means a rating indication assigned by Moody's to applicants that have credit ratings determined to Baa3, Baa2, or Baa1.

"Coverage ratio" means the ratio produced by the fraction in which pledged revenues are the numerator and debt service is the denominator.

"Debt service" means annual principle and interest payments on all loans from the Authority plus any principle and interest payments on other debt secured with an equal pledge on the same revenues pledged to the Authority's loans.

"Dedicated revenue source" means the origin of money committed by an Indian tribe to be used for repayment of a loan.

"Financial assistance round" means a period of time established by the Board during which applications for financial assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

"General obligation" means a pledge by the applicant's voters of the full faith and credit and unlimited taxing ability to secure a loan. The applicant must have the ability to levy and increase property taxes for payment of debt obligations.

"Moody's" means Moody's Investors Service, Inc., its successors and their assigns.

"Project" means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which financial assistance is being requested or provided.

"Staff" means the Executive Director and other employees of the Water Infrastructure Finance Authority.

"Standard & Poor's" means Standard & Poor's Ratings Service, its successors and their assigns.

Historical Note
Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in the opening paragraph was updated; due to a reassignment of duties, the reference to the Department of Commerce was removed in the definition of "staff." Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).

R20-8-202. Application Process

A. The Board shall annually establish due dates by which applications for financial assistance shall be submitted.

B. The Authority shall notify in writing by electronic or other means potential applicants of the due date for applications and of any limitation of the amount of funding available at least 60 days before applications are due. Other interested persons may submit requests to the Authority to be placed on a notification list to be utilized by the Authority.

C. An applicant shall provide to the Authority by the established due date for applications on a form provided by the Authority the following information:

1. Contact information for the applicant, including name, address, and telephone number;
2. Financial statements, audits, or comprehensive annual financial statements relating to the applicant for the applicant's current fiscal year;
3. Financial statements, audits, or comprehensive annual financial statements relating to the applicant for the previous five fiscal years;
4. The proposed or estimated financial statement or budget, and business plan or management plan for the current and next fiscal years;
5. A fee schedule for the applicable enterprise funds for the current and past five fiscal years if not included in response to subsections (C)(2), (3), and (4);
6. The source of pledged revenues or dedicated revenue source to be used to repay the requested financial assistance;
7. The amount of pledged revenues or money collected through the dedicated revenue source for each of the previous five fiscal years;
8. An estimate of the amount of pledged revenues or money that will be collected through the dedicated revenue source for the current fiscal year;
9. A projection of the amount of pledged revenues or money that will be collected through the dedicated revenue source for each of the next five fiscal years;
10. A list of professional and outside service providers, including their professional qualifications, that are working or have worked on the project;
11. An estimate of the project costs, including applicable planning, design, and construction costs, as well as estimated annual operation, maintenance, and replacement costs;
12. An estimated schedule of required disbursements of the financial assistance; and
13. Any information that may have a negative effect on the applicant's application, or on its financial condition, including material information relating to other projects undertaken by the applicant, pending lawsuits, and current investigations by state or federal authorities.

D. In addition to the application and documentation required in subsection (C), an applicant shall provide to the Authority by the established due date for applications the following information:

1. Copies of documentation relating to outstanding indebtedness, including official statements, financial assistance agreements, and amortization schedules;
2. A detailed description of the project, with an explanation of how the project complements the overall development of the community, including the following, if available and applicable:
   a. Copies of project feasibility studies, engineering reports, project designs, rate studies, and related material;
   b. A detailed timeline for the project; and
   c. A planning document specific to the locality of the project for which the financial assistance is being requested that includes the project, such as a capital improvement plan, local strategic plan, or similar planning document;
3. A resolution of the governing body of the applicant stating the following:
   a. The project is in the best interests of its residents;
   b. The commitment of local funds, if applicable; and
   c. If a political subdivision, then confirmation of the pledge of the state-shared revenues;
4. For a political subdivision, a written commitment by its governing body to complete all applicable reviews and approvals and to secure all required permits in a timely manner;
5. To the extent required under A.R.S. § 41-2257, for a political subdivision, evidence of voter approval to incur debt in connection with the project:
   a. If the election for voter authorization has been held, a copy of the ballot evidencing voter authorization for the debt in connection with the project and official action canvassing the results of the election;
   b. If the election for voter authorization is scheduled to be held after the application date, sample ballot language and evidence of a plan to obtain voter authorization for the debt to be incurred in connection with the project;
6. For a political subdivision, if voter approval has been obtained for substantially the same project but with a different funding source, evidence of that approval in lieu of that required by subsection (D)(5); and
7. For an Indian tribe, evidence of the current or proposed establishment of a dedicated revenue source under the control of a tribally chartered corporation or other tribal entity subject to suit by the Attorney General, or evidence that additional funds or revenue streams that are subject to execution by the Attorney General without the waiver of any claim of sovereign immunity by the Tribe have been designated as additional security.

E. Staff shall analyze each application received on or prior to the due date for applications for financial assistance to determine whether the application is administratively complete and whether an applicant meets the eligibility criteria prescribed in R20-8-203. Applications for financial assistance that are determined to be both administratively complete and eligible for financial assistance under R20-8-203 shall be submitted to the Board for prioritization and possible funding. Applications that are either not administratively complete or do not meet the criteria in R20-8-203 shall not be submitted to the Board.

Historical Note

Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (D)(5) was updated. Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).

R20-8-203. Eligibility Criteria

To be eligible to receive financial assistance, an applicant shall satisfy all of the following criteria:

1. The applicant is a political subdivision, special district, or Indian tribe;
2. The financial assistance requested is for an infrastructure project;
3. The application is administratively complete;
4. The applicant demonstrates that the financial assistance can be repaid and the level of security pledged to the loan is consistent with A.R.S. §§ 41-2257(D)(4) through (6);
5. The applicant demonstrates that the project is ready for construction and the applicant is ready to proceed;
6. The applicant provides evidence that the project has public support;

7. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, local strategic plan, general plan, comprehensive plan or similar planning document;
8. The applicant demonstrates that the loan proceeds will be managed and expended in accordance with the timetable set forth in the application;
9. The minimum number of points required to be eligible for consideration for funding by the Board shall be 70 percent or 70 points; and
10. Applicants are responsible for the payment of all administrative fees and penalties associated with financial assistance. Administrative fees shall be paid on or before 90 days from the date on the Authority's invoice. Administrative fees remaining unpaid after 90 days from the date on the Authority's invoice shall be subject to penalties of five percent per annum. Applicants with outstanding administrative fees or penalties are not eligible for financial or technical assistance.

Historical Note

Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2042, effective April 10, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (4) was updated. Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).

R20-8-204. Priority; Approval and Disapproval; Funding; Appeal

A. The Board shall not review an application for financial assistance that does not meet the eligibility criteria in R20-8-203.

B. During each financial assistance round, the Board shall determine the order and priority of infrastructure projects for which an eligible application for financial assistance has been received. Application scores shall be prioritized based on a percentage of the points received to total points possible. The minimum number of points required to be eligible for consideration for funding by the Board is 70 percent or 70 points. Applicants scoring less than 70 percent will be notified in writing by electronic or other means. A score of 70 percent does not guarantee funding. Applications for financial assistance shall be assigned points under the following categories in descending order of importance:

1. The applicant demonstrates strong credit worthiness and ability to repay the obligation based on the source of the repayment pledge - Up to 50 points,
   a. Category I, A, and general obligation pledges - Up to 50 points; or
   b. Category II, Baa, BBB, and previously unrated pledges with coverage ratios of 1.50 or higher - Up to 45 points; or
   c. Previously unrated pledges with coverage ratios less than 1.50 - Up to 35 points.
2. The applicant demonstrates that it has little or no access to alternative funding sources that provide the same or lower access to capital as that provided by the Authority - Up to 25 points,
   a. No access to alternative funding sources - 25 points, or
   b. One alternative funding source - 15 points, or
   c. Two or more alternative funding sources - 5 points, or
   d. No alternative funding sources researched - 0 points.
3. There is evidence of the project's public support based on the adopted planning document specific to the locality or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant - Up to 15 points,
4. The purpose of the project is the following:
   a. Public infrastructure or economic development - Up to 10 points, or
   b. Refinancing of public infrastructure debt - Up to 5 points.

C. The Board shall approve or disapprove each application for financial assistance based upon the priority list and available funding for financial assistance. The Board may fund all or a portion of a financial assistance request. Disbursement of funds to an approved applicant shall only occur upon the applicant's agreement with the terms and conditions established by the Board in accordance with A.R.S. § 41-2257. The prioritization using points assigned under subsection (B) is as follows:

1. The tied application with the higher score under subsection (B)(1) shall have priority over other applications;
2. If the tied applications have the same score under subsection (B)(1) the application with the higher score under subsection (B)(2) shall have priority over the other applications;
3. If the tied applications have the same score under subsections (B)(1) and (2) the application with the higher score under subsection (B)(3) shall have priority over the other applications;
4. If the tied applications have the same score under subsections (B)(1), (2), and (3), the application with the higher score under subsection (B)(4) shall have priority over the other applications;
5. If the tied applications have the same score under subsections (B)(1), (2), (3), and (4), the Board shall determine the priority of the applications.

D. The Authority shall notify in writing by electronic or other means each applicant of the Board's determination within 90 days after the date that all applications for financial assistance were due.

E. For each approved project, the Authority shall establish a date by which the commitment of the Authority to provide financial assistance expires. The Authority shall not provide financial assistance for an approved project if the applicant does not complete all agreements with the Authority on or before that date.

F. An applicant whose project for financial assistance is disapproved or determined to be ineligible may appeal. The Authority shall use the Uniform Administrative Hearings Procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Authority.

Historical Note

Adopted effective February 3, 1998 (Supp. 98-1). Amended by final rulemaking at 16 A.A.R. 190, effective March 6, 2010 (Supp. 10-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2011, Second Special Session, Ch. 1, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (C) was updated. Agency request filed February 12, 2013, Office File No. R13-179 (Supp. 13-1).

Title 41 Chapter 18 GREATER ARIZONA DEVELOPMENT AUTHORITY

Article 1 General Provisions

41-2251. Definitions

In this article, unless the context otherwise requires:

1. "Authority" means the greater Arizona development authority.
2. "Board" means the board of directors of the Arizona finance authority established by chapter 53, article 2 of this title.
3. "Financial assistance" means assistance provided by the authority to eligible political subdivisions, special districts and Indian tribes pursuant to section 41-2257.
4. "Fund" means the greater Arizona development authority revolving fund established by section 41-2254.
5. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
6. "Infrastructure" means any land, building or other improvement and equipment or other personal property that will make up part of a facility that is located in this state for public use and that is owned by a political subdivision, special district or Indian tribe that retains ultimate responsibility for its operation and maintenance.
7. "Loan" means bonds, leases, loans or other evidences of indebtedness.
8. "Loan repayment agreement" means an agreement to repay a loan entered into by a political subdivision, special district or Indian tribe.
9. "Pledged revenues" means any monies to be received by a political subdivision, special district or Indian tribe, including property taxes, other local taxes, fees, assessments or charges pledged by a political subdivision, special district or Indian tribe as a source for repayment of a loan repayment agreement.
10. "Political subdivision" means a county, city or town.
11. "Short-term assistance" means assistance provided by the authority to political subdivisions, special districts and Indian tribes in connection with the financing of infrastructure.
12. "Special district" means any of the following entities established pursuant to title 48:
(a) Municipal improvement district.
(b) Fire district.
(c) County improvement district.
(d) Special road district.
(e) Sanitary district.
(f) Drainage or flood protection district.
(g) County flood control district.
(h) County jail district.
(i) Regional public transportation authority.
(j) Regional transportation authority.
13. "Technical assistance" means assistance provided pursuant to section 41-2256.

14. "Technical assistance repayment agreement" means an agreement to repay assistance provided pursuant to section 41-2256.
15. "Tribal subdivision" means any chapter, district or village that is recognized by an Indian tribe by resolution or through tribal constitution and that receives technical assistance.

41-2252. Greater Arizona development authority
The greater Arizona development authority is established in the Arizona finance authority. The authority shall be governed by the board of directors of the Arizona finance authority.

41-2253. Powers and duties of authority
A. The authority is a body corporate and politic and shall have an official seal that is judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property as necessary to carry out its responsibilities under this article.
B. The authority, through its board, may:
1. Issue bonds to provide financial assistance to political subdivisions, special districts and Indian tribes for acquiring, constructing, improving or equipping infrastructure or for refinancing outstanding bonds or other obligations of the political subdivisions, special districts or Indian tribes that were issued to acquire, construct, improve or equip infrastructure. The bonds shall be in the name of the authority.
2. Provide financial assistance to political subdivisions, special districts and Indian tribes to finance or refinance infrastructure projects.
3. Guarantee debt obligations of political subdivisions, special districts and Indian tribes that are issued to finance or refinance infrastructure projects.
4. Provide technical assistance or short-term assistance to political subdivisions, special districts, Indian tribes and tribal subdivisions.
5. Apply for, accept and administer grants and other monetary assistance from the United States government and from other public and private sources to carry out its responsibilities under this article.
6. Hire professional assistance as needed to carry out this article.
C. The board shall:
1. Approve all policies and procedures of the authority.
2. Approve which projects receive technical and financial assistance.
3. Approve loan repayment agreements entered into with political subdivisions, special districts and Indian tribes.
D. The authority may impose administrative fees and penalties that are necessary to recover the costs incurred in connection with entering into or enforcing a loan repayment agreement or providing financial or technical assistance.
E. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 5 of this section in the fund.

41-2254. Greater Arizona development authority revolving fund
A. The greater Arizona development authority revolving fund is established consisting of:
1. Monies appropriated by the legislature.
2. Monies received from the United States government to carry out this article.

3. Monies received from political subdivisions, Indian tribes, tribal subdivisions and special districts as loan repayments, technical assistance repayments, interest, administrative fees and penalties.
4. Interest and other income received from investing monies in the fund.
5. Gifts, grants and donations received from any public or private source to carry out this article.
6. Any other monies received by the authority.
B. The board shall administer the fund in compliance with the requirements of this article. The board shall separately account for monies received from each source listed in subsection A of this section. Monies received pursuant to subsection A, paragraph 1 of this section shall not be used for any purpose except securing bonds issued by the authority and providing assistance under technical assistance repayment agreements if the amount used for providing this assistance is not more than eight hundred thousand dollars. This subsection does not limit the power of the authority to pledge other monies in the fund to secure bonds issued by the authority or to provide assistance under technical assistance repayment agreements.
C. The board may establish accounts and subaccounts as necessary to properly account for and use monies received by the authority.
D. Monies in the fund may be used for securing bonds of the authority.
E. Monies in the fund received pursuant to subsection A, paragraphs 2, 3, 4, 5 and 6 of this section may be used for:
1. Providing technical assistance to political subdivisions, special districts, Indian tribes and tribal subdivisions.
2. Providing financial assistance to political subdivisions, special districts and Indian tribes.
3. Paying compensation and employment-related expenses.
4. Paying the costs to operate the authority, to administer the fund and to carry out the requirements of this article.
5. Paying the costs of professional assistance hired by the authority pursuant to section 41-2253, subsection B, paragraph 6.
F. On notice from the board, 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.
G. If the monies pledged to secure the bonds become insufficient to pay the principal and interest on the bonds, the board may direct the state treasurer to divest monies in the fund as may be necessary and may apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and shall report these findings to the attorney general. The attorney general shall conduct an investigation and report these findings to the governor and the legislature.

41-2255. Project application and prioritization
A. The authority shall:
1. Establish an application form for technical and financial assistance.
2. Establish a procedure to review and approve or disapprove on its merits each administratively complete application for technical and financial assistance.

3. Establish by rule criteria by which technical and financial assistance will be awarded. For financial assistance the criteria shall include a determination of the ability of the applicant to repay a loan according to its terms and other conditions established by this article.
4. Adopt rules to prioritize applications for technical and financial assistance.
5. Inform the applicant of the board's determination within ninety days after the application date established by the authority pursuant to paragraph 2 of this subsection.
B. The board shall:
1. Approve or disapprove applications for financial and technical assistance.
2. Determine the order and priority of projects assisted under this article based on the merits of the applications.
C. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the technical assistance or financial assistance will be used according to law and the terms of the application. The loan repayment agreement shall include any conditions concerning financial assistance deemed necessary by the board.
D. The authority shall only make financial assistance or short-term assistance available when the applicant is ready to proceed or, if the financial assistance is for refinancing outstanding bonds or other obligations, when the outstanding bonds or other obligations are to be refunded. The authority may provide technical assistance on an as needed basis. The authority may charge the applicant fees sufficient to cover the authority's costs related to the project.
E. A political subdivision, a special district or an Indian tribe may apply to the authority for financial assistance and may accept assistance in connection with an infrastructure project owned by the political subdivision, special district or Indian tribe. The existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement may be accepted by the board as evidence regarding the ability of the applicant to repay a loan.
F. The authority shall only make financial assistance available upon a determination of the ability of the applicant to repay the financial assistance according to its terms and conditions.
G. Applications for financial assistance shall:
1. Be solicited annually, semiannually, quarterly or monthly as determined by the authority pursuant to subsection A, paragraph 2.
2. Be administratively complete before being reviewed by the authority.
3. Include documentation concerning the ability of the applicant to repay the financial assistance according to its terms and conditions.
4. Include a resolution from the governing body of the political subdivision, special district or Indian tribe that the project is in the best interests of the residents.
H. Applications for technical assistance shall:
1. Be solicited annually or semiannually as determined by the authority pursuant to subsection A, paragraph 2, except that an application for short-term assistance may be solicited at those times as the authority determines.
2. Be administratively complete before being reviewed by the authority.
3. Include a resolution from the governing body of the political subdivision, special district or Indian tribe that the project is in the best interests of the residents.

41-2256. Technical assistance; repayment agreements

A. The authority may provide technical assistance to political subdivisions, special districts, Indian tribes and tribal subdivisions in connection with the development or financing of infrastructure.

B. Technical assistance may include the following:

1. Assistance in selecting outside consultants.
2. Evaluation of design and construction options.
3. Financial advisory services.
4. Assistance in satisfying statutory requirements.
5. Short-term assistance.

C. Assistance provided under a technical assistance repayment agreement:

1. Shall not be more than two hundred fifty thousand dollars for a single project.
2. Shall be repaid not more than three years after the date the monies for the assistance are advanced to the applicant.
3. Shall be in a form and under terms determined by the authority.

D. Short-term assistance represents an advance of financial assistance. The authority shall not provide short-term assistance unless the political subdivision, special district or Indian tribe has an approved financial assistance application on file with the authority. A political subdivision, special district or Indian tribe shall repay short-term assistance pursuant to a technical assistance repayment agreement.

E. The authority shall establish an application process and method of determining the allocation of technical assistance pursuant to section 41-2255.

F. Before technical assistance may be provided, the board shall approve the application for technical assistance.

G. The provision of technical assistance by the authority does not create any liability for the authority or this state regarding the design, construction or operation of any infrastructure project.

41-2257. Financial assistance

A. The authority may provide financial assistance to political subdivisions, special districts and Indian tribes in developing, acquiring, constructing, improving, equipping or refinancing infrastructure. The financial assistance shall include:

1. Loans as provided in this section.
2. Credit enhancements purchased for a political subdivision's, special district's or Indian tribe's bonds or other forms of indebtedness.

B. A loan shall be evidenced by a loan repayment agreement, lease purchase agreement or bonds of a political subdivision, special district or Indian tribe that are delivered to and held by the authority.

C. The authority shall prescribe a principal repayment schedule for each loan made. Loan principal payments may be rescheduled at the discretion of the authority but may not be forgiven.

D. A loan under this section:

1. Shall be repaid not more than thirty years after the date it is incurred.
2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to holders of any of the authority's bonds that provided

funding for the loan. The authority may provide that loan interest accruing during construction of the borrower's infrastructure project and up to one year after completion of the construction be capitalized in the loan.
3. Shall be repayable in at least annual principal installments and at least semiannual interest installments.
4. Shall be conditioned on the identification of pledged revenues for repaying the loan. If the infrastructure financed by the loan is part of a municipal utility and the city or town pledges revenues of the utility to repay the loan, the loan shall be treated under section 9-530, subsection B as a lawful long-term obligation incurred for a specific capital purpose.
5. To the extent permitted by law, shall be secured by a debt service reserve account that is held in trust and that is in such amount, if any, as determined by the authority.
6. Shall be either:
(a) For a political subdivision, additionally secured by an irrevocable pledge of the shared state revenues due the political subdivision for the life of the loan as provided by a resolution of the board.
(b) For an Indian tribe, conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation or other tribal entity that is subject to suit by the attorney general to enforce the loan contract or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general.
E. The authority shall prescribe the rate or rates of interest on loans made under this section, but the rate or rates shall not exceed the prevailing market rate for similar types of loans. A political subdivision or special district may negotiate the sale of its bonds to or a loan repayment agreement with the authority without complying with any public or accelerated bidding requirements imposed by any other law for the sale of its bonds.
F. The approval of a loan is conditioned on a written commitment by the political subdivision or special district to complete all applicable reviews and approvals and to secure all required permits in a timely manner.
G. The approval of financial assistance to a city or town having a population of more than fifty thousand persons shall be conditioned on approval of its voters. An election is not required if voter approval has previously been received for substantially the same project.
H. The approval of financial assistance to a county having a population of more than two hundred thousand persons shall be conditioned on approval of its voters. An election is not required if voter approval has previously been received for substantially the same project.
I. By resolution of the board, the authority may impose any additional requirements it considers necessary to ensure that the loan principal and interest are timely paid.
J. All monies received from political subdivisions, special districts and Indian tribes as loan repayments, interest and penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the fund.
K. The attorney general may take whatever actions are necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to this article.
L. If a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and direct a withholding of state shared revenues as provided in

subsection M of this section. The certificate of default shall be in the form determined by the authority, provided the certificate specifies the amount required to satisfy the unpaid payment obligation of the political subdivision.
M. On receipt of a certificate of default from the authority, the state treasurer, to the extent not otherwise expressly prohibited by law, shall withhold the monies from the next succeeding distribution of monies pursuant to section 42-5029 due to the defaulting political subdivision. In the case of a city or town, the state treasurer shall also withhold from the next succeeding distribution of monies pursuant to section 43-206 due to the defaulting city or town the amount specified in the certificate of default and immediately deposit the amount withheld in the fund. The state treasurer shall continue to withhold and deposit the monies until the authority certifies to the state treasurer that the default has been cured. In no event shall the state treasurer withhold any amount that is necessary, as certified by the defaulting political subdivision to the state treasurer and the authority, to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision that were issued prior to the date of the loan repayment agreement or bonds and that have been secured by a pledge of distributions made pursuant to sections 42-5029 and 43-206.

41-2258. Greater Arizona development authority bonds
A. The authority, through the board, may issue negotiable bonds in a principal amount that in its opinion is necessary to provide sufficient monies for assistance under this article, to refund bonds, when the authority deems it expedient to do so, maintaining sufficient reserves in the fund to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article.
B. The board shall authorize the bonds by resolution. The resolution shall prescribe:
1. The rate or rates of interest and the denominations of the bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.
C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of bonds, except any amounts used to pay costs associated with the issuance and sale of the bonds, shall be deposited in the fund or a separately held account as specified in the resolution.
D. To secure any bonds authorized by this section the board by resolution may:
1. Provide that bonds issued under this section may be secured by a lien on all or part of the monies paid into the appropriate account or subaccount of the fund.
2. Pledge or assign to or in trust to be held by the state treasurer or a trustee appointed by the authority for the benefit of the holder or holders of the bonds any part of the appropriate account or subaccount of the fund monies as is necessary to pay the principal and interest of the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which consent may be given.
6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.
7. Provide terms necessary to secure credit enhancement or other sources of payment or security.
8. Provide any other terms and conditions that in any way may affect the security and protection of the bonds.
E. Any pledge of revenues by a political subdivision, a special district, an Indian tribe or the authority made under this article is valid and binding from the time when the pledge is made. The monies pledged and received by the state treasurer to be placed in the fund or in any account or subaccount in the fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.
F. A member of the board or any person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board.
G. The board, out of any available monies, may purchase bonds, which may then be canceled, at a price not exceeding either of the following:
1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.
H. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.
I. If a political subdivision fails to make a payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the payment and direct withholding pursuant to subsection J of this section. The authority may determine the form of the certificate of default, except that the certificate must specify the amount of money required to satisfy the unpaid payment obligation of the political subdivision.
J. On receipt of a certificate of default from the authority, the state treasurer, to the extent not otherwise expressly prohibited by law, shall withhold an amount from the defaulting political subdivision's next distribution of monies pursuant to section 42-5029 and an amount from a

defaulting city's or town's next distribution of monies pursuant to section 43-206 necessary to meet the certified amount of the deficiency. The state treasurer shall immediately deposit in the fund the amount withheld. The state treasurer shall continue to withhold distributions pursuant to sections 42-5029 and 43-206 and deposit them into the fund until the authority certifies to the state treasurer that the default has been cured.
K. Notwithstanding subsection J of this section, the state treasurer shall not withhold from the distribution of monies under section 42-5029 any amount, as certified by the defaulting political subdivision to the state treasurer and the authority, that is necessary to make any required deposits then due for payment of principal and interest on bonds of the political subdivision that have been secured by a pledge of the distribution.

41-2259. Bond obligations of the authority
Bonds issued under this article are obligations of the authority, are payable only according to their terms and are not general, special or other obligations of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

41-2260. Agreement of state
A. This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the authority or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged.
B. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

41-2261. Certifications of bonds by attorney general
A. The board may submit any bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. Within fifteen days after submission the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings.
B. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

41-2262. Bonds as legal investments
Bonds issued under this article are securities:
1. In which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying

on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest.
2. That may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

41-2263. Annual audit and reporting

A. The board shall cause an annual audit to be made of the fund. The audit shall be conducted by a certified public accountant within one hundred fifty days after the close of the fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.
B. The auditor general may make further audits and examinations that the auditor general considers to be necessary and take appropriate action relating to the audit or examination pursuant to title 41, chapter 7, article 10.1. If the auditor general takes no official action within twenty days after the annual audit is filed pursuant to subsection A, the audit is considered to be sufficient.
C. The board shall pay any fees and costs of the certified public accountant and auditor general under this section from the earnings on the fund.
D. Not later than January 1 of each year, the board shall submit an annual report of its activities, including a copy of the annual audit, to the governor, the president of the senate and the speaker of the house of representatives.

Title 41 Chapter 53 Office of Economic Opportunity

Article 2 ARIZONA FINANCE AUTHORITY

41-5351. Definitions

In this article, unless the context otherwise requires:

1. "Agreement" means any loan or other agreement, contract, note, mortgage, deed of trust, trust indenture, lease, sublease or instrument entered into by the authority.
2. "Authority" means the Arizona finance authority.
3. "Board" means the board of directors of the authority.
4. "Bonds" means any bonds issued by the authority.
5. "Costs":

(a) Means all costs incurred in the issuance of bonds, including insurance policy, credit enhancement, legal, accounting, consulting, printing, advertising and travel expenses, plus any authority administrative fees.

(b) May include interest on bonds issued by the authority for a reasonable time before and during the time the proceeds are used.

6. "Director" means the director of the authority.
7. "Federal agency" means the United States or any agency or agencies of the United States.

41-5352. Arizona finance authority; fund

A. The Arizona finance authority is established in the office of economic opportunity.

B. The governor shall appoint the director of the authority to serve at the pleasure of the governor.

C. The Arizona finance authority operations fund is established consisting of monies deposited pursuant to section 41-5355. The authority shall administer the fund. Monies in the fund are continuously appropriated.

D. At the end of the fiscal year, the authority shall transfer all unencumbered monies in the fund in excess of the authority's operating costs to the economic development fund established by section 41-5302.

41-5353. Board; members; terms; meetings; compensation; prohibition

A. The authority shall be governed by a board of directors, consisting of five members to be appointed by the governor, giving due consideration to a diverse geographical representation on the board, and to serve at the pleasure of the governor.

B. Before appointment by the governor, a prospective member of the board of directors shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. Each member shall serve for a term of three years. Vacancies occurring other than by expiration of term shall be filled in the same manner for the remainder of the unexpired term.

D. The board shall annually elect from among its members a chairperson, a secretary and a treasurer.
E. The board rules shall provide for regular annual meetings of the board. The chairperson may call a special meeting at any time. The board rules shall provide for a method of giving notice of a special meeting.
F. The board may meet by audioconference or videoconference. The requirements of title 38, chapter 3, article 3.1 apply to an audioconference or videoconference, except that all votes of members must be by roll call, and the board may not meet in executive session by audioconference or videoconference.
G. Members of the board are not eligible to receive compensation but are eligible to receive reimbursement for necessary expenses pursuant to title 38, chapter 4, article 2 while engaged in the performance of the members' duties.
H. Members of the board may not have any direct or indirect personal financial interest in any project financed under this article.

41-5354. Powers of board

The board may:
1. Adopt an official seal and alter the seal at its pleasure.
2. Apply for, accept and administer grants of monies or materials or property of any kind from a federal agency or others on such terms and conditions as may be imposed.
3. Make and enter into agreements, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, execute all instruments, perform all acts and do all things necessary or convenient to carry out the powers granted.
4. Employ or contract with experts, engineers, architects, attorneys, accountants, construction and financial experts and such other persons as may be necessary in the board's judgment and fix their compensation.
5. Pay compensation and employee-related expenses.
6. Fix the compensation of the director.
7. Sue and be sued.
8. Acquire and maintain office space, equipment, supplies, services and insurance necessary to administer this article.
9. Contract with, act as guarantor for or coinsure with any federal, state or local governmental agency and other organizations or corporations in connection with its activities under this article and receive monies relating to those contracts and services.
10. Adopt bylaws and administrative rules consistent with this article.
11. Protect and enforce the interests of the authority in any project financed through the authority's resources.
12. Enter into and inspect any facility financed through the authority's resources to investigate its physical condition, construction, rehabilitation, operation, management and maintenance and to examine all of the records relating to its capitalization, income and other related matters.
13. Acquire title to real property or other assets by gift, grant or operation of law, or by purchase.
14. Establish advisory boards that have all rights and powers granted by the board, including the right to review, evaluate and recommend to the board for approval proposed financings.

41-5355. Assets; cost of operation and administration; taxation

A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.

B. This state is not responsible for any obligation incurred by the authority.

C. All costs and expenses of the authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority that are available to pay the Arizona finance authority's costs and expenses.

D. The authority and its income are exempt from taxation in this state.

41-5356. Duties of board; annual report

A. The board shall:

1. Establish an industrial development authority under title 35, chapter 5 and, notwithstanding the requirements of section 35-705, serve as the board of the industrial development authority.

2. Serve as the board of the greater Arizona development authority and have all powers and authority to take action on behalf of the greater Arizona development authority pursuant to chapter 18 of this title.

3. Approve the authority's budget.

4. On or before October 1 of each year, the industrial development authority shall submit a report to the president of the senate, the speaker of the house of representatives and the directors of the joint legislative budget committee and the governor's office of strategic planning and budgeting regarding the authority's revenues, expenditures and program activity for the previous fiscal year.

41-5357. Supplemental law

The powers conferred by this article are in addition and supplemental to the powers conferred by any other law, general or special, and are deemed full authority for the issuance of bonds, for entering into agreements in connection therewith and for the authorization, issuance and sale of bonds pursuant to this article and without regard to the procedure required by any other such law, except as provided for in title 44, chapter 12, article 4.

ARIZONA CRIMINAL JUSTICE COMMISSION
Title 10, Chapter 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: November 15, 2023

SUBJECT: **ARIZONA CRIMINAL JUSTICE COMMISSION**
Title 10, Chapter 4

Summary

This Five-Year Review Report (5YRR) from the Arizona Criminal Justice Commission (Commission) relates to six (6) rules in Title 10, Chapter 4, Article 4 regarding Drug and Gang Enforcement Account Grants. Specifically, the Drug and Gang Enforcement Account (Account) was created with the objective of supporting governmental units at the state, county, local, and tribal levels that are working to reduce drug and gang-related crime. These rules relate to general information and processes regarding providing grants from the Account by the Commission, the process for applying for a grant from the Account by an approved agency or task force, the procedure for evaluating grant applications and the standards for awarding funding from the Account, the process for an applicant to request modifications to the Committee's recommended allocation plan for grants from the Account, and the requirements for grant recipients to submit reports documenting the activities supported by the Account funds and the consequences for not submitting these reports.

In the prior 5YRR for these rules, which was approved by the Council in December 2018, the Commission did not propose any changes to the rules.

Proposed Action

In the current report, the Commission is not proposing any additional changes to the rules.

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

The Commission cites both general and specific statutory authority for these rules.

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

The Commission states that the existing rules are estimated to have no direct economic impact. The Department indicates that while the Account might have a minor economic impact on the agencies receiving funding from the Account, these rules provide guidance for obtaining a grant from the Account and outline the reporting requirements once an award is made. The Commission indicates that these rules do not significantly impact small businesses, consumers, or overall state revenues. Stakeholders include the Commission and entities that voluntarily decide to apply for a grant from the Account.

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 Commission believes that the rules impose the least possible burden to achieve the underlying regulatory objectives. The benefits gained from a transparent and equitable distribution of funds, their effective deployment, and the anticipated impact on addressing drug and gang-related issues in the state substantially outweigh any costs related to grant application and reporting. Therefore, the Commission states, it can be conclusively stated that the probable benefits of the rules outweigh the probable costs within the state, and the rules impose the least burden and costs necessary to achieve the underlying objectives.

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

The Commission 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 Commission indicates the rules are clear, concise, and understandable.

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

The Commission indicates the rules are consistent with other rules and statutes.

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

The Commission indicates the rules are effective in achieving their objectives.

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

The Commission indicates the rules are currently enforced as written.

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

The Commission indicates the Byrne Justice Assistance Grant (JAG) Program and 42 U.S.C. 3751(a) correspond to the subject of these rules. Specifically, these federal laws provide the framework for grant allocation to state and local governments to support various criminal justice programs, including elements such as program assessment, prohibited use of funds, administration costs, and grant duration.

The Commission indicates the rules do not exceed the stringency of the above-mentioned federal laws. The Commission states the rules have been designed and implemented to guide the process of granting funds from the Account to eligible entities, ensuring fairness and accountability in distributing and using these funds. The Commission states the rules reflect the need for a fair application process, adequate program assessment, appropriate use of funds, and detailed reporting mechanisms.

The Commission states the aim is to assist entities in effectively addressing drug and gang crime without imposing additional regulatory burdens that could hinder their efforts. Therefore, the Commission believes its rules are less stringent than corresponding federal law while still effectively achieving the desired objectives.

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

Not applicable. The Commission indicates the rules to not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Commission relates to six (6) rules in Title 10, Chapter 4, Article 4 regarding Drug and Gang Enforcement Account Grants. The Commission indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Commission does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

Arizona Criminal Justice Commission

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August 9, 2023

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

RE: A.A.C. Title 10, Law
Chapter 4. Arizona Criminal Justice Commission

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Criminal Justice Commission for A.A.C. Title 10, Law, Chapter 4, Arizona Criminal Justice Commission, which is due on August 31, 2023

1) The Arizona Criminal Justice Commission hereby certifies compliance with A.R.S. 41-1091.
2) It is not the intent of the Arizona Criminal Justice Commission that any rule will expire under A.R.S. § 41-1056(J).
3) The Council has not rescheduled the review of any article under A.R.S. § 41-1056(H).

For questions about this report, please contact:

Name: Tony Vidale, Deputy Director
Address: Arizona Criminal Justice Commission
1110 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 364-1155
E-mail: tvidale@azcjc.gov
Web site: www.azcjc.gov

Sincerely,

Andrew T. LeFevre
Executive Director

Arizona Criminal Justice Commission

5 YEAR REVIEW REPORT

A.A.C. Title 10. Law, Chapter 4. Arizona Criminal Justice Commission August 9, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 41-2405(A)(B)

Specific Statutory Authority: All rules under Title 10, Chapter 4 are authorized explicitly by A.R.S. § 41-2402 and 41-2405(A)(8).

2. The objective of each rule:

Rule	Objective
R10-4-401	Rule R10-4-401 clearly defines terms used in relation to grants provided by the Drug and Gang Enforcement Account established by the Arizona Revised Statutes (A.R.S) § 41-2402. The overall objective of this rule is to promote transparency, consistency, and understanding in administering these grants. By providing these definitions, the rule makes the process more transparent and accessible, thus facilitating the application process for and managing grants. The Drug and Gang Enforcement Account was created with the objective of supporting governmental units at the state, county, local, and tribal levels that are working to reduce drug and gang-related crime. These definitions assist these organizations in understanding what's required for applying to this account, what types of projects are eligible for funding, and what their responsibilities are as grant recipients. The rule was adopted for several reasons. First, it's important for any statutory or regulatory scheme to clearly define the terms it uses to avoid confusion or misinterpretation. This is especially true when public funds are involved, as it ensures they are used for their intended purposes. Secondly, these definitions ensure that there's a standard understanding of what's required when applying for and using these funds. This not only assists the organizations applying for the funds but also helps those who are responsible for administering the grants and ensuring they are used appropriately. Lastly, these definitions play a role in ensuring accountability, as they provide a clear basis for audit and review.
R10-4-402	Rule R10-4-402 outlines the general information and processes regarding providing grants from the Drug and Gang Enforcement Account by the Arizona Criminal Justice Commission. This rule aims to regulate and streamline the grant application and award process, ensure effective utilization of the Account's funds, and promote accountability, transparency, and inclusivity. Specifically, this rule serves to achieve the following objectives: 1. **Regulating the Grant Process**: The rule establishes the Commission's authority to request grant applications and make awards based on available funds. It also sets out the conditions under which matching funds may be required.

	2. **Setting Priorities**: The Commission's duty to publish its priorities in a strategic report ensures that the grant awards align with the state's strategy for combating drugs, gangs, and violent crime. 3. **Promoting Transparency**: The rule promotes transparency in the grant application process by mandating that all grant information be made available on the Commission's website. 4. **Providing Training and Oversight**: The rule also establishes the Commission's responsibility to provide training on grant application procedures and grant management, thus enhancing the capacity of agencies to use these funds effectively. Furthermore, the provision for oversight, including possible financial review or audits, ensures accountability in using these public funds. 5. **Maintaining Fairness**: The rule limits the amount of matching funds a grant recipient may be required to provide, ensuring fairness and accessibility in the grant process. The rule was adopted to create a well-structured, equitable, and transparent process for distributing funds intended to combat drug and gang-related crime. This, in turn, increases the effectiveness of these funds by ensuring they are targeted toward the state's strategic priorities and used responsibly and accountable.
R10-4-403	Rule R10-4-403 outlines the process for applying for a grant from the Drug and Gang Enforcement Account by an approved agency or task force. This rule establishes a structured, detailed, and accountable application process for potential grant recipients. The rule outlines the application requirements and procedures, providing guidance on how an application must be submitted and the specific information to be included. This ensures that all applications are complete, accurate, and can be evaluated effectively and fairly. The main objectives are: 1. **Standardization and Streamlining**: The rule provides a standard procedure for all potential grant recipients to follow, streamlining the application process and ensuring fairness. 2. **Transparency and Accountability**: The detailed information required ensures applicants are held accountable for their proposed projects. The Commission can assess the scope of the problem addressed, the proposed solution, its expected effectiveness, and its sustainability. This allows the Commission to evaluate the potential impact of each project. 3. **Evaluation**: The rule outlines what an applicant needs to provide to enable the Commission to evaluate the application properly. This includes the project's goals, objectives, budget, and methodology for evaluating its effectiveness. 4. **Compliance**: The requirement for information regarding audit reports and internal controls demonstrates the applicant’s compliance with financial regulations and accountability for public funds.

	The rule was adopted to ensure that the grant application process is effective, fair, and transparent. By establishing a thorough application process, the rule helps to ensure that funds from the Account are awarded to projects that are well-planned, necessary, and likely to be effective in addressing the issues of drugs, gangs, and violent crime. It also helps ensure that the funded projects are financially accountable and comply with all relevant laws and regulations.
R10-4-404	Rule R10-4-404 sets forth the procedure for evaluating grant applications and the standards for awarding funding from the Drug and Gang Enforcement Account. This rule aims to establish a systematic, comprehensive, and fair method for assessing the eligibility and merit of each application. The main objectives are: 1. **Evaluation Process**: The rule outlines a transparent and structured process for evaluating each grant application, including a timeline for decision-making. This aims to provide clarity to the applicants about the review process and ensures efficient grant processing. 2. **Information Acquisition**: It sets procedures for the Commission to request additional information or amendments to applications, ensuring a thorough evaluation process and allowing applicants to enhance their applications. 3. **Standards for Award**: The rule clearly stipulates the standards against which each application will be assessed. These standards help ensure that funded projects are well-planned, data-driven, collaborative, have specific and measurable objectives, and have appropriate evaluation and financial control mechanisms. The rule was adopted to ensure a thorough, fair, and transparent evaluation of each application. It helps to ensure that the funds are allocated to projects with the greatest potential to address drug and gang-related issues effectively. The requirement for evaluation methods and internal controls also ensures accountability and effectiveness in using the funds. In summary, the rule enhances the quality, fairness, and transparency of the grant allocation process, and ensures that the funds are used effectively to achieve their intended purposes.
R10-4-405	Rule R10-4-405 establishes the process for an applicant to request modifications to the Committee's recommended allocation plan for grants from the Drug and Gang Enforcement Account. The rule sets out the procedure for notifying applicants about the recommended allocation plan, the meetings in which the allocation plan will be discussed, and how to request changes to the plan. The main objectives are: 1. **Communication and Transparency**: The rule mandates that the Commission staff must provide adequate notice to applicants about the Committee's allocation plan and the associated meetings. This ensures that the process is transparent and that applicants have sufficient time to review the recommended plan and prepare any requests for modification. 2. **Feedback Mechanism**: The rule allows applicants to voice any disagreement with the recommended allocation plan and to request modifications. This allows applicants to influence the allocation process, encouraging interaction between the Commission and the applicants and

	fostering fairness. 3. **Deliberation**: The rule ensures that both the Committee and the Commission consider any requests for modification before making final decisions about the allocation of grants. This reinforces the principle of due consideration for all applicants. The rule was adopted to ensure a fair and transparent process for the allocation of grants. By allowing applicants to request modifications to the allocation plan, the rule acknowledges that applicants might have valuable insights about their projects' needs and their communities. It ensures that these insights are considered in the allocation process, which can help ensure that the funds are used most effectively to tackle drug, gang, and violent crime issues. Furthermore, by establishing clear procedures for this process, the rule promotes accountability, transparency, and fairness in the use of public funds.
R10-4-406	Rule R10-4-406 sets out the requirements for grant recipients to submit reports documenting the activities supported by the Account funds and the consequences for not submitting these reports. The rule also outlines the Commission's responsibilities regarding these reports and the use of their information. The main objectives are: 1. Accountability and Monitoring: By mandating that grant recipients provide regular financial, activity, and progress reports, the rule ensures accountability for using Account funds. These reports provide a mechanism for monitoring the effectiveness of the funded projects and identifying potential issues or deviations from the approved plans. 2. Evaluation: The requirement for grant recipients to participate in all assessment, evaluation, or data collection efforts helps the Commission to evaluate the impact of the funded projects. This could inform future decisions about the allocation of grants and help to ensure that the Account funds are being used effectively. 3. Transparency: By giving the Commission the right to obtain, reproduce, publish, or use the information provided in the reports, the rule encourages transparency in the use of public funds. 4. Penalties for Non-Compliance: By stipulating that the Commission shall not distribute Account funds to a grant recipient that fails to submit a required report within 60 days of its due date, the rule establishes clear consequences for non-compliance with the reporting requirements. The rule was adopted to ensure that Account funds are used efficiently and effectively for their intended purpose, which is to combat drug, gang, and violent crime issues. The reporting requirements support accountability, transparency, and continuous improvement in the use of these funds.

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

The rules are effective in achieving their objectives. The rules effectively promote transparency, consistency, and understanding in administering the grants, regulate and streamline the grant application and award process, and ensure effective utilization of the Account's funds. The rules also establish a systematic, comprehensive, and fair method for assessing the eligibility and merit of each application and

foster accountability and transparency in the allocation of the grants.

Additionally, they guide how an application must be submitted, the specific information to be included, and also procedures for evaluating each grant application. The rules clearly define the consequences of non-compliance and facilitate accountability by requiring regular financial, activity, and progress reports.

Overall, the rules have been well-crafted to meet their objectives of facilitating a fair, transparent, and effective process for granting and managing funds to combat drug and gang-related crime. They promote accountability and ensure the effective utilization of public funds. The rules also provide feedback and modification mechanisms, which further underscore their effectiveness in achieving their objectives. Thus, they meet the overall objective of supporting governmental units at various levels in their work to reduce drug and gang-related crime.

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

The rules and regulations currently governing Account funding are consistent with other rules and statutes. Most prominently, the rules align with state and federal statutes, rules, and guidelines. Specifically, the rules comply with:

1. The Byrne Justice Assistance Grant (JAG) Program authorized by Title I of Public Law 90–351 (generally codified at 34 U.S.C. 10151-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151- 10158).
2. The Uniform Guidance (2 C.F.R. Part 200), which stipulates the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.
3. Grant guidelines set forth by the Office of Justice Programs, Bureau of Justice Assistance.
4. ARS § 41-2402, 41-2405, and 41-2702, thus maintaining consistency in procedural and regulatory conformance.

The aforementioned compliances validate that the Account rules maintain consistency in procedural and regulatory conformance and are consistent with and cognizant of the broader legislative and statutory framework that governs our operations.

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

The Arizona Criminal Justice Commission enforces the rules outlined above in accordance with their written provisions.

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

The provided rules have a clear and concise structure, making them relatively easy to understand. The rules are divided into different sections, each addressing specific aspects of the grant application and management process. the rules are well-structured, clearly written, and provide sufficient guidance for applicants and grant recipients. They cover the necessary information and processes involved in applying for and managing grants from the Account.

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

The agency has not received any written criticisms of the rules within the last five years. This includes formal and informal communication with both the Commission and its staff.

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

The existing rules are estimated to have no direct economic impact. While the Drug and Gang Enforcement Account Fund might have a minor economic impact on the agencies receiving funding from the Account, these rules provide guidance for obtaining a grant from the Account and outline the reporting requirements once an award is made. Thus, they do not exert any direct economic influence. the minor economic impact experienced by agencies due to the Drug and Gang Enforcement Account is associated explicitly with addressing drug or gang crime rather than maintaining a baseline level of public safety in communities across the state. In other words, the financial resources obtained from the Account and directed by these rules are primarily used to confront and mitigate drug or gang-related issues. Therefore, the Account rules' economic influence is limited to facilitating these targeted interventions and does not directly affect the broader financial requirements associated with maintaining general public safety in Arizona's communities. As such, they do not significantly impact small businesses, consumers, or overall state revenues.

Furthermore, the Commission anticipates no economic impact on businesses, irrespective of their size, as they are not directly affected by the Account rules. Implementing these rules neither results in the addition of any full or part-time employees nor affects state revenues. Therefore, the rules, in their current form, do not have a significant economic impact on small businesses or consumer interests**.**

9. **Has the agency received any business competitiveness analyses of the rules? Yes ___No X__**

The agency has not received any business competitiveness analyses of the rules. This is understandable, given the nature and purpose of these rules. The rules are designed to guide obtaining grants from the Drug and Gang Enforcement Account and outline the reporting requirements once these grants have been awarded. Therefore, these rules focus on public safety, specifically drug and gang crime prevention and intervention.

They do not directly affect businesses, are not involved in regulating commercial activities, and do not influence market competition. The primary stakeholders in the context of these rules are public safety agencies, not businesses. Therefore, conducting a business competitiveness analysis would not be applicable or provide meaningful insights in this context. Thus, the absence of such analyses is both expected and appropriate.

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

The last five-year review report for this Article was submitted in December 2018. The report did not include any course of action related to the rules to be completed prior to submission of the next review report.

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

The probable costs associated with the administration of the rules include factors such as any required training, staff time for application and reporting processes, and costs of complying with reporting or audit requirements. Benefits include enhanced transparency, consistency, and understanding in grant administration, improved grant application and evaluation processes, and increased effectiveness of public funds for tackling drug and gang-related crime. The aggregate of these benefits clearly outweighs the minimal costs involved in adhering to the rules, supporting the conclusion that the rules are cost-effective.

The Account rules guide entities that voluntarily decide to apply for a grant from the Account. After a

cost-benefit analysis, these entities decide that the potential advantages of receiving grant funding significantly outweigh the costs associated with the application process and subsequent required reporting.

As defined by the rules, the competitive application process is essential in ensuring a fair and equitable evaluation of proposed projects. This mechanism guarantees that all potential grant recipients are treated fairly and that the most deserving and impactful projects are awarded funding.

Moreover, the rules enforce regular financial and activity reporting, a crucial measure for accountability. These reports confirm that Account funds are being properly utilized to combat drug and gang-related crime. Absent such measures, there would be no means of verifying the responsible and effective use of the funds.

Additionally, the reports facilitate the Commission in collecting and compiling essential program data, which is instrumental for assessing the effectiveness of funded projects and making data-driven decisions about future funding allocations. These reports also enable the Commission to fulfill its obligatory reporting requirements.

Considering these points, it is evident that the rules impose the least possible burden to achieve the underlying regulatory objectives. The benefits gained from a transparent and equitable distribution of funds, their effective deployment, and the anticipated impact on addressing drug and gang-related issues in the state substantially outweigh any costs related to grant application and reporting. Therefore, it can be conclusively stated that the probable benefits of the rule outweigh the probable costs within the state, and the rule imposes the least burden and costs necessary to achieve the underlying regulatory objective.

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

The Commission's rules pertaining to the Drug and Gang Enforcement Account are consistent with the guiding principles of the federal laws, specifically the Byrne Justice Assistance Grant (JAG) Program and 42 U.S.C. 3751(a). These federal laws provide the framework for grant allocation to state and local governments to support various criminal justice programs, including elements such as program assessment, prohibited use of funds, administration costs, and grant duration.

The Commission has determined that its rules do not exceed the stringency of the above-mentioned federal laws. The rules have been designed and implemented to guide the process of granting funds from the Account to eligible entities, ensuring fairness and accountability in distributing and using these funds. They reflect the need for a fair application process, adequate program assessment, appropriate use of funds, and detailed reporting mechanisms.

The aim is to assist entities in effectively addressing drug and gang crime without imposing additional regulatory burdens that could hinder their efforts. Therefore, the Commission believes its rules are less stringent than corresponding federal law while still effectively achieving the desired objectives.

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

The rules do not require issuing a regulatory permit, license, or agency authorization. As such, compliance with A.R.S. § 41-1037 is not applicable.

14. Proposed course of action

The Commission has determined that no action is necessary for the rules that are the subject of this report.

necessary to protect Fund monies and ensure that Fund monies are expended as specified in A.R.S. § 41-2401.

Historical Note
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-303 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-304. Records Required

A. A Head shall ensure that the following records are maintained for the recipient:
1. The amount of Fund monies available to the recipient,
2. To whom Fund monies were disbursed and the amount of Fund monies disbursed,
3. A detailed description of the manner in which the Fund monies are expended, and
4. An assessment of the impact of the Fund monies on enhancing criminal justice.

B. A Head shall ensure that the records required under subsection (A) are:
1. Maintained for three years; and
2. Made available, upon request, for review by the Commission and the Arizona Auditor General.

C. All reports required of a recipient by statute to be submitted to the Commission are subject to review and verification by the Commission.

Historical Note
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-304 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-305. Complaints

A. An individual who believes that Fund monies are being expended in a manner that is inconsistent with A.R.S. § 41-2401(D) may:
1. Submit a written complaint to the Commission; and
2. If the complaint relates to an expenditure by a court, shall submit the complaint to the Director of the Administrative Office of the Courts.

B. An individual who submits a complaint shall ensure that the complaint includes sufficient information to enable the Commission to investigate the expenditure alleged to be inconsistent with A.R.S. § 41-2401(D).

C. Except as specified in subsection (E), if the Commission determines that an expenditure about which a complaint is submitted appears to be inconsistent with A.R.S. § 41-2401(D), the Commission shall ask the Head to explain the expenditure.

D. If the Commission determines that the expenditure is inconsistent with A.R.S. § 41-2401(D), the Commission shall take action allowed by law to remedy the expenditure.

E. The Director of the Administrative Office of the Courts shall:
1. Investigate an expenditure about which a complaint is submitted under subsection (A)(2),
2. Determine whether the expenditure is inconsistent with A.R.S. § 41-2401(D), and
3. Notify the Commission of the determination and any action taken to remedy the expenditure.

Historical Note
Adopted effective September 11, 1986 (Supp. 86-5). R10-4-305 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

ARTICLE 4. DRUG AND GANG ENFORCEMENT ACCOUNT GRANTS

R10-4-401. Definitions

In this Article:

"A-133 audit report" means a report on an audit conducted in accordance with the standards for obtaining consistency and uniformity among federal agencies for the audit of non-federal entities expending federal awards established by the Office of Management and Budget in Circular A-133.

"Account" means the Drug and Gang Enforcement Account established by A.R.S. § 41-2402.

"Applicant" means an approved agency or task force that submits an application for a grant from the Account.

"Approved agency" means a unit of state, county, local, or tribal government working to accomplish one or more of the goals established at A.R.S. § 41-2402(A).

"Approved project" means a planned endeavor to accomplish one or more of the goals established at A.R.S. § 41-2402(A) for which a grant is made from the Account.

"Commission" means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.

"Committee" means the Drug, Gang, and Violent Crime Committee of the Commission.

"Host agency" means an approved agency that submits a grant application and required reports on behalf of a task force.

"Matching funds" means non-federal and non-Account money or program income that a grant recipient adds to a grant from the Account and spends to accomplish the goals of an approved project.

"Program income" means funds generated as a result of the activities funded by a grant from the Account.

"Task force" means multiple approved agencies from different jurisdictions that collaborate to accomplish multiple goals established at A.R.S. § 41-2402(A).

Historical Note
Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 1007, effective February 8, 2001 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4).

R10-4-402. General Information Regarding Grants

A. The Commission may annually request grant applications and make grant awards of Account funds.

B. The Commission's ability to make grant awards is contingent upon the availability of Account funds.

C. The Commission shall publish its priorities for grant awards in a report of the state's strategy for combating drugs, gangs, and violent crime.

D. The Commission shall make all information regarding grants, including the request for grant applications and application and report forms, available on its web site.

E. The Commission shall ensure that training regarding grant application procedures and grant management are made available to interested approved agencies.

F. The Commission shall provide oversight of all grants awarded, which may include conducting a financial review or audit of a grant recipient, to ensure that Account funds are expended in compliance with all terms of the grant agreement and all applicable state and federal laws.

G. The Commission may require that a grant recipient provide matching funds in the amount specified in the request for grant applications.

H. The Commission shall not require a grant recipient to provide matching funds that exceed 25% of the total project budget.

Historical Note

Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 1007, effective February 8, 2001 (Supp. 01-1). Former Section R10-4-402 renumbered to R10-4-403; new Section made by final rulemaking 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

R10-4-403. Grant Application

A. An approved agency or task force may submit an application for a grant from the Account. If application is made by a task force, members of the task force shall identify a host agency.

B. An applicant shall access, complete, and submit to the Commission the application form that is available on the Commission's web site. The applicant shall provide the following information:

1. Title of the application and proposed project;
2. Purpose specified in A.R.S. § 41-2402(A) that the proposed project will address;
3. Statement of whether the application is a request to continue a previously approved project;
4. Name and address of the applicant;
5. List of member agencies of the task force if the applicant is a task force;
6. Name of the individual authorized to submit the application;
7. Name of the individual responsible for administering and supervising the proposed project;
8. Statement of the mission of the proposed project;
9. Statement of the problem addressed by the proposed project including data reflecting:
   a. The scope of the problem, and
   b. The absence or inadequacy of current resources to address the problem;
10. Summary of the proposed project that explains how the proposed project seeks to address the problem identified;
11. Description of collaborative efforts among law enforcement, prosecution, community organizations, social service agencies, and others that will be involved with the proposed project;
12. Description of the methodology that will be used to evaluate the effectiveness of the proposed project;
13. Goals of the proposed project stating what the proposed project is intended to accomplish;
14. Objectives that are specific, measurable, and directly correlated to the goals of the proposed project;
15. Detailed budget that includes:
    a. Total amount to be expended on the proposed project including both Account and matching funds;
    b. Estimated amount to be expended for various allowable expenses and the manner in which the estimate was determined;
    c. Sources of the required matching funds; and
    d. Statement of whether Account funds received will be used as matching funds for another grant program and if so, the name of the grant program and funding agency;
16. Date of the jurisdiction's current A-133 audit report;
17. Description of the internal controls the applicant will use to ensure compliance with all terms of the grant agreement;
18. Description of plan to sustain the project if Account funds are no longer available; and
19. Signature of the individual identified in subsection (B)(6) certifying that the information presented is correct and that if a grant is received, the applicant will comply with the terms of the grant agreement and all applicable state and federal laws.

C. In addition to submitting the application form required under subsection (B), an applicant shall submit to the Commission:

1. A copy of the jurisdiction's current A-133 audit report or if the jurisdiction does not have a current A-133 audit report, a copy of all correspondence relating to an extension of time to have an audit completed;
2. If the applicant is a task force, a letter on agency letterhead or another document from each member agency of the task force describing the manner in which the member intends to contribute to the proposed project; and
3. If the applicant's jurisdiction applied directly for federal criminal justice grant funding:
   a. Each applicant must disclose whether it has, or is proposed as a subrecipient under, any pending application for federally-funded grants or cooperative agreements that:
      i. Include requests for funding to support the same project being proposed in the application for a grant from the Account; and
      ii. Would cover identical cost items outlined in the budget submitted to the Commission as part of the application for a grant from the Account.
   b. The applicant is to disclose applications made directly to federal awarding agencies, and also applications for subawards of federal funds (e.g. applications to state agencies that will subaward federal funds).

Historical Note

Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended by final rulemaking at 7 A.A.R. 1007, effective February 8, 2001 (Supp. 01-1). Former Section

R10-4-403 renumbered to R10-4-404; new Section R10-4-403 renumbered from R10-4-402 and amended by final rulemaking at 14 A.A.C. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

R10-4-404. Application Evaluation; Standards for Award

A. The Commission shall ensure that each application that is submitted timely and proposes a project eligible for funding from the Account is evaluated. After the applications are evaluated, the Committee shall forward a recommended allocation plan to the Commission. The Commission shall grant or deny funding within 90 days after the application deadline.

B. If the Commission determines that it needs additional information to facilitate its review of an application, the Commission shall:
1. Request the additional information from the applicant, or
2. Request the applicant to amend the application.

C. The Commission shall approve grant funding, in whole or in part, or deny funding using standards referenced under A.R.S. § 41-2402 and R10-4-402(C).

D. The standards referenced in subsection (C) include an assessment of whether the proposed project:
1. Is directed toward a problem that is demonstrated by statistical data;
2. Is designed to address the identified problem;
3. Is a coordinated effort among multiple approved agencies;
4. Has specific goals;
5. Has measurable objectives that relate to the goals;
6. Has appropriate methods for evaluating achievement of objectives;
7. Has a reasonable budget of allowable expenses;
8. Has identified the required matching funds;
9. Has internal controls to monitor expenditure of Account funds; and
10. If the program was previously funded, all grant requirements were met timely and there were no reportable deficiencies during monitoring reviews.

Historical Note

Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 1007, effective February 8, 2001 (Supp. 01-1). Former Section 10-4-404 renumbered to R10-4-406; new Section R10-4-404 renumbered from R10-4-403 and amended by final rulemaking 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

R10-4-405. Request for Modification of Recommended Allocation Plan

A. Commission staff shall provide an applicant with at least five days' notice of the Committee's recommended allocation plan and the date, time, and location of the meeting at which the Committee will make a decision about forwarding the recommended allocation plan to the Commission for its action.

B. If an applicant disagrees with the recommended allocation plan, the applicant may verbally request that the Committee modify the recommended allocation plan. The Committee shall consider the request for modification before forwarding the recommended allocation plan to the Commission.

C. Commission staff shall provide an applicant with at least five days' notice of the date, time, and location of the meeting at which the Commission will consider the recommended allocation plan.

D. If an applicant disagrees with the recommendation of the Committee, the applicant may verbally request that the Commission modify the recommended allocation plan. The Commission shall consider the request for modification when making a final decision to award or deny a grant of Account funds to the applicant. The Commission's decision is final.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4).

R10-4-406. Required Reports

A. The Commission shall annually prepare and submit the report required under A.R.S. § 41-2405(A)(11). The Commission shall use data submitted by grant recipients as specified in the recipient's grant agreement to prepare the report.

B. A grant recipient shall submit to the Commission financial, activity, and progress reports documenting the activities supported by the Account funds. The grant recipient shall submit the reports as specified in the grant agreement. The specific reports required are determined by the nature of the proposed project.

C. The Commission shall not distribute Account funds to a grant recipient that fails to submit a required report within 60 days of its due date.

D. A grant recipient shall cooperate with and participate in all assessment, evaluation, or data collection efforts authorized by the Commission.

E. The Commission has the right to obtain, reproduce, publish, or use information provided in the required reports or assessment, evaluation, or data collection efforts. When in the best interest of the state, the Commission may authorize others to receive and use the information.

Historical Note

New Section R10-4-406 renumbered from R10-4-404 and amended by final rulemaking 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

R10-4-501. Definitions

In this Article:
1. "Account" means the Full-service Forensic Crime Laboratories Account established by A.R.S. § 41-2421(J)(5).
2. "Commission" means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.
3. "Full-service forensic crime laboratory" means a facility that:
   a. Is operated by a criminal justice agency that is a political subdivision of the state;
   b. Employs at least one full-time forensic scientist who holds a minimum of a bachelor's degree in a physical or natural science;
   c. Is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for possession of all scheduled, controlled substances;
   d. Is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board; and
   e. Provides, at a minimum, services in the areas of controlled substances, forensic biology, DNA, blood and breath alcohol, firearms, and toolmarks.

41-2405. Arizona criminal justice commission; powers and duties; staff

A. The Arizona criminal justice commission shall:

1. Monitor the progress and implementation of new and continuing criminal justice legislation.

2. Facilitate research among criminal justice agencies and maintain criminal justice system information.

3. Facilitate coordinated statewide efforts to improve criminal justice information and data sharing.

4. Prepare for the governor a biennial criminal justice system review report. The report shall contain:

(a) An analysis of all criminal justice programs created by the legislature in the preceding two years.

(b) An analysis of the effectiveness of the criminal code, with a discussion of any problems and recommendations for revisions if deemed necessary.

(c) A study of the level of activity in the several areas of the criminal justice system, with recommendations for redistribution of criminal justice revenues if deemed necessary.

(d) An overall review of the entire criminal justice system, including crime prevention, criminal apprehension, prosecution, court administration and incarceration at the state and local levels as well as funding needs for the system.

(e) Recommendations for constitutional, statutory and administrative revisions that are necessary to develop and maintain a cohesive and effective criminal justice system.

5. Provide supplemental reports on criminal justice issues of special timeliness.

6. In coordination with other governmental agencies, gather information on programs that are designed to effectuate community crime prevention and education using citizen participation and on programs for alcohol and drug abuse prevention, education and treatment and disseminate that information to the public, political subdivisions, law enforcement agencies and the legislature.

7. Make recommendations to the legislature and the governor regarding the purposes and formula for allocation of fund monies as provided in section 41-2401, subsection D and section 41-2402 through the biennial agency budget request.

8. Adopt rules for the purpose of allocating fund monies as provided in sections 41-2401, 41-2402 and 41-2407 that are consistent with the purposes set forth in those sections and that promote effective and efficient use of the monies.

9. Make reports to the governor and the legislature as they require.

10. Oversee the research, analyses, studies, reports and publication of crime and criminal justice statistics prepared by the Arizona statistical analysis center, which is an operating section of the Arizona criminal justice commission.

11. Prepare an annual report on law enforcement activities in this state that are funded by the drug and gang enforcement fund or the criminal justice enhancement fund and that relate to illicit drugs and drug related gang activity. The report shall be submitted by October 31 of each year to the governor, the president of the senate and the speaker of the house of representatives and a copy shall be submitted to the secretary of state. The report shall include:

(a) The name and a description of each law enforcement program dealing with illegal drug activity or street gang activity, or both.

(b) The objective and goals of each program.

(c) The source and amount of monies received by each program.

(d) The name of the agency or entity that administers each program.

(e) The effectiveness of each program.

12. Compile and disseminate information on best practices for cold case investigations, including effective victim communication procedures. For the purposes of this paragraph, "cold case" means a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.

13. Beginning January 1, 2019, submit an annual recidivism report to the legislature that compares the recidivism rate for a person who serves a term of mandatory incarceration in a county jail pursuant to section 28-1383 and a person who serves that term of mandatory incarceration in prison.

B. The Arizona criminal justice commission, as necessary to perform its functions, may:

1. Request any state or local criminal justice agency to submit any necessary information.

2. Form subcommittees, make studies, conduct inquiries and hold hearings.

3. Subject to chapter 4, article 4 of this title, employ consultants for special projects and such staff as deemed necessary or advisable to carry out this section.

4. Delegate its duties to carry out this section, including:

(a) The authority to enter into contracts and agreements on behalf of the commission.

(b) Subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, the authority to appoint, hire, terminate and discipline all personnel of the commission, including consultants.

5. Establish joint research and information facilities with governmental and private agencies.

6. Accept and expend public and private grants of monies, gifts and contributions and expend, distribute or allocate monies appropriated to the commission for the purpose of enhancing efforts to investigate or prosecute and adjudicate any crime and to implement this chapter.

41-2402. Drug and gang enforcement fund; resource center fund; uses

A. The drug and gang enforcement fund is established and consists of monies appropriated by the legislature and any other monies available from other sources, public or private. Monies in the fund shall be used to enhance efforts to deter, investigate, prosecute, adjudicate and punish drug offenders and members of criminal street gangs as defined in section 13-105. The Arizona criminal justice commission shall administer the fund.

B. The Arizona criminal justice commission shall distribute monies from the drug and gang enforcement fund in the following manner:

1. Up to fifty percent to fund law enforcement agencies approved by the commission to enhance both:

(a) The investigation of drug and gang offenses and related criminal activity.

(b) Drug and gang education and prevention programs.

2. Up to fifty percent to fund programs and agencies approved by the commission to enhance the state, county, city or town prosecution of drug and gang offenses and related criminal activity.

3. Up to thirty percent to fund programs and agencies approved by the commission for the purpose of enhancing the ability of the courts to process drug and gang offenses and related criminal cases, either through the appointment of judges pro tempore or the establishment of additional divisions of the courts only for the purposes of this section, enhancing defense and probation services, including treatment, and funding the drug testing program.

4. Up to thirty percent to fund programs by county sheriffs and the state department of corrections, as approved by the commission, to enhance drug offender treatment programs and the jail operations and facilities available to detain and incarcerate drug offenders and members of criminal street gangs as defined in section 13-105.

5. Up to thirty percent to fund programs and agencies, as approved by the commission, to enhance the integration of criminal justice records relating to drug and gang offenders and their related criminal activity.

C. Any state agency that receives monies allocated from the drug and gang enforcement fund shall not include the monies as part of the state agency's continuation budget base for the purpose of requesting appropriations for the following fiscal year.

D. All the monies allocated from the drug and gang enforcement fund shall be dedicated solely to the purpose of enhancing efforts to deter, investigate, prosecute, adjudicate and punish drug and gang and related criminal offenders, except those monies allocated pursuant to subsection G of this section.

E. Notwithstanding the limitations prescribed in subsection B of this section, any federal monies or matching state monies in the drug and gang enforcement fund may only be allocated by the commission pursuant to a plan approved by the federal government.

F. The auditor general shall annually perform a full and complete audit of the drug and gang enforcement fund or the commission shall annually contract with an accounting firm to perform the audit and deliver a report to the governor and the legislature. The audit shall be charged to the drug and gang enforcement fund.

G. The resource center fund is established consisting of monies received pursuant to section 12-284.03, subsection A, paragraph 1 and section 41-178 and all monies received from public or private gifts, grants or other sources, excluding federal monies and monies to be passed through to other entities, to be used solely for funding the Arizona youth survey and Arizona statistical analysis center. The Arizona criminal justice commission shall administer the fund. Monies in the fund are subject to legislative appropriation. Any monies unexpended or unencumbered on June 30 of each year shall not be subsequently expended or encumbered unless

reappropriated. Monies in the drug and gang enforcement fund shall not be used to fund the Arizona youth survey.

BOARD OF PHARMACY
Title 4, Chapter 23, Articles 5 & 12

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 5, 2023

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

FROM: Council Staff

DATE: November 15, 2023

SUBJECT: **BOARD OF PHARMACY**
Title 4, Chapter 23, Articles 5 & 12

Summary

This Five-Year Review Report (5YRR) from the Board of Pharmacy (Board) relates to six (6) rules in Title 4, Chapter 23, Articles 5 and 15 related to the Controlled Substances Prescription Monitoring Program (CSPMP) and Donated Medicine Program, respectively.

In the prior 5YRR for these rules, which was approved by the Council in December 2018, the Board indicated it would work with the legislature to determine whether A.R.S. § 32-1909 could be amended in a manner that might facilitate participation in the donated medicine program. The Board indicates this was achieved. Furthermore, the Board proposed to amend R4-23-501 and R4-23-502 by the end of 2019 to make them consistent with state statutes, if it was possible to add the rules to a higher priority rulemaking. The Board indicates these changes have not been achieved although a draft Notice of Proposed Rulemaking to amend all rules in Article 5, including the previously proposed changes to R4-23-501 and R4-23-502, has been prepared for Board review.

Proposed Action

The Board has identified four (4) rules in Article 5 which are inconsistent with statute as outlined in more detail below. The Board states a draft Notice of Proposed Rulemaking to

amend all rules in Article 5 has been prepared for the Board to review. The Board states it intends to submit the rulemaking to the Council by December 2023.

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

The Board cites both general and specific statutory authority for these rules.

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

The rules' objective is to implement CSPMP and expand the program to include nonprescription medicines. The rules outline instructions for registering into the program, specify information and data formats and submission requirements, and establish handling fees. The rules' original economic impact statement indicated that the methods of the rulemaking were neither intrusive nor costly. During the most recent five-year review, the Board found no information suggesting that participation in the CSPMP did not have minimal economic impact for licensed prescribers and pharmacists. While it takes time to submit data, that time is built into the cost of providing patient care.

Stakeholders are identified as the Board; any individual who is indigent, uninsured, underinsured, or enrolled in a public health benefits program; licensees and permittees; and those who submit data to the program.

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

The Board determined the rules in Article 5 provide benefits that outweigh the costs of the rules and impose the least burden and cost on persons regulated by the rules.

The Board has no information regarding fees charged in or the success of the program outlined within the one rule in Article 12.

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

The Board 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 Board indicates the rules are clear, concise, and understandable.

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

The Board indicates the rules are mostly consistent with other rules and statutes except for the following:

- **R4-23-501(A)** and **R4-23-503(C)(3)** are inconsistent with A.R.S. § 36-2604(C)(3) because they reference a veterinarian as a medical practitioner.
- **R4-23-501(D)** is inconsistent with statute as amended under Laws 2017, Chapter 61, because statute does not require renewal of a CSPMP registration.
- **R4-23-501(E)** is inconsistent with A.R.S. § 32-2606(A) because the rule suggests participation in the CSPMP is something in which a medical practitioner or pharmacist "chooses" to participate. Statute indicates a licensed medical practitioner or pharmacist with a DEA registration is required to participate in the program.
- **R4-23-502(A)** is inconsistent with A.R.S. 36-2608(B) regarding the date of the cited material.
- **R4-23-503(C)** is inconsistent with A.R.S. § 36-2604, as it became effective on July 1, 2023.
- **R4-23-505(B)** contains an incomplete statutory cross reference because of the recent change to A.R.S. § 36-2604.

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

The Board indicates the rules are effective in achieving their objectives.

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

The Board indicates the rules are mostly enforced as written. However, given the inconsistencies with statute outlined above, the Board states it enforces the rules in a manner consistent with statute.

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 Board indicates there are no federal laws directly applicable to the subject matter of the reviewed 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?

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(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Board indicates the CSPMP registration required under R4-23-501(B) complies with A.R.S. § 41-1037 because it is issued to all qualified individuals required to participate in the CSPMP. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Board relates to six (6) rules in Title 4, Chapter 23, Articles 5 and 15 related to the Controlled Substances Prescription Monitoring Program (CSPMP) and Donated Medicine Program, respectively. The Board indicates the rules are clear, concise, understandable, and effective. However, the Board has identified four (4) rules in Article 5 which are inconsistent with statute. The Board states a draft Notice of Proposed Rulemaking to amend all rules in Article 5 has been prepared for the Board to review. The Board states it intends to submit the rulemaking to the Council by December 2023.

Council staff recommends approval of this report.

Arizona State Board of Pharmacy

Physical Address: 1110 W. Washington Street, Suite 260, Phoenix, AZ 85007
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p) 602-771-2727 f) 602-771-2749 www.azpharmacy.gov

August 10, 2023

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

Re: Board of Pharmacy
Five-year-review Report
4 A.A.C. 23, Articles 5 (CSPMP) and 12 (Donated Medicine Program)

Dear Ms Sornsin:

The referenced 5YRR is enclosed. It is due at the end of this month.

The Board certifies it complies with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Kamlesh Gandhi, at 602-771-2740 or kgandhi@azpharmacy.gov

Sincerely,

Kamlesh Gandhi
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 23. Board of Pharmacy
Articles 5 and 12
Submitted for October 3, 2023

INTRODUCTION

The Arizona State Board of Pharmacy protects the health, safety and welfare of the citizens of Arizona by regulating the practice of pharmacy and the distribution, sale and storage of prescription medications and devices and non-prescription medications.

The rules in 4 A.A.C. 23, Article 5, implement a Controlled Substances Prescription Monitoring Program (CSPMP). Under Laws 2007, Chapter 269, the legislature enacted A.R.S. §§ 36-2601 through 36-2610, requiring the Board to make rules to implement the CSPMP.

Under Laws 2021, Chapter 137, the legislature repealed and replaced A.R.S. § 32-1909 dealing with the donated medicine program. This was done, in part, because the previous statute and the rules made under it had never been used. The revised A.R.S. § 32-1909 expanded the program to include nonprescription medicines. It also put program requirements in statute and reduced the rulemaking required to implement the program.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1904(A)(1)

1. Specific statute authorizing the rule:
   R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access: A.R.S. §§ 36-2602(A) and 36-2606
   R4-23-502. Requirements for Data Format and Transmission: A.R.S. §§ 36-2602(A) and 36-2608
   R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data: A.R.S. §§ 36-2602(A) and 36-2604

R4-23-504. Computerized Central Database Tracking System Task Force: A.R.S. §§ 36-2602(A) and 36-2603
R4-23-505. Reports: A.R.S. §§ 36-2602(A) and 36-2604
R4-23-1208. Handling Fee: A.R.S. § 32-1909(N)

2. Objective of the rules:

R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access: The objective of the rule is to specify who must register with the Board and obtain access to the CSPMP. The rule provides instructions for registering and renewing registration with the Board.

R4-23-502. Requirements for Data Format and Transmission: The objective of the rule is to specify the information required to be submitted regarding each controlled-substance prescription dispensed, the format in which the information is to be submitted, and the procedure for obtaining a waiver from complying with the formatting requirements.

R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data: The objective of the rule is to specify that data in the CSPMP is confidential and the circumstances under which the Board is authorized to release the data.

R4-23-504. Computerized Central Database Tracking System Task Force: The objective of the rule is to specify the responsibilities of a computerized central database tracking system task force.

R4-23-505. Reports: The objective of the rule is to specify the procedures the Board uses for releasing data from the CSPMP.

R4-23-1208. Handling Fee: The objective of the rule is to establish guidelines an authorized recipient may use to establish a handling fee charged to an eligible patient or other authorized recipient.

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

4. Are the rules consistent with other rules and statutes? Mostly yes

The Board determined the following inconsistencies with statute exist:

- R4-23-501(A) and R4-23-503(C)(3) are inconsistent with A.R.S. § 36-2604(C)(3) because they reference a veterinarian as a medical practitioner.
- R4-23-501(D) is inconsistent with statute as amended under Laws 2017, Chapter 61, because statute does not require renewal of a CSPMP registration.
- R4-23-501(E) is inconsistent with A.R.S. § 32-2606(A) because the rule suggests participation in the CSPMP is something in which a medical practitioner or pharmacist "chooses" to participate. Statute indicates a licensed medical practitioner or pharmacist with a DEA registration is required to participate in the program.
- R4-23-502(A) is inconsistent with A.R.S. 36-2608(B) regarding the date of the cited material.
- R4-23-503(C) is inconsistent with A.R.S. § 36-2604, as it became effective on July 1, 2023.
- R4-23-505(B) contains an incomplete statutory cross reference because of the recent change to A.R.S. § 36-2604.

Except for these subsections, the rules are consistent with state statutes and other rules made by the Board. Although there are numerous federal statutes regulating prescription medications, especially controlled substances, and the federal government makes grants available to establish CSPM programs, there are no federal laws directly applicable to the reviewed rules.

5. Are the rules enforced as written? Mostly yes

The Board enforces the rules in a manner consistent with statute.

6. Are the rules clear, concise, and understandable? Yes

Although clear, concise, and understandable, R4-23-502(A) and R4-23-503(B) and (C) repeat statute. As indicated in item 4, this may cause the rules to become inconsistent when the statute is amended.

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

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

The Board has received no information suggesting its conclusion that participation in the CSPMP has minimal economic impact for licensed prescribers and pharmacists is incorrect. In the 5YRR of Article 5 submitted in 2018, the Board indicated that submitting data to the CSPMP is a routine part of patient care. Although it requires time to submit the data, that time is built into the cost of providing patient care rather than a separate cost. There are currently 42,685 prescribers with a DEA registration and 8,301 pharmacists working for a pharmacy with a DEA registration who are required to participate in the CSPMP. During the last year, 10,093,144 prescriptions for controlled substances were reported to the CSPMP.

2022 Rulemaking (28 A.A.R. 611)

The only reviewed rule made in this rulemaking was R4-23-1208. The economic, small business, and consumer impact statement prepared with this rulemaking was available for review. Under Laws 2021, Chapter 137, the legislature repealed and replaced A.R.S. § 32-1909. The revised A.R.S. § 32-1909 expanded the donated medicine program to include nonprescription medicines and put program requirements in statute so the need for rulemaking was reduced. There is only one rule in Article 12. It establishes guidelines for a fee that an authorized recipient may charge to an eligible patient or other authorized recipient. The Board has no responsibility to implement or monitor the donated medicine program and has no information regarding whether it is being implemented.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR:

Partially yes

In the 2018 5YRR, the Board indicated it would work with the legislature to determine whether A.R.S. § 32-1909 could be amended in a manner that might facilitate participation in the donated medicine program. This was achieved (See Laws 2021, Chapter 137).

The Board also indicated it would amend R4-23-501 and R4-23-502 if it was possible to add the rules to a more high priority rulemaking. This has not been achieved although a draft NPR that amends all rules in Article 5 has been prepared for Board review.

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

    The Board determined the rules in Article 5 provide benefits that outweigh the costs of the rules and impose the least burden and cost on persons regulated by the rules. Under the rules, a prescriber or pharmacy with a DEA registration is required to register with the Board, which requires completing a form, and to access the CSPMP and submit specified information each time a controlled substance is dispensed. The information is required to be submitted weekly. There are also standards for the electronic submission of the data. The CSPMP is designed to address the epidemic of addiction to opioid drugs.

    The one rule in Article 12 allows an authorized recipient to charge a reasonable fee to an eligible patient or other authorized recipient. Allowing a reasonable fee is designed to encourage participation in the donated medicine program. The Board has no information regarding fees charged in or the success of the program.

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

    No federal law is directly applicable to the subject matter of the reviewed rules.

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

All of the reviewed rules were made after July 29, 2010. The CSPMP registration required under R4-23-501(B) complies with A.R.S. § 41-1037 because it is issued to all qualified individuals required to participate in the CSPMP.

14. Proposed course of action:

The Board intends to complete the rulemaking referenced in item 10 by the end of 2023.

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

Under Laws 2021, Chapter 226, Section 3, the legislature amended A.R.S. § 32-1904 to authorize the Board to issue non-disciplinary civil penalties to licensees and permittees for acts or omissions that are administrative and do not pose an imminent threat to public health or safety. This will enable the Board to function more efficiently and is respectful of the harm disciplinary actions can cause to licensees and permittees.

Under Laws 2021, Chapter 137, the legislature repealed and replaced A.R.S. § 32-1909. This was done, in part, because the previous statute and the rules made under it had never been used. The revised A.R.S. § 32-1909 expands the program to include nonprescription medicines. It also puts program requirements in statute and reduces the rulemaking required to implement the program.

Under Laws 2021, Chapter 61, the legislature repealed the schedules of controlled substances at A.R.S. §§ 36-2512 through 36-2516 and replaced them with a directive that the Board adopt the schedules at 21 CFR, Chapter II, Part 1308, by rule.

Exemptions from Executive Order 2021-02 were provided for this rulemaking in e-mails dated July 29, 2021 and September 13, 2021, by Gabee Lepore, of the Governor's Office. Approval to submit the rulemaking to GRRC was provided by Trista Guzman Glover of the Governor's Office in an e-mail dated November 22, 2021.

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

Until the rulemaking is completed, the Board will not be in compliance with three statutory changes made by the legislature in 2021.

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

The legislature expects state agencies to comply with statutory changes it makes. It is not good government for a state agency not to comply with legislative directives.

[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)).

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

When the rulemaking is completed, the Board will be in compliance with the statutory changes made by the legislature in 2021.

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

A licensee or permittee who engages in one of the specified acts or omissions may be subject to a non-disciplinary civil penalty. However, avoiding this economic impact is within the control of the licensee or permittee.

Approximately 40 percent of adults in the U.S. fail to fill a needed prescription order because of the cost of the medication. Yet, more than $5 billion in unexpired medications are wasted annually in the U.S. These two issues may be addressed if the donated medicine program is successfully implemented in Arizona. There may also be important environmental benefits.

Repealing and replacing A.R.S. §§ 36-2512 through 36-2516 ensures the schedules of controlled substances are kept current.

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: 1616 W Adams Street, Suite 120
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:

A licensee or permittee who engages in one of the specified acts or omissions will be directly affected by, bear the costs of, and directly benefit from the rule regarding non-disciplinary civil penalties.

An authorized recipient, donor, and eligible patient will be directly affected by, bear the costs of, and directly benefit from the rule regarding the donated medicine program.

The Board will be directly affected by, bear the costs of, and directly benefit from the rule regarding adopting federal schedules of controlled substances.

5. Cost-benefit analysis:

The provision regarding non-disciplinary civil penalties benefits licensees and permittees who engage in one of the specified acts or omissions. Previously, they would have been subject to a disciplinary action, which is public and can cause harm to the professional reputation of the licensee or permittee. It is within the control of the licensee or permittee to avoid a non-disciplinary civil penalty by not engaging in the specified acts or omissions. Engaging in the specified acts or omissions will lead to a non-disciplinary civil penalty ranging between $25 and $1,000. Several of the specified acts or omissions will result in disciplinary action if the licensee or permittee engages in the specified acts or omissions more than twice.

Approximately 40 percent of adults in the U.S. fail to fill a needed prescription order because of the cost of the medication. Yet, more than $5 billion in unexpired medications are wasted annually in the U.S. These two issues may be addressed if the donated medicine program is successfully implemented in Arizona. The program may also protect the environment by reducing the amount of medications that enter the water system or pollute the air. Licensees and permittees are authorized recipients of donated medications. An individual who is indigent, uninsured, underinsured, or enrolled in a public health benefits program is an eligible patient who may benefit from the program. Implementation of the program will be managed by private industry.

Repealing the schedules of controlled substances at A.R.S. §§ 36-2512 through 36-2516 and replacing them with a directive that the Board adopt federal law regarding schedules of controlled substances is designed to ensure the schedules are kept current. This change was made, in part, to allow new medications containing a controlled substance to reach patients who need them faster.

The Board incurred the cost of doing this rulemaking and will incur the cost of implementing it. The Board has the benefit of being in compliance with statutory changes made by the legislature in 2021.

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 described above. The Board will not require an additional full-time employee to implement or enforce the rules.

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

No political subdivision is directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:

Licensees and permittees are businesses directly affected by the non-disciplinary civil penalty and donated medicine program provisions. Their costs and benefits are described above.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment. However, not having a disciplinary action against a license or permit will provide the holder with greater opportunity for employment.

7. Impact on small businesses[2]:

a. Identification of the small business subject to the rulemaking:

Licensees and permittees are small businesses directly affected by the non-disciplinary civil penalty and donated medicine program provisions.

b. Administrative and other costs required for compliance with the rulemaking:

A licensee or permittee that engages in one of the specified acts or omissions will incur the cost of a non-disciplinary civil penalty. It is within the control of the licensee or permittee to avoid this cost.

A licensee or permittee that decides to participate in the donated medicine program may charge a fee to an eligible patient and to a donor or other authorized recipient. The licensee or permittee will incur the cost of establishing and collecting the fee.

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

It is within the control of a licensee or permittee to avoid the impact of the provision regarding non-disciplinary civil penalties. No method is needed to reduce the economic impact.

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

A licensee or permittee that decides to participate in the donated medicine program does so voluntarily because the licensee or permittee determines the benefits of participation outweigh the costs. The cost associated with establishing and collecting a fee to offset the cost of participation is minimal. No method is needed to reduce the economic impact.

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.

9. Probable effects on state revenues:

   As required under A.R.S. § 35-146, all non-disciplinary civil penalties collected under A.R.S. § 32-1904 will be deposited in the state's general fund. The Board is not certain how much will be collected because it is possible for licensees and permittees to avoid all non-disciplinary civil penalties.

10. Less intrusive or less costly alternative methods considered:

    The methods in this rulemaking are neither intrusive nor costly. No less intrusive or costly alternative was considered.

ARTICLE 5. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM

New Article 5, consisting of Sections R4-23-501 through R4-23-505, made effective August 2, 2014 (Supp. 14-2).

Article 5, consisting of Sections R4-23-501 through R4-23-505, expired effective August 30, 2013 (Supp. 14-1).

Article 5, consisting of Sections R4-23-501 and R4-23-502, recodified to Article 8 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

New Article 5, consisting of Sections R4-23-501 through R4-23-505, made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3).

R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access

A. Under A.R.S. § 36-2606, a medical practitioner who is issued a license under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 21, 25, or 29 and possesses a current DEA registration under the Federal Controlled Substances Act shall have a current CSPMP registration issued by the Board.

B. Application.

1. An applicant for CSPMP registration shall:
   a. Submit a completed application for CSPMP registration electronically or manually on a form furnished by the Board, and
   b. Submit with the application form the documents specified in the application form.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.

C. Registration. Within seven business days of receipt of a completed application specified in subsection (B), the Board office shall determine whether an application is complete. If the application is complete, the Board office shall issue a registration number and provide a current registration certificate to the applicant by mail or electronic transmission. If the application is incomplete, the Board office shall issue a written notice of incompleteness. An applicant with an incomplete application shall comply with the requirements of R4-23-202(F).

D. Registration renewal. As specified in A.R.S. § 36-2606(C), the Board shall automatically suspend the registration of any registrant that fails to renew the registration on or before May 1 of the year in which the renewal is due. The Board shall vacate a suspension if the registrant submits a renewal application. A suspended registrant with CSPMP database access credentials is prohibited from accessing information in the prescription monitoring program database.

E. CSPMP database access.

1. A medical practitioner that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the medical practitioner is in compliance with the registration requirements of this Section.
2. A pharmacist that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the pharmacist has a current active pharmacist license.

3. A medical practitioner or pharmacist who is not licensed in Arizona may request access from the CSPMP Director by:
   a. Completing an access user registration form electronically;
   b. Printing the access user registration form;
   c. Having the access user registration form signed and notarized; and
   d. Mailing the notarized access user form along with a current copy of the applicant's nonresident state license and driver's license. Upon receipt of the notarized access user registration form and other required documents, the CSPMP Director or designee shall issue access credentials provided the nonresident licensed medical practitioner or pharmacist credentials show an current active license in another state.

Historical Note

Former Rule 5.2110; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-801 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 94, effective March 10, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-502. Requirements for Data Format and Transmission

A. Each dispenser shall submit to the Board or its designee by electronic means information regarding each prescription dispensed for a controlled substance listed in Schedules II, III, and IV of A.R.S. Title 36, Chapter 27, the Arizona Uniform Controlled Substances Act. The information reported shall conform to the August 31, 2005 Version 003, Release 000 ASAP Rules-based Standard Implementation Guide for Prescription Monitoring Programs published by the American Society for Automation in Pharmacy as specified in A.R.S. § 36-2608(B). The information submitted for each prescription shall include:
   1. The name, address, telephone number, prescription number, and DEA registration number of the dispenser;
   2. The name, address, gender, date of birth, and telephone number of the person or, if for an animal, the owner of the animal for whom the prescription is written;
   3. The name, address, telephone number, and DEA registration number of the prescribing medical practitioner;
   4. The quantity and National Drug Code (NDC) number of the Schedule II, III, or IV controlled substance dispensed;
   5. The date the prescription was dispensed;
   6. The number of refills, if any, authorized by the medical practitioner;
   7. The date the prescription was issued;
   8. The method of payment identified as cash or third party; and
   9. Whether the prescription is new or a refill.

B. A dispenser shall submit the required information electronically unless the Board or its designee approves a waiver as specified in subsection (D).

C. A dispenser's electronic data transfer equipment including hardware, software, and internet connections shall meet the privacy and security standards of the Health Insurance Portability and

Accountability Act (HIPAA) of 1996, as amended, and A.R.S. § 12-2292, in addition to common internet industry standards for privacy and security. A dispenser shall ensure that each electronic transmission meets the following data protection requirements:

1. Data shall be at least 128-bit encryption in transmission and at rest; and
2. Data shall be transmitted via secure e-mail, telephone modem, diskette, CD-ROM, tape, secure File Transfer Protocol (FTP), Virtual Private Network (VPN), or other Board-approved media.

D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the Board established format may request a waiver from electronic reporting by submitting a written request to the Board or its designee. The Board or its designee shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form supplied by the Board or its designee.

E. Unless otherwise approved by the Board, a dispenser shall report by the close of business on each Friday the required information for the previous week, Sunday through Saturday. If a Friday falls on a state holiday, the dispenser shall report the information on the following business day. The Board or its designee may approve a less frequent reporting period if a dispenser makes a showing that a less frequent reporting period will not reduce the effectiveness of the system or jeopardize the public health.

Historical Note

Former Rule 5.2510. Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-802 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data

A. Except as provided in A.R.S. § 36-2604(B) and (C) and this Section, prescription information submitted to the Board or its designee is confidential and is not subject to public inspection.

B. The Board or its designee shall review the prescription information collected under A.R.S. Title 36, Chapter 28 and R4-23-502. If the Board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the Board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.

C. The Board or its designee is authorized to release data collected by the program to the following:

1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient;
2. An individual who requests the individual's own controlled substance prescription information under A.R.S. § 12-2293;
3. A professional licensing board established under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25, or 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint;

4. A local, state, or federal law enforcement or criminal justice agency. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint;
5. The Arizona Health Care Cost Containment System Administration regarding individuals who are receiving services under A.R.S. Title 36, Chapter 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the Administration states in writing that the information is necessary for an open investigation or complaint;
6. A person serving a lawful order of a court of competent jurisdiction;
7. A person who is authorized to prescribe or dispense a controlled substance and who performs an evaluation on an individual under A.R.S. § 23-1026; and
8. The Board staff for purposes of administration and enforcement of A.R.S. Title 36, Chapter 28 and this Article.

D. The Board or its designee may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

Historical Note

Former Rules 5.3500, 5.3520, 5.3540, 5.3550, 5.3560, 5.3570, 5.3580, 5.3590, 5.4110, and 5.6110; Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-504. Computerized Central Database Tracking System Task Force

A. The Board shall appoint a task force to help it administer the computerized central database tracking system as specified in A.R.S. § 36-2603.

B. The Task Force shall meet at least once each year and at the call of the chairperson to establish the procedures and conditions relating to the release of prescription information specified in A.R.S. § 36-2604 and R4-23-503.

C. The Task Force shall determine:
1. The information to be screened;
2. The frequency and thresholds for screening; and
3. The parameters for using the information to notify medical practitioners, patients, and pharmacies to educate and provide for patient management and treatment options.

D. The Board shall review and approve the procedures and conditions established by the Task Force as needed but at least once every calendar year.

Historical Note

Former Rule 5.7010; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-505. Reports

A. Before releasing prescription monitoring program data, the Board or its designee shall receive a written or electronic request for controlled substance prescription information.

B. A person authorized to access CSPMP data under R4-23-503(C)(1) through (7) shall submit a written or electronic request that:

1. Specifies the information requested for the report;
2. For a medical practitioner, provides a statement that the report's purpose is to provide medical or pharmaceutical care to a patient or to evaluate a patient;
3. For an individual obtaining the individual's own controlled substance prescription information, provides a form of non-expired government-issued photo identification;
4. For a professional licensing board, states that the information is necessary for an open investigation or complaint;
5. For a local, state, or federal law enforcement or criminal justice agency, states that the information is necessary for an open investigation or complaint;
6. For the AHCCCS Administration, states that the information is necessary for an open investigation or complaint; and
7. For a person serving a lawful order of a court of competent jurisdiction, provides a copy of the court order.

C. The Board or its designee may provide reports through U.S. mail, other common carrier, facsimile, or secured electronic media or may allow reports to be picked up in-person at the Board office.

Historical Note

Former Rules 5.7100, 5.8100, 5.8500, 5.9100, and 5.9500; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

ARTICLE 12. DONATED MEDICINE PROGRAM

R4-23-1208. Handling Fee

A. The definitions at A.R.S. § 32-1909(U) apply to this Section.

B. As specified under A.R.S. § 32-1909(N), an authorized recipient shall not sell a medicine received from a donor.

C. An authorized recipient may charge a fee to an eligible patient to whom a donated medicine is dispensed. The authorized recipient shall ensure any fee charged to an eligible patient:

1. Does not exceed the reasonable cost of receiving, handling, and dispensing the donated medicine; and
2. Is consistent with the purpose of the donated medicine program. A fee consistent with the purpose of the donated medicine program includes an adjustment for the quantity and retail cost of the medicine dispensed.

D. An authorized recipient may charge a fee to a donor or other authorized recipient for usual and customary expenses incurred in receiving and handling donated medicine.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 28 A.A.R. 611 (March 18, 2022), effective May 2, 2022 (Supp. 22-1).

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.

32-1909. Donated medicine; donors; authorized recipients; requirements; immunity; definitions

A. A donor may donate medicine to an authorized recipient, and an authorized recipient may receive donated medicine from donors. Before a donor may make its first donation to an authorized recipient, the authorized recipient must verify and record all the following:

1. That the donor is legally authorized to possess the medicine.

2. The donor's name, address and telephone number and permit or license number, if applicable.

3. That the donor will remove or redact any patient names and prescription numbers on donated medicine or will otherwise maintain patient confidentiality by executing a confidentiality agreement with the authorized recipient.

B. Notwithstanding any other law, an authorized recipient may transfer donated medicine to another authorized recipient or to an entity participating in a drug donation program operated by another state. Medicine transferred pursuant to this section may be transferred only once.

C. An authorized recipient may accept into inventory only donated medicine that meets all of the following:

1. Is in unopened, tamper-evident packaging or that has been repackaged under this section.

2. Is not adulterated or misbranded.

3. Has been maintained in accordance and in compliance with the United States food and drug administration risk evaluation and mitigation strategies pursuant to 21 United States Code section 355-1, if applicable.

4. Is accompanied by an attestation from the donor stating that the medicine being donated has been kept in a temperature-controlled environment and has not been adulterated.

D. An authorized recipient may accept into inventory a donated biologic only if the donated biologic meets the requirements of subsection C of this section and is donated by a health care professional or an entity legally authorized to posses the biologic.

E. Donated medicine that does not meet the requirements of subsection C of this section must be disposed of by returning it to the donor, destroying it in an incinerator, medical waste hauler or other lawful method or transferring it to a returns processor. A record of disposed medicine shall contain a description of the disposal method, the date of disposal and the name, strength and quantity of each medicine disposed of. No other record of disposal is required.

F. A drug manufacturer, repackager, dispenser or wholesaler, other than a returns processor, that participates in this program shall comply with the requirements of 21 United States Code sections 360eee-1 through 360eee-4 relating to drug supply chain security.

G. All donated medicine received by an authorized recipient but not yet accepted into inventory shall be kept in a separate designated area. Before or when accepting a donation or transfer into inventory, the authorized recipient shall maintain a written or electronic inventory of the donation consisting of the name, strength and quantity of each accepted medicine and the name, address and telephone number of the donor. This record is not required if the donor and authorized recipient are under common ownership or common control. No other record of donation is required.

H. An authorized recipient must store and maintain donated medicine physically or electronically separated from other inventory and in a secure and temperature-controlled environment that meets the drug manufacturers' recommendations and United States pharmacopeia standards.

I. Repackaged medicine shall be labeled with the drug's name, strength and expiration date and shall be kept in a separate designated area until inspected and initialed by a health care professional. If multiple packaged donated medicines with varied expiration dates are repackaged together, the earliest expiration date shall be used.

J. An authorized recipient may administer or dispense only donated medicine that meets all of the following:

1. Meets the requirements of subsection C of this section based on an inspection by a health care professional.

2. If dispensed to an eligible patient, is repackaged into a new container or has all previous patient information on the donated container redacted or removed.

3. Is properly labeled in accordance with board rules.

4. Has an expiration or beyond-use date brought forward from the donated medicine that will not expire before the medicine is completely used by the eligible patient based on the prescribing practitioner's directions for use or, for over-the-counter medicine, on the package's label.

K. An authorized recipient may dispense or administer donated medicine to an eligible patient only if otherwise allowed by law. Donated medicine may be dispensed or administered only to eligible patients pursuant to a valid prescription order and must have patient-specific written or electronic records maintained in accordance with board rules.

L. Donated medicine may not be dispensed or administered to an eligible patient if the prescriber writes or clearly displays on the face of the prescription form "DAW", "dispense as written" or any other language that indicates a substitution is not allowed.

M. The donation, transfer, receipt or facilitation of donated medicine pursuant to this section is not considered wholesale distribution and does not require licensing as a wholesale distributor.

N. Medicine donated under this section may not be resold and is considered nonsaleable. Charging a handling, dispensing or administrative fee under this section is not reselling a donated medicine. The board shall prescribe in rule the limits on the fees that an authorized recipient may charge under this section considering the medicine's retail cost for a monthly supply.

O. When performing any action under this section or otherwise processing donated medicine for tax, manufacturer or other credit, an authorized recipient is considered to be acting as a returns processor and shall comply with all recordkeeping requirements for nonsaleable returns under federal law.

P. An authorized recipient shall retain all records required by this section in a physical or electronic format for a period of at least seven years. A donor and authorized recipient may contract with each other or a third party to create or maintain records on each other's behalf. An identifier, such as a serial number or barcode, may be used in place of any information required to be in a record or on a label pursuant to this section if the identifier allows for such information to be readily retrievable. On request by the board, the identifier used for requested records shall be replaced with the original information. An identifier may not be used on patient labels when dispensing or administering a donated medicine.

Q. A donation or other transfer of possession or control is not a change of ownership unless it is specified as such by the authorized recipient. If a record of the donation's transaction information or history is required, the history must begin with the donor of the medicine and include all prior donations and, if the medicine was previously dispensed, must include only drug information required to be on the patient label in accordance with board rules.

R. A donor or authorized recipient shall make all records available for audit by the board within five business days after the request.

S. The following are not subject to civil liability, criminal liability or professional disciplinary action if acting in good faith under this section:

1. A person involved in the supply chain of donated medicine, including a donor, authorized recipient, manufacturer, repackager, wholesaler or pharmacy.

2. A person, including any employee, officer, volunteer, owner, partner, member, director, contractor or other person or entity associated with the person, that in compliance with this section prescribes, donates,

receives, dispenses, administers, transfers, replenishes or repackages medicine, or facilitates any of the above pursuant to this section.

T. This section does not prohibit otherwise legal activities related to nonprescription drugs.

U. For the purposes of this section:

1. "Authorized recipient" means any entity that has a license or permit in good standing in this state and that is legally authorized to possess medicine, including a wholesaler, distributor, reverse distributor, repackager, hospital, pharmacy or health care institution.

2. "Donor":

(a) Means any person, any individual member of the public or any entity legally authorized to possess medicine, including a manufacturer, wholesaler, distributor, third-party logistic provider, pharmacy, dispenser, clinic, surgical center, health center, detention and rehabilitation center, laboratory, medical school, pharmacy school, health care professional or health care facility.

(b) Includes government agencies and entities that are federally authorized to possess medicine, including drug manufacturers, repackagers, relabelers, outsourcing facilities, prisons and importers authorized by the United States food and drug administration.

3. "Eligible patient" means an individual who is indigent, uninsured, underinsured or enrolled in a public health benefits program.

4. "Health care professional" means a health care provider who is licensed or certified pursuant to this title and authorized to dispense or administer prescription drugs.

5. "Medicine" means both prescription and nonprescription drugs, including drugs approved by the United States food and drug administration and labeled for investigational use.

6. "Returns processor" has the same meaning prescribed in 21 United States Code section 360eee and includes a reverse distributor.

7. "Unopened, tamper-evident packaging" has the same meaning as United States pharmacopeia packaging and storage requirements, including unopened unit-dose, multiple-dose and immediate, secondary and tertiary packaging.

36-2601. Definitions

In this article, unless the context otherwise requires:

1. "Board" means the Arizona state board of pharmacy or its designee.

2. "Dispenser" means a medical practitioner or pharmacy that is authorized to dispense controlled substances.

3. "Licensed health care provider" means a person who is licensed pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 19.1, 25, 29 or 33.

4. "Medical practitioner" means any person who is licensed and authorized by law to use and prescribe drugs and devices to treat sick and injured human beings or to diagnose or prevent sickness in human beings in this state or any state, territory or district of the United States.

5. "Patient utilization report" means all of the following information about a patient that is compiled by the program and disclosed pursuant to section 36-2606:

(a) Controlled substances prescription monitoring program data.

(b) Clinical alerts and other required alerts or indicators.

6. "Person" means an individual, partnership, corporation or association and the person's duly authorized agents.

7. "Program" means the controlled substances prescription monitoring program.

36-2602. Controlled substances prescription monitoring program; contracts; retention and maintenance of records

A. The board shall adopt rules to establish a controlled substances prescription monitoring program. The program shall:

1. Be operated, monitored and maintained by the board.

2. Be staffed by the board.

3. Include a computerized central database tracking system to track the prescribing, dispensing and consumption of schedule II, III, IV and V controlled substances that are dispensed by a medical practitioner or by a pharmacy that holds a valid license or permit issued pursuant to title 32. The database shall include data from the department of health services that identifies residents of this state who possess a registry identification card issued pursuant to chapter 28.1 of this title. The tracking system shall not interfere with the legal use of a controlled substance for managing severe or intractable pain.

4. Assist law enforcement to identify illegal activity related to prescribing, dispensing and consuming schedule II, III, IV and V controlled substances.

5. Provide information to patients, medical practitioners and pharmacists to help avoid the inappropriate use of schedule II, III, IV and V controlled substances.

6. Be designed to minimize inconvenience to patients, prescribing medical practitioners and pharmacies while effectuating the collection and storage of information.

B. The board may enter into private or public contracts, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, to ensure the effective operation of the program. Each contractor must comply with the confidentiality requirements prescribed in this article and is subject to the criminal penalties prescribed in section 36-2610.

C. The board shall maintain the following records for the following periods of time:

1. A record of dispensing a controlled substance for seven years after the date the controlled substance was dispensed.

2. Affidavits for the purpose of an open investigation by law enforcement for two years.

3. Court orders requesting medical record information in the program for two years.

4. A patient's request of the patient's own prescription history for two years.

5. A prescriber report for two years.

36-2603. Computerized central database tracking system task force; consultation on electronic prescribing; membership

A. The board shall appoint a task force to help it administer the computerized central database tracking system, to identify educational, outreach and support services to advance medical practitioners' adoption of electronic prescribing of schedule II controlled substances and pharmacy implementation of section 36-2525 and to consult with regarding recommendations for exceptions to the electronic prescribing requirements prescribed in section 36-2525. The chairperson of the board shall chair the task force. The task force shall include the following members:

1. Pharmacists, medical practitioners and other licensed health care providers.

2. Representatives of professional societies and associations for pharmacists, medical practitioners and other licensed health care providers.

3. Representatives of professional licensing boards.

4. Representatives of the Arizona health care cost containment system administration.

5. Representatives of state and federal agencies that have an interest in controlling controlled substances.

6. Criminal prosecutors.

7. Representatives of a health information organization in this state.

B. The task force shall meet to establish the procedures and conditions relating to the release of prescription information pursuant to section 36-2604. The task force shall meet at least once each year and at the call of the chairperson.

C. Task force members serve at the pleasure of the board and are not eligible to receive compensation or reimbursement of expenses.

36-2604. Use and release of confidential information; definitions

(L22, Ch. 362, sec. 12. Eff. 7/1/23)

A. Except as otherwise provided in this section, prescription information submitted to the board pursuant to this article is confidential and is not subject to public inspection. The board shall establish procedures to ensure the privacy and confidentiality of patients and that patient information that is collected, recorded and transmitted pursuant to this article is not disclosed except as prescribed in this section.

B. The board or its designee shall review the prescription information collected pursuant to this article. If the board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the board or its designee shall notify the appropriate professional licensing board or law enforcement or

criminal justice agency and provide the prescription information required for an investigation. The board may delegate the duties prescribed in this subsection to the executive director pursuant to section 32-1904.

C. The board may release data collected by the program to the following:

1. A person who is authorized to prescribe or dispense controlled substances, or a delegate who is authorized by the prescriber or dispenser, to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient or to assist with or verify compliance with the requirements of this chapter, the rules adopted pursuant to this chapter and the rules adopted by the department of health services to reduce opioid overdose and death.

2. An individual who requests the individual's own prescription monitoring information pursuant to section 12-2293.

3. A medical practitioner regulatory board established pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 25 or 29.

4. A local, state or federal law enforcement or criminal justice agency. Except as required pursuant to subsection B of this section, the board shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint.

5. The Arizona health care cost containment system administration and contractors regarding persons who are receiving services pursuant to chapters 29 and 34 of this title or title XVIII of the Social Security Act. Except as required pursuant to subsection B of this section, the board shall provide this information only if the administration or a contractor states in writing that the information is necessary for an open investigation or complaint or for performing a drug utilization review for controlled substances that supports the prevention of opioid overuse or abuse and the safety and quality of care provided to the member.

6. A health care insurer. Except as required pursuant to subsection B of this section, the board shall provide this information only if the health care insurer states in writing that the information is necessary for an open investigation or complaint or for performing a drug utilization review for controlled substances that supports the prevention of opioid overuse or abuse and the safety and quality of care provided to the insured.

7. A person who is serving a lawful order of a court of competent jurisdiction.

8. A person who is authorized to prescribe or dispense controlled substances and who performs an evaluation on an individual pursuant to section 23-1026.

9. A county medical examiner or alternate medical examiner who is directing an investigation into the circumstances surrounding a death as described in section 11-593 or a delegate who is authorized by the county medical examiner or alternate medical examiner.

10. The department of health services regarding persons who are receiving or prescribing controlled substances in order to implement a public health response to address opioid overuse or abuse, including a review pursuant to section 36-198. Except as required pursuant to subsection B of this section, the board shall provide this information only if the department states in writing that the information is necessary to implement a public health response to help combat opioid overuse or abuse.

D. Data provided by the board pursuant to this section may not be used for any of the following:

1. Credentialing health care professionals.

2. Determining payment.

3. Preemployment screening.

4. Any purpose other than as specified in this section.

E. For a fee determined by the board, the board may provide data to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

F. Any employee of the administration, a contractor or a health care insurer who is assigned delegate access to the program shall operate under the authority and responsibility of the administration's, contractor's or health care insurer's chief medical officer or other employee who is a licensed health care professional and who is authorized to prescribe or dispense controlled substances. A delegate of the administration, a contractor or a health care insurer shall hold a valid license or certification issued pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 19.1, 25, 29 or 33 as a condition of being assigned and provided delegate access to the program by the board. Each employee of the administration, a contractor or a health care insurer who is a licensed health care professional and who is authorized to prescribe or dispense controlled substances may authorize not more than ten delegates.

G. A person who is authorized to prescribe or dispense controlled substances or the chief medical officer or other licensed health care professional of the administration, a contractor or a health care insurer who is authorized to prescribe or dispense controlled substances shall deactivate a delegate within five business days after an employment status change, the request of the delegate or the inappropriate use of the controlled substances prescription monitoring program's central database tracking system.

H. For the purposes of this section:

1. "Administration" and "contractor" have the same meanings prescribed in section 36-2901.

2. "Delegate" means any of the following:

(a) A licensed health care professional who is employed in the office of or in a hospital with the prescriber or dispenser.

(b) An unlicensed medical records technician, medical assistant or office manager who is employed in the office of or in a hospital with the prescriber or dispenser and who has received training regarding both the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 164, subpart E) and security standards (45 Code of Federal Regulations part 164, subpart C).

(c) A forensic pathologist, medical death investigator or other qualified person who is assigned duties in connection with a death investigation pursuant to section 11-594.

(d) A registered pharmacy technician trainee, licensed pharmacy technician or licensed pharmacy intern who works in a facility with the dispenser.

(e) Any employee of the administration, a contractor or a health care insurer who is authorized by the administration's, contractor's or health care insurer's chief medical officer or other licensed health care professional who is authorized to prescribe or dispense controlled substances.

3. "Health care insurer" has the same meaning prescribed in section 20-3151.

36-2605. Controlled substances prescription monitoring program fund

A. The controlled substances prescription monitoring program fund is established consisting of legislative appropriations, transfers pursuant to section 32-1907 and any grants, gifts or donations received by the board. The board shall administer the fund. Monies in the fund are continuously appropriated and shall be used to operate the controlled substances prescription monitoring program established pursuant to section 36-2602.

B. The board may apply for grants and may accept gifts, grants or donations for the establishment and maintenance of the computerized prescription monitoring program.

36-2606. Registration; access; requirements; mandatory use; annual user satisfaction survey; report; definitions

A. A medical practitioner regulatory board shall notify each medical practitioner who receives an initial or renewal license and who intends to apply for registration or has an active registration under the controlled substances act (21 United States Code sections 801 through 904) of the medical practitioner's responsibility to register with the Arizona state board of pharmacy and be granted access to the controlled substances prescription monitoring program's central database tracking system. The Arizona state board of pharmacy shall provide access to the central database tracking system to each medical practitioner who has a valid license pursuant to title 32 and who possesses an Arizona registration under the controlled substances act (21 United States Code sections 801 through 904). The Arizona state board of pharmacy shall notify each pharmacist of the pharmacist's responsibility to register with the Arizona state board of pharmacy and be granted access to the controlled substances prescription monitoring program's central database tracking system. The Arizona state board of pharmacy shall provide access to the central database tracking system to each pharmacist who has a valid license pursuant to title 32, chapter 18 and who is employed by either:

1. A facility that has a valid United States drug enforcement administration registration number.

2. The administration, a contractor or a health care insurer and who has a national provider identifier number.

B. The registration is:

1. Valid in conjunction with a valid United States drug enforcement administration registration number and a valid license issued by a medical practitioner regulatory board established pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 25 or 29.

2. Valid in conjunction with a valid license issued by the Arizona state board of pharmacy for a pharmacist who is employed by either:

(a) A facility that has a valid United States drug enforcement administration registration number.

(b) The administration, a contractor or a health care insurer and who has a national provider identifier number.

3. Not transferable or assignable.

C. An applicant for registration pursuant to this section must apply as prescribed by the board.

D. Pursuant to a fee prescribed by the board by rule, the board may issue a replacement registration to a registrant who requests a replacement because the original was damaged or destroyed, because of a change of name or for any other good cause as prescribed by the board.

E. A person who is authorized to access the controlled substances prescription monitoring program's central database tracking system may do so using only that person's assigned identifier and may not use the assigned identifier of another person.

F. Beginning the later of October 1, 2017 or sixty days after the statewide health information exchange has integrated the controlled substances prescription monitoring program data into the exchange, a medical practitioner, before prescribing an opioid analgesic or benzodiazepine controlled substance listed in schedule II, III or IV for a patient, shall obtain a patient utilization report regarding the patient for the preceding twelve months from the controlled substances prescription monitoring program's central database tracking system at the beginning of each new course of treatment and at least quarterly while that prescription remains a part of the treatment. Each medical practitioner regulatory board shall notify the medical practitioners licensed by that board of the applicable date. A medical practitioner may be granted a one-year waiver from the requirement in this subsection due to technological limitations that are not reasonably within the control of the practitioner or other exceptional circumstances demonstrated by the practitioner, pursuant to a process established by rule by the Arizona state board of pharmacy.

G. Before a pharmacist dispenses or before a pharmacy technician or pharmacy intern of a remote dispensing site pharmacy dispenses a schedule II controlled substance, a dispenser shall obtain a patient utilization report regarding the patient for the preceding twelve months from the controlled substances prescription monitoring program's central database tracking system at the beginning of each new course of treatment.

H. The medical practitioner or dispenser is not required to obtain a patient utilization report from the central database tracking system pursuant to subsection F of this section if any of the following applies:

1. The patient is receiving hospice care or palliative care for a serious or chronic illness.

2. The patient is receiving care for cancer, a cancer-related illness or condition or dialysis treatment.

3. A medical practitioner will administer the controlled substance.

4. The patient is receiving the controlled substance during the course of inpatient or residential treatment in a hospital, nursing care facility, assisted living facility, correctional facility or mental health facility.

5. The medical practitioner is prescribing the controlled substance to the patient for not more than a five-day period for an invasive medical or dental procedure or a medical or dental procedure that results in acute pain to the patient.

6. The medical practitioner is prescribing the controlled substance to the patient for not more than a five-day period for a patient who has suffered an acute injury or a medical or dental disease process that is

diagnosed in an emergency department setting and that results in acute pain to the patient. An acute injury or medical disease process does not include back pain.

I. On or before December 31, 2026, a vendor that provides electronic medical records services to a medical practitioner in this state shall integrate the vendor's electronic medical records system with the program's central database tracking system either directly or through the statewide health information exchange or a third-party vendor.

J. If a medical practitioner or dispenser uses electronic medical records that integrate data from the controlled substances prescription monitoring program, a review of the electronic medical records with the integrated data shall be deemed compliant with the review of the program's central database tracking system as required in subsection F of this section.

K. The board shall promote and enter into data sharing agreements to integrate and display patient utilization reports within electronic medical records.

L. By complying with this section, a medical practitioner or dispenser who acts in good faith, or the medical practitioner's or dispenser's employer, is not subject to liability or disciplinary action arising solely from either:

1. Requesting or receiving, or failing to request or receive, prescription monitoring data from the program's central database tracking system.

2. Acting or failing to act on the basis of the prescription monitoring data provided by the program's central database tracking system.

M. Notwithstanding any provision of this section to the contrary, medical practitioners or dispensers and their delegates are not in violation of this section during any time period in which the controlled substances prescription monitoring program's central database tracking system is suspended or is not operational or available in a timely manner. If the program's central database tracking system is not accessible, the medical practitioner or dispenser or the medical practitioner's or dispenser's delegate shall document the date and time the practitioner, dispenser or delegate attempted to use the central database tracking system pursuant to a process established by board rule.

N. The board shall conduct an annual voluntary survey of program users to assess user satisfaction with the program's central database tracking system. The survey may be conducted electronically. On or before December 1 of each year, the board shall provide a report of the survey results to the president of the senate, the speaker of the house of representatives and the governor and shall provide a copy of this report to the secretary of state.

O. This section does not prohibit a medical practitioner regulatory board or the Arizona state board of pharmacy from obtaining and using information from the program's central database tracking system.

P. For the purposes of this section:

1. "Administration" has the same meaning prescribed in section 36-2901.

2. "Contractor" has the same meaning prescribed in section 36-2901.

3. "Dispenser" means a pharmacist who is licensed pursuant to title 32, chapter 18.

4. "Emergency department" means the unit within a hospital that is designed to provide emergency services.

5. "Health care insurer" has the same meaning prescribed in section 20-3151.

36-2607. Disciplinary action

A. The registrant's professional licensing board may revoke or suspend a registrant's registration or may place the registrant on probation for any of the following:

1. The registrant's professional licensing board determines that the registration was obtained by fraudulent means.

2. The registrant's professional licensing board takes action to revoke, suspend or place on probation the registrant's license, permit or registration to prescribe or dispense drugs.

3. The registration was issued through error.

4. The registrant knowingly files with the board any application, renewal or other document that contains false or misleading information or the registrant gives false or misleading testimony to the board.

5. The registrant knowingly makes a false report or record required by this article.

6. A registrant that dispenses controlled substances does not resolve discrepancies submitted to the program's central database tracking system within thirty business days after being notified of the error by the board.

7. A registrant that dispenses controlled substances does not resolve a failed attempt or missing transmission to the program's central database tracking system within thirty business days after the occurrence.

B. The board may deny a registration to an applicant for the grounds prescribed in subsection A of this section.

C. In addition to any other law, a licensed or permitted medical practitioner, pharmacist or pharmacy that fails to comply with the requirements of this article is subject to disciplinary action by the medical practitioner's, pharmacist's or pharmacy's professional licensing board. The board of pharmacy shall report to the appropriate professional licensing board the failure of a licensed or permitted medical practitioner, pharmacist or pharmacy to comply with the requirements of this article.

36-2608. Reporting requirements; waiver; exceptions

A. If a medical practitioner dispenses a controlled substance listed in section 36-2513, 36-2514, 36-2515 or 36-2516 or the rules adopted pursuant to chapter 27, article 2 of this title, or if a prescription for a controlled substance listed in any of those sections or naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration is dispensed by a pharmacy in this state, a health care facility in this state for outpatient use or a board-permitted nonresident pharmacy for delivery to a person residing in this state, the medical practitioner, health care facility or pharmacy must report the following information as applicable and as prescribed by the board by rule:

1. The name, address, telephone number, prescription number and United States drug enforcement administration controlled substance registration number of the dispenser.

2. The name, address and date of birth of the person for whom the prescription is written.

3. The name, address, telephone number and United States drug enforcement administration controlled substance registration number of the prescribing medical practitioner.

4. The name, strength, quantity, dosage and national drug code number of the schedule II, III, IV or V controlled substance or naloxone hydrochloride or other opioid antagonist dispensed.

5. The date the prescription was dispensed.

6. The number of refills, if any, authorized by the medical practitioner.

B. Except as provided in subsection D of this section, a dispenser must use the latest version of the standard implementation guide for prescription monitoring programs published by the American society for automation in pharmacy to report the required information.

C. The board shall allow the reporter to transmit the required information by electronic data transfer if feasible or, if not feasible, on reporting forms as prescribed by the board. The reporter shall submit the required information once each day.

D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting by submitting a written request to the board. The board shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form as prescribed by the board by rule.

E. The board by rule may prescribe the prescription form to be used in prescribing a schedule II, III, IV or V controlled substance if the board determines that this would facilitate the reporting requirements of this section.

F. The reporting requirements of this section do not apply to the following:

1. A controlled substance that is administered directly to a patient.

2. A controlled substance that is dispensed by a medical practitioner at a health care facility licensed by this state if the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with not more than two seventy-two-hour cycles within any fifteen-day period.

3. A controlled substance sample.

4. The wholesale distribution of a schedule II, III, IV or V controlled substance. For the purposes of this paragraph, "wholesale distribution" has the same meaning prescribed in section 32-1981.

5. A facility that is registered by the United States drug enforcement administration as a narcotic treatment program and that is subject to the recordkeeping provisions of 21 Code of Federal Regulations section 1304.24.

G. A pharmacist who dispenses naloxone hydrochloride or another opioid antagonist to an individual pursuant to section 32-1979 shall report the information listed in subsection A, paragraphs 1, 2, 3 and 5 of

this section and the name, strength, quantity, dosage and national drug code number as prescribed by the board by rule pursuant to subsection A of this section.

H. Naloxone hydrochloride or any other opioid antagonist shall not be viewable in the patient utilization report.

36-2609. Use of information; civil immunity

A. An individual or entity that complies with the reporting requirements of section 36-2608 is not subject to civil liability or other civil relief for reporting the information to the board.

B. Unless a court of competent jurisdiction makes a finding of malice or criminal intent, the board, any other state agency or any person or entity in proper possession of information pursuant to this article is not subject to civil liability or other legal or equitable relief for any of the following acts or omissions:

1. Furnishing information pursuant to this article.

2. Receiving, using or relying on, or not using or relying on, information received pursuant to this article.

3. Information that was not furnished to the board.

4. Information that was factually incorrect or that was released by the board to the wrong person or entity.

36-2610. Prohibited acts; violation; classification

A. A person who is subject to this article and who fails to report required information pursuant to section 36-2608 is guilty of a class 2 misdemeanor.

B. A person who is subject to this article and who knowingly fails to report required information to the board in violation of section 36-2608 is guilty of a class 1 misdemeanor.

C. A person who is subject to this article and who knowingly reports information to the board that the person knows to be false or fraudulent is guilty of a class 6 felony.

D. A person who is granted access to the information maintained by the board as required by this article and who knowingly discloses the information in a manner inconsistent with a legitimate professional or regulatory purpose, a legitimate law enforcement purpose, the terms of a court order or as otherwise expressly authorized by this article is guilty of a class 6 felony.

F

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1056(F) EXTENSION REQUEST FROM DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS FOR FIVE-YEAR REVIEW REPORT FOR TITLE 20, CHAPTER 6, ARTICLE 24

Arizona Department of Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie M. Hobbs, Governor
Barbara D. Richardson, Cabinet Executive Officer,
Executive Deputy Director

DATE: November 1, 2023

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

RE: Arizona Department of Insurance and Financial Institutions
Insurance Division ("Department")
Request for 1-Year Extension to file a Five-Year Review Report

Dear Chairperson Sornsin:

On October 4, 2023, the Council notified the Department that a Five-Year Review Report is due to them by January 31, 2024 for Title 20, Chapter 6, Article 24. Out-of-Network Claim Dispute Resolution (the "Surprise Billing Rules").

Arizona law provides that an agency may request an extension of no longer than one year from the date specified by the Council by sending a written request that identifies the reason for the extension request and demonstrates good cause for the extension. A.R.S. 41-1056(F).

By this submission, the Department is requesting approval of an extension to January 31, 2025 from the Council to submit the Five-Year Review Report for the Surprise Billing Rules.

The reason for this request is that the Arizona rules will eventually become obsolete when the Arizona laws become pre-empted by Federal law. The Department anticipates this pre-emption may occur sometime during 2024.

In 2021, the Federal government passed the "No Surprises Act" (Consolidated Appropriations Act, 2021, Public Law 116-260). The No Surprises Act (the "Federal law") became effective for plans issued on or after January 1, 2022. The Federal law provides to consumers much of the same functions and protections of Arizona's Surprise Billing Act, A.R.S. §§ 20-3111 through 20-3119 (the "Arizona law"). The Arizona law will eventually be pre-empted in its entirety by the Federal law once all potential appeals for plans renewed in 2022 are expired. The Department estimates that this pre-emption will occur sometime in 2024. Further information is available on the Department's website at: https://difi.az.gov/soonbdr and on the CMS website at: https://www.cms.gov/nosurprises.

Pre-emption of the Arizona law will make the Surprise Billing Rules obsolete.

The Department would like to defer filing the Five-Year Review report until January 31, 2025. At that time, it will choose to review the Surprise Billing Rules or refrain from the review and allow the rules to expire by operation of law under A.R.S. § 41-1056(G).

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director

H

CONSIDERATION AND DISCUSSION OF GOVERNOR'S REGULATORY REVIEW COUNCIL'S **DRAFT** UPCOMING 5YRR DUE DECEMBER 29, 2023

Governor's Regulatory Review Council (GRRC)
Five-Year Review Report for Governor's Regulatory Review Council
Due: December 29, 2023
Submitted: December ??, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. 41-1051(E)
Specific Statutory Authority: A.R.S. 41-1001.01(A)(6), 41-1008(G), 41-1027, 41-1033, 41-1052, 41-1053, 41-1055, 41-1056, 41-1056.01(D), 41-1081(F); 41-1095

2. The objective of each rule:

Rule	Objective
R1-6-101	This rule defines terms related to the rulemaking process and the Governor's Regulatory Review Council (GRRC).
R1-6-102	This rule describes the requirements and procedures for Council Meetings.
R1-6-103	This rule describes the procedures for submitting a petition to the Council under A.R.S. 41-1033(A) to challenge a Council rule or to request a review of an existing Council practice or substantive policy statement alleged to constitute a rule.
R1-6-104	This rule addresses requests under A.R.S. 41-1008(E) to extend the two year period during which a fee established or increased by an exempt rulemaking is effective.
R1-6-105	This rule was added in via regular rulemaking in 2018. It addresses public comments submitted to GRRC and requires agencies to submit electronic copies of any written public comment to GRRC within 10 business days of receipt.
R1-6-201	This rule describes the procedures and requirements for submitting a regular rulemaking to GRRC.
R1-6-202	This rule describes the procedures and requirements for submitting an expedited rulemaking to GRRC.
R1-6-203	This rule describes the requirements for delivering a Notice of Proposed Expedited Rulemaking and posting requirements for GRRC and the agency submitting the rulemaking.
R1-6-204	This rule describes the process for submitting an approved regular or expedited rule to the Council office that the Council approved with changes.
R1-6-205	This rule states the requirements for an agency to file an approved regular or expedited rule with the Office of the Secretary of State. It also states the requirements for filing an approved regular or expedited rule subject to the agency making changes as directed by the Council.
R1-6-206	This rule describes the process by which the Council may vote to return a preamble; table of contents; rule; or economic, small business, and consumer impact statement if any does not meet the standards proscribed by A.R.S. § 41-1052(D) through (G) and resubmission of a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement by the agency to the Council.
R1-6-301	This rule describes the process and requirements for submitting a Five-Year Review Report (5YRR) for consideration by the Council.
R1-6-302	This rule describes the process for an agency to request a 5YRR be rescheduled by the Council under A.R.S. § 41-1056(H).
R1-6-303	This rule describes the process for an agency to obtain an extension to submit a 5YRR from the Council.
R1-6-305	This rule describes the process by which the Council may vote to return a 5YRR if the report does not meet the standards in A.R.S. § 41-1056(A) and submission of a revised 5YRR by the agency to the Council.

R1-6-401	This rule defines which statutory petitions or appeals fall under Article 4.
R1-6-402	This rule describes the process and requirements for filing an Article 4 petition or appeal with the Council and deadlines for the affected agency's response to the petition, the Council's choice to consider the petition or appeal, and written notice of the Council's decision.
R1-6-403	This rule describes additional requirements for appeals of delegation agreements filed with the Council pursuant to A.R.S. § 41-1081(F).
R1-6-404	This rule describes additional requirements for appeals of final decisions by agencies on petitions regarding the economic, small business, and consumer impact of a rule filed with the Council pursuant to A.R.S. § 41-1056.01.

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

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
R1-6-105	R1-6-105 requires an agency to submit one electronic copy of any written public comment received by the agency to the Council within 10 business days of receipt. Written public comments received by an agency related to its rules must already be maintained and provided to the Council pursuant to A.R.S. § 41-1056(A)(2) and Council rule R1-6-301(A)(7). Additionally, all written public comments received by an agency during the rulemaking process must be submitted to the Council pursuant to A.R.S. § 41-1052(D)(6) and Council rule R1-6-201(A)(4). As such, the requirements in R1-6-105 may be redundant, ineffective, and create an unnecessary burden on agencies.

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

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

Rule	Explanation
R1-6-302	R1-6-302(B) and (C) grant the Council Chair discretion to grant 5YRR rescheduling requests from agencies or reschedule 5YRRs on the Chair's own initiative pursuant to A.R.S. § 41-1056(H). However, the statute states, "*[t]he [C]ouncil* may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the [C]ouncil." *See* A.R.S. § 41-1056(H) (emphasis added). As such, the statute indicates the Council as a whole must decide whether to reschedule a 5YRR, rather than the Chair. This rule must be revised to change references to the Council Chair to the Council to be consistent with A.R.S. § 41-1056(H).

R1-6-401	R1-6-401 lists the various statutory bases for a petition or appeal heard by the Council. Recent changes in 2022 to the language in petition/appeal statute A.R.S. § 41-1033 means subsections R1-6-401(2) through (5) must be updated to be consistent.

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
R1-6-203 (A) & (B)	Pursuant to A.R.S. § 41-1027(B), an agency shall deliver a Notice of Proposed Expedited Rulemaking (NPER) to the Council containing the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicating how the proposed expedited rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A). The statute also states, "[o]n delivery of the notice required in subsection B of this section, the agency shall file the [NPER] with the secretary of state for publication in the next state administrative register. The agency and the council shall post the [NPER] on their respective websites and shall allow any person to provide written comment for at least thirty days after posting the notice." *See* A.R.S. § 41-1027(C). While the rule requires agencies to submit a copy of the NPER to the Council prior to filing with the Secretary of State and a separate notification when the NPER is filed, Council staff currently only receives one notice from agencies that includes a copy of the NPER and that NPER has been filed with the Secretary of State, not two separate notices as currently outlined in rule.

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
R1-6-102 (B) & (C)	The rule refers to the term "special meeting" but the word "special meeting" is not defined in the rule and appears to have different meanings at different administrative agencies. The term "special" should be removed to increase clarity.
R1-6-203	R1-6-203(C) seeks to clarify that if an agency and the Council post a Notice of Proposed Expedited Rulemaking on their respective websites on different dates, that the Council shall consider the 30-day public comment window to have opened on the date of the agency's posting. This rule may be revised to improve clarity and conciseness by

	eliminating the if/then language and simply identifying that the 30-day window opens on the date of the agency's posting.
R1-6-101	R1-6-101(B)(5) defines "Five-year Review Report" to mean "a report submitted to the Council according to the procedures in A.R.S. §§ 41-1027 and 41-1095." The definition in rule therefore includes both Five-Year Review Reports (A.R.S. § 41-1056) and One-Year Review Reports (A.R.S. § 41-1095). This rule may be revised to improve clarity and understandability by separately identifying One-Year Review Reports in this section and/or in Article 3 (Five-Year Review Reports) and indicating that the rules under Article 3 apply to both.
R1-6-201(C) , R1-6-202 (C) , and R1-6-301(D)	The rules do not identify at what point "placed on the agenda" means, to incur the need of the Agency to provide written notice to the Chair to be placed on a later agenda . Current practice is that a rule is tentatively placed on the agenda up to four weeks prior to the Study Session and Council Meeting. The finalized agenda is then posted to the designated websites to comply with open meeting law 1 week prior to those meetings. Open meeting law allows changes to the posted agenda up to 24 hours prior to these meetings without Council or Chair approval and Council staff makes these changes as needed without consulting the Chair or Council. Either the rule or Council practice need to be updated for clarification.
R1-6-202(D)	The rule requires an agency to respond to any public comments as required under A.R.S. § 41-1023, however A.R.S. § 41-1023 is the public comment period that occurs for at least 30 days after the Notice of Proposed Expedited Rulemaking has been posted, not once the record has closed and the Notice of Final Expedited Rulemaking has been submitted to Council. This subsection may need to be removed altogether or clarified.
R1-6-302	There is no requirement in rule regarding the deadline for a Five-Year Review Report (5YRR) when it has been rescheduled pursuant to A.R.S. § 41-1056(H). It has been the Council's practice to move that deadline by five years. For clarification, the Council may want to provide a range of time for which the Council can vote to reschedule a 5YRR deadline (e.g., from 1 year and 1 day up to 5 years).

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:

There has been no change in the economic, small business, and consumer impact of these rules between now and the last time GRRC conducted a rulemaking for these rules in 2018 and which became effective in October 2018.

At the time of the 2018 rulemaking, GRRC noted that it estimated the economic impact of the rulemaking to be minimal (less than $1000) for all stakeholders. It was estimated state agencies may face minimal costs from providing copies of public comments to the Council office and responses to public comments to the commenter and the Council. It was estimated the removal of unnecessary provisions from Sections 201, 202, and 301 may provide a minimal beneficial economic impact to state agencies. The rulemaking applied to all state agencies subject to Council review, currently estimated at 100 agencies.

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

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

In the prior 5YRR for these rules, which was approved in June 2019, the Council did not propose any changes to the 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:

Stakeholders of the Council's rules include state agencies who submit 1YRRs, 5YRRs and rulemaking packages as well as members of the public who submit petitions or appeals. For agencies, any costs associated with rules related to submitting 1YRRs, 5YRRs or rulemakings are minimal and limited to costs of preparing and transmitting the submissions to the Council in compliance with the Council's rules and attending meetings at which the submission is discussed and voted on. However, the Council's rules related to submission of 1YRRs, 5YRRs and rulemaking packages track closely with the statutory requirements for such submissions found in A.R.S. § 41-1095, 41-1056 and 41-1052, respectively. As such, the costs to agencies to comply with the Council's rules are no more costly than complying with their statutory obligations. However, any minor costs to agencies associated with the rule are far outweighed by the benefits. Specifically, if submissions are prepared and submitted in accordance with the Council's rules, they will be complete and detailed, meeting their statutory obligations, and allow the Council to conduct a thorough review. Otherwise, the Council may require additional or follow-up information which can delay approval of agency submissions. Likewise, any costs of attending Council meetings are outweighed by the benefits of responding to Council member inquiries or clarifying aspects of the submission, if any, in order to facilitate approval.

Similarly, for members of the public, the costs associated with the Council's rules regarding submission of petitions or appeals are minimal and limited to costs of preparing and transmitting the petition or appeal to the Council. However, the benefit to members of the public in allowing a venue for their concerns to be heard and the oversight provided by the Council far outweighs the costs outlined.

The Council has determined that the rules generally impose the least burden and costs to regulated persons and agencies necessary to achieve their underlying regulatory objective, except as to those rules identified in Sections 3 through 6 that could be made more effective, consistent, enforced, clear, concise, and understandable. Improvements to these rules will likely reduce burdens on stakeholders.

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

Not applicable. There is no corresponding federal law.

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

These rules do not require the issuance of a permit, license, or agency authorization

14. Proposed course of action

TBD

1 A.A.C. 6 Supp. 18-4

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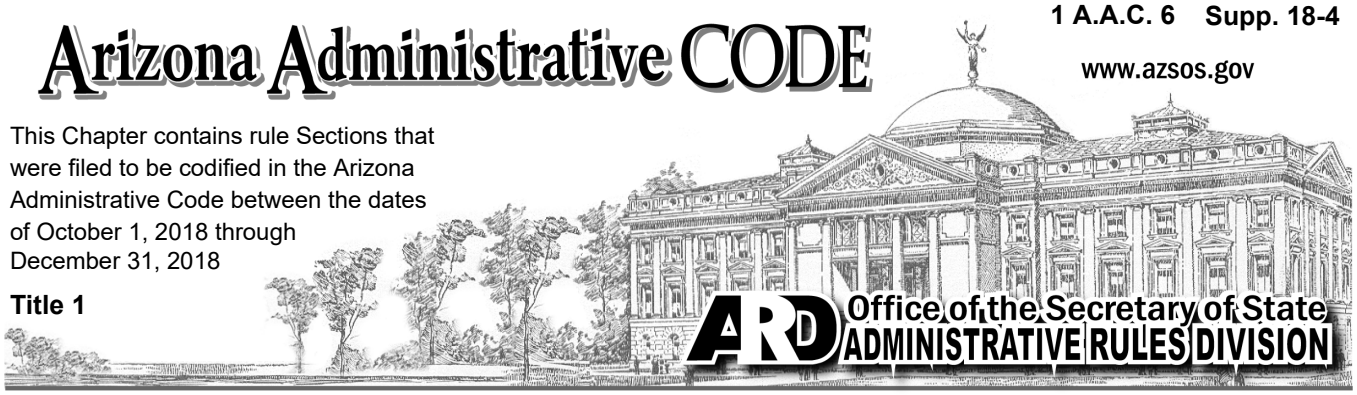
Arizona Administrative CODE

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of October 1, 2018 through December 31, 2018

Title 1



TITLE 1. RULES AND THE RULEMAKING PROCESS

CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

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.

Questions about these rules? Contact:

Department: Governor's Regulatory Review Council
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The release of this Chapter in Supp. 18-4 replaces Supp. 17-3, 11 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 2018 is cited as Supp. 18-1.

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).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, 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

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 1. RULES AND THE RULEMAKING PROCESS

CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

(Authority: A.R.S. § 41-1051)

ARTICLE 1. GENERAL RULES OF PROCEDURE

Article 1, consisting of Sections R1-6-101 through R1-6-106 and R1-6-108, adopted effective May 25, 1995 (Supp. 95-2).

Article 1, consisting of Sections R1-6-102 three R1-6-109, repealed effective May 25, 1995 (Supp. 95-2).

Article 1 consisting of Sections R1-6-102 through R1-6-109 adopted effective December 16, 1987.

Section

ARTICLE 2. RULEMAKING PROCEDURES

Article 2, consisting of Section R1-6-201, repealed by final rulemaking; new Article 2, consisting of Sections R1-6-201 to R1-6-207 made by final rulemaking effective October 5, 2013 (Supp. 13-3).

Article 2, consisting of Section R1-6-201, adopted effective May 25, 1995 (Supp. 95-2).

Article 2, consisting of Sections R1-6-202 three R1-6-206, repealed effective May 25, 1995 (Supp. 95-2).

Article 2, consisting of Section R1-6-201, adopted effective May 25, 1995 (Supp. 95-2).

Article 2, consisting of Sections R1-6-202 through R1-6-206, repealed effective May 25, 1995 (Supp. 95-2).

Article 2 consisting of Sections R1-6-202 through R1-6-206 adopted effective March 16, 1988.

Section

ARTICLE 3. FIVE-YEAR REVIEW REPORTS

Article 3, consisting of Sections R1-6-301 and R1-6-302 repealed by final rulemaking; new Article 3, consisting of Sections R1-6-301 to R1-6-305 made by final rulemaking effective October 5, 2013 (Supp. 13-3).

Article 3, consisting of Section R1-6-301, adopted effective April 3, 1996 (Supp. 96-2).

Section

ARTICLE 4. APPEALS AND PETITIONS

Article 4, consisting of Section R1-6-401, repealed by final rulemaking; new Article 4, consisting of Section R1-6-401, made by final rulemaking effective October 5, 2013 (Supp. 13-3).

Article 4, consisting of Section R1-6-401, adopted effective April 3, 1996 (Supp. 96-2).

Section

ARTICLE 5. REPEALED

Article 5, consisting of Sections R1-6-501 and R1-6-502, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 5, consisting of Section R1-6-501, repealed by final rulemaking; new Article 5, consisting of Sections R1-6-501 and R1-6-502, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

Article 5, consisting of Section R1-6-501, made at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3).

Section

ARTICLE 6. REPEALED

Article 6, consisting of Section R1-6-601, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 6, consisting of Section R1-6-601, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

ARTICLE 7. REPEALED

Article 7, consisting of Section R1-6-701, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 7, consisting of Section R1-6-701, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

ARTICLE 8. REPEALED

Article 8, consisting of Sections R1-6-801 and R1-6-802, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 8, consisting of Sections R1-6-801 and R1-6-802, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

ARTICLE 1. GENERAL RULES OF PROCEDURE

R1-6-101. Definitions

A. The definitions in A.R.S. § 41-1001 apply to this Chapter.

B. In this Chapter:

1. "Agency head" means the chief officer of an agency or another person directly or indirectly purporting to act on behalf or under the authority of the agency head.
2. "Chair" means the chairperson of the Council or the chairperson's designee.
3. "Electronic copy" means a document submitted or filed by e-mail or other electronic means.
4. "Expedited rule" means a rule made according to the procedures in A.R.S. §§ 41-1027 and 41-1053.
5. "Five-year Review Report" means a report submitted to the Council according to the procedures in A.R.S. § 41-1056 or 41-1095.
6. "Open Meeting Law" means A.R.S. Title 38, Chapter 3, Article 3.1.
7. "Public Comment" means a written comment or criticism submitted to an agency that relates in whole or in part to a proposed rule or an existing rule, or a comment made at an oral proceeding held in accordance with A.R.S. § 41-1023.
8. "Regular rule" means a rule made according to the procedures in A.R.S. §§ 41-1021 through 41-1024 and 41-1052.

Historical Note

Adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-101 renumbered to R1-6-102; new Section R1-6-101 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-102. Meetings

A. The Chair, in consultation with the Council, shall set monthly meeting dates of the Council and a schedule containing submission deadlines based on those meeting dates for each calendar year by the preceding September 15 and shall post notice of each monthly meeting according to the Open Meeting Law.

B. The Chair or Council may schedule a special meeting to consider any matter it may consider at a regularly scheduled monthly meeting. The Council shall post notice of a special meeting according to the Open Meeting Law at least 24 hours before the special meeting.

C. The Council may recess a regularly scheduled monthly or special meeting to a later date if, before recessing, the Chair gives notice of the date and time of the resumption of the meeting and posts a notice of resumption of the meeting according to the Open Meeting Law.

D. The Chair may temporarily adjourn or recess a regularly scheduled monthly or special meeting on the meeting day in an effort to ensure that a quorum of the Council is present.

E. For the purpose of responding to questions from the Council, a representative of an agency shall appear at a Council meeting at which the agency has been notified that its rule or five-year review report is on the agenda for consideration.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-102 renumbered to R1-6-103; new Section R1-6-102 renumbered from R1-6-101 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-103. Submitting a Petition for Council Rulemaking or Review

A. A person may petition the Council under A.R.S. § 41-1033(A) for a:

1. Rulemaking action relating to a rule promulgated by the Council, including making a new rule or amending or repealing an existing rule; or
2. Review of an existing Council practice or substantive policy statement alleged to constitute a rule.

B. To act under A.R.S. § 41-1033(A) and this Section, a person shall submit to the Council office one electronic copy of a petition, in the form of a letter signed by the person submitting the petition, that includes the following information:

1. Name, mailing address, e-mail address, and telephone number of the person submitting the petition;
2. Name of any person represented by the person submitting the petition; and
3. If the petition is for rulemaking action:
   a. A statement of the rulemaking action sought, including the *Arizona Administrative Code* citation of all existing rules, and the specific language of a new rule or rule amendment; and
   b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
4. If the petition is for a review of an existing practice or substantive policy statement:
   a. Subject matter of the existing practice or substantive policy statement, and
   b. Reasons why the existing practice or substantive policy statement constitutes a rule.

C. The petition shall not exceed five double-spaced pages and shall be in a clear and legible typeface.

D. A person may submit supporting information with a petition, including:

1. Statistical data; and
2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.

E. The Council shall send a letter in response to the petition no later than 60 calendar days after the date the Council receives the petition.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-103 renumbered to R1-6-104; new Section R1-6-103 renumbered from R1-6-102 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effec-

tive August 9, 2017 (Supp. 17-3).

R1-6-104. A.R.S. § 41-1008(E) Extension Requests

A. Under A.R.S. § 41-1008(E), an agency may file a written request for an extension of the two-year period during which a fee established or increased by exempt rulemaking is effective.

B. The agency shall file a request, in the form of a letter signed by the agency head, at least 40 days before expiration of the two-year period so that the request may be considered at a regularly scheduled Council meeting. The agency representative filing a request shall submit to the Council office one electronic copy of the request. The request shall contain:

1. The name, mailing address, e-mail address, and telephone number of the agency and the agency representative filing the request;
2. The statutory authority under which the request is allowed;
3. The length of the extension sought;
4. The reasons why the two-year period should be extended; and
5. Other supporting information, such as statistical data or a description of persons likely to be adversely affected if the request is denied, if applicable.

C. The request shall not exceed five double-spaced pages and shall be in a clear and legible typeface.

D. The Council shall schedule consideration of the request for a Council meeting as soon as practicable after receipt of the agency's request.

E. Within seven calendar days after the Council's decision on the request, the Chair shall provide written notification of the Council's decision to the affected agency head, including the reasons for and date of the decision.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-104 renumbered to R1-6-108; new Section R1-6-104 renumbered from R1-6-103 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-104 renumbered to R1-6-201; new Section R1-6-104 renumbered from R1-6-110 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-105. Public Comments

Within 10 business days of receipt, an agency shall submit to the Council office one electronic copy of any written public comment received by the agency.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-105 renumbered to R1-6-109; new Section R1-6-105 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Repealed by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). New Section made by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-106. Repealed

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Former Section R1-6-106 renumbered to R1-6-110; new Section R1-6-106 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Repealed by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-107. Renumbered

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Repealed effective May 25, 1995 (Supp. 95-2). New Section adopted effective April 3, 1996 (Supp. 96-2). Former Section R1-6-107 renumbered to R1-6-111; new Section R1-6-107 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-107 renumbered to R1-6-204 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-108. Renumbered

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-108 renumbered to R1-6-112; new Section R1-6-108 renumbered from R1-6-104 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-108 renumbered to R1-6-205 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-109. Renumbered

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-109 renumbered from R1-6-105 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-109 renumbered to R1-6-206 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-110. Renumbered

Historical Note

New Section R1-6-110 renumbered from R1-6-106 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5,

2011 (Supp. 11-3). Section R1-6-110 renumbered to R1-6-104 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013; clerical error of not showing renumbering in Supp. 13-3 corrected in Supp. 17-3.

R1-6-111. Renumbered

Historical Note

New Section R1-6-111 renumbered from R1-6-107 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Former R1-6-111 renumbered to R1-6-112; new R1-6-111 renumbered from R1-1-112 and amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-111 renumbered to R1-6-301 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-112. Renumbered

Historical Note

New Section R1-6-112 renumbered from R1-6-108 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Former R1-6-112 renumbered to R1-6-111; new R1-6-112 renumbered from R1-1-111 and amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-112 renumbered to R1-6-203 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-113. Renumbered

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-113 renumbered to R1-6-302 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-114. Renumbered

Historical Note

New Section made by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-114 renumbered to R1-6-303 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-115. Renumbered

Historical Note

New Section made by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-115 renumbered to R1-6-304 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

ARTICLE 2. RULEMAKING PROCEDURES

R1-6-201. Submitting a Regular Rule

A. To submit a regular rule for consideration by the Council, an agency shall submit to the Council office one electronic copy of each rulemaking document that follows, prepared in the manner required by this subsection and the rules of the Office of the Secretary of State:

1. A request for approval, in the form of a cover letter signed by the agency head. The cover letter shall specify:
   a. The close of record date;
   b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council;
   c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee;
   d. Whether the rule contains a fee increase;
   e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032;
   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 of or justification for the rule;
   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 of the number of new full-time employees necessary to implement and enforce the rule; and
   h. A list of all documents enclosed.
2. A Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;
3. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
4. The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript, or minutes;
5. Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
6. Material incorporated by reference, if any;
7. The general and specific statutes authorizing the rule, including relevant statutory definitions; and
8. If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

B. After a rule is placed on a Council agenda, Council staff shall review the rule for compliance with the requirements of A.R.S. §§ 41-1021 through 41-1024 and 41-1052 and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any rulemaking document in response to a question or suggested change, the agency shall submit one electronic copy of the revised rulemaking document to the Council for review.

C. After a rule is placed on a Council agenda, an agency may have the rule moved to the agenda of a later meeting by having the agency head send a written notice to the Chair that includes the date of the later meeting. If the agency makes a subsequent request that the rule be moved, the Chair may grant or deny the request at the Chair's discretion.

D. Council staff shall notify the agency of any written comments received by the Council related to an agency's rulemaking.

E. If it is necessary for a rule to be heard at more than one Council meeting, the agency shall submit any revised documents for the later meeting, consistent with this Section.

F. An agency shall respond to any public comment received in accordance with A.R.S. § 41-1023. An agency shall provide a copy of its response to the commenter and the Council office.

Historical Note

Adopted effective May 25, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.A. 8, effective December 8,

1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). R1-6-201 renumbered to R1-6-401; new Section R1-6-201 renumbered from R1-6-104 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-202. Submitting an Expedited Rule

A. To submit an expedited rule for consideration by the Council, an agency shall submit to the Council office one electronic copy of each rulemaking document that follows, prepared in the manner required by this subsection and the rules of the Office of the Secretary of State:
1. A request for approval, in the form of a cover letter signed by the agency head. The cover letter shall specify:
   a. The close of record date;
   b. An explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A);
   c. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council;
   d. 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 of or justification for the rule; and
   e. A list of all documents enclosed.
2. A Notice of Final Expedited Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;
3. The written comments, including objections that the rulemaking does not meet the criteria in A.R.S. § 41-1027(A), received by the agency or contained in a notice concerning the proposed rule;
4. Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
5. Material incorporated by reference, if any;
6. For a statute declared unconstitutional, the court's decision;
7. The general and specific statutes authorizing the rule, including relevant statutory definitions;
8. If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

B. After a rule is placed on a Council agenda, Council staff shall review the rule for compliance with the requirements of A.R.S. §§ 41-1027, 41-1053, and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any rulemaking document in response to a question or suggested change, the agency shall submit one electronic copy of the revised rulemaking document to the Council for review.

C. After a rule is placed on a Council agenda, an agency may have the rule moved to the agenda of a later meeting by having the agency head send a written notice to the Chair that includes the date of the later meeting. If the agency makes a subsequent request that the rule be moved, the Chair may grant or deny the request at the Chair's discretion.

D. An agency shall respond to any public comment received in accordance with A.R.S. § 41-1023. An agency shall provide a copy of the response to the commenter and an electronic copy to the Council office.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-203. Delivering a Notice of Proposed Expedited Rulemaking

A. Under A.R.S. § 41-1027(B), before filing a Notice of Proposed Expedited Rulemaking with the Office of the Secretary of State, an agency is required to submit an electronic copy of the Notice of Proposed Expedited Rulemaking to the Council.

B. Upon filing a Notice of Proposed Expedited Rulemaking with the Office of the Secretary of State, the agency shall:
1. Post the Notice of Proposed Expedited Rulemaking on its website as soon as practicable; and
2. Notify Council staff of the filing as soon as practicable. Upon receipt of this notice, Council staff shall post the Notice of Proposed Expedited Rulemaking on the Council's website as soon as practicable.

C. For the purposes of submitting a final expedited rule for consideration by the Council in accordance with R1-6-202, if the agency and the Council post the Notice of Proposed Expedited Rulemaking on their respective websites on different dates, the Council shall consider the 30-day public comment window established in A.R.S. § 41-1027(C) to have opened on the date of the agency's posting.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-203 renumbered from R1-6-112 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-204. Submitting an Approved Regular or Expedited Rule with Changes

A. If a final regular or expedited rule is approved by the Council with changes, an agency shall submit to the Council office within 14 calendar days after Council approval, unless a later date is arranged under subsection (B), one electronic copy of each rulemaking document that follows, prepared in the manner required by this Chapter and the rules of the Office of the Secretary of State:
1. A letter identifying each change made at the direction of the Council; and
2. The following rulemaking documents:
   a. A notice of Final Rulemaking or Notice of Final Expedited Rulemaking, as applicable; and
   b. An economic, small business, and consumer impact statement, if applicable.

B. If an agency is unable to submit an approved regular rule or expedited rule to the Council office within the time specified in subsection (A), the agency shall contact the Council office in writing and arrange to submit the approved rule at a later date.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-204 renumbered from R1-6-107 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23

A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-205. Filing a Regular or Expedited Rule Approved by the Council

A. If the Council approves a final regular or expedited rule as submitted, an agency shall file the final regular or expedited rule according to the rules of the Office of the Secretary of State.

B. If the Council approves a final regular or expedited rule subject to the agency making changes as directed by the Council, and the agency submits the rulemaking documents required by R1-6-204:

1. Council staff shall verify whether each change required by the Council was made.
2. Once Council staff notifies the agency that the verification process is complete, the agency shall file the final regular or expedited rule according to the rules of the Office of the Secretary of State.
3. If an agency submits a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement that does not contain the exact words approved by the Council, Council staff shall notify the agency and require that the items be submitted as approved or schedule the matter for reconsideration by the Council.

C. Except as specified in subsection (B), an agency shall not make any change to a preamble; table of contents; rule; economic, small business, and consumer impact statement; or materials incorporated by reference after Council approval.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-205 renumbered from R1-6-108 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-206. Returned Rules

The Council may vote to return a preamble; table of contents; rule; or economic, small business, and consumer impact statement under A.R.S. § 41-1052(C), after identifying the manner in which the returned portion does not meet the standards at A.R.S. § 41-1052(D) through (G).

1. The Council may schedule a date for resubmission in consultation with the agency representative.
2. An agency shall resubmit the notice, with a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement to the Council, and attach to each resubmitted document a letter that:
   a. Identifies all changes made in response to the Council's explanation for the returned portion,
   b. Explains how the changes ensure that the document meets the standards at A.R.S. § 41-1052(D) through (G), and
   c. If applicable, shows that the resubmitted rule is not substantially different from the proposed rule under the standards in A.R.S. § 41-1025.
3. In accordance with R1-6-102, an agency representative shall appear at the Council meeting at which the resubmitted notice, with a revised preamble, table of contents, or rule, or economic, small business, and consumer impact statement is to be considered for legal action.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-206 renumbered from R1-6-109 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-207. Repealed

Historical Note

New Section R1-6-207 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 3. FIVE-YEAR REVIEW REPORTS

R1-6-301. Submitting a Five-year Review Report

A. To submit a five-year review report for consideration by the Council, an agency shall submit to the Council office one electronic copy of the cover letter signed by the agency head and the five-year review report required by A.R.S. § 41-1056. The agency shall concisely analyze and provide the following information in the five-year review report in the following order for each rule:

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report. An agency shall respond to any written criticism and shall provide a copy of its response to the commenter;
8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report;
11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authoriza-

tion, whether the rule complies with A.R.S. § 41-1037; and

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

B. In addition to the documents required in subsection (A), an agency shall submit one electronic copy of the cover letter. The cover letter shall provide the following information:

1. A person to contact for information regarding the report,
2. Any rule that is not reviewed with the intention that the rule will expire under A.R.S. § 41-1056(J),
3. Any rule that is not reviewed because the Council rescheduled the review of an article under A.R.S. § 41-1056(H), and
4. The certification that the agency is in compliance with A.R.S. § 41-1091.

C. After a five-year review report is placed on a Council agenda, Council staff shall review the report for compliance with the requirements of A.R.S. § 41-1056 and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any document in response to a question or suggested change, the agency shall submit one electronic copy of the revised document to the Council for review.

D. After a five-year review report is placed on a Council agenda, an agency may have the report moved to the agenda of a later meeting by having the agency head submit one electronic copy of a written notice to Council staff that includes the date of the later meeting. If the agency makes a subsequent request to have a five-year review report moved, the Chair may grant or deny the request at the Chair's discretion.

Historical Note

Adopted effective April 3, 1996 (Supp. 96-2). Former Section R1-6-301 renumbered to R1-6-302; new Section R1-6-301 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). R1-6-301 renumbered to R1-6-501; new R1-6-301 renumbered from R1-6-111 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-302. Rescheduling a Five-year Review Report

A. To request that a five-year review report be rescheduled under A.R.S. § 41-1056(H), an agency head shall submit one electronic copy of a letter to the Chair before the report is due that includes the following information:

1. The Title, Chapter, and Article of the rules for which rescheduling is sought;
2. Whether the rules were initially made or substantially revised with an effective date or date of Council approval that is within two years before the due date of the report; and
   a. If substantially revised:
      i. A description of the revisions,
      ii. Why the revisions are believed to be substantial,
      iii. The date of Council approval of the rules, if applicable, and
      iv. The date on which the rules were published in the Register by the Office of the Secretary of State and the effective date of the rules; or
   b. If initially made:
      i. The date of Council approval of the rules, if applicable, and
      ii. The date on which the rules were published in the *Register* by the Office of the Secretary of State and the effective date of the rules.

B. The Chair, in the Chair's discretion, may grant the rescheduling of a five-year review report for the rules within an Article that meet the requirements of this Section.

C. The Chair may, on the Chair's own initiative, reschedule a five-year review report if all rules within an Article meet the requirements of this Section.

Historical Note

New Section renumbered from R1-6-301 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). R1-6-302 renumbered to R1-6-502; new R1-6-302 renumbered from R1-6-113 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-303. Extension of the Due Date for a Five-year Review Report

A. An agency may obtain an extension of 120 days to submit a five-year review report by submitting one electronic copy of a notice of extension to the Council office before the due date of the report. The agency shall specify in the notice the reason for the extension.

B. An agency may, as an alternative, request a longer extension that is more than 120 days but does not exceed one year by submitting one electronic copy of a request to the Chair at least 40 days prior to the due date of the report. The agency shall specify the length of the requested extension and the reason for the requested extension.

1. A request for an extension that is more than 120 days but does not exceed one year shall be placed on the agenda of a Council meeting scheduled to occur prior to the due date of the report.
2. The Council shall consider the reason for the requested extension and may grant a request for an extension that is more than 120 days but does not exceed one year.

Historical Note

New Section R1-6-303 renumbered from R1-6-114 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-304. Repealed

Historical Note

New Section R1-6-304 renumbered from R1-6-115 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-305. Returned Five-year Review Reports

The Council may vote to return, in whole or in part, a five-year review report after identifying the manner in which the five-year review report does not meet the standards in A.R.S. § 41-1056(A).

1. The Council, in consultation with the agency, shall schedule submission of a revised report.
2. An agency submitting a revised five-year review report shall attach to the revised report a letter that:
   a. Identifies all changes made in response to the Council's explanation for return of the five-year review report, and
   b. Explains how the changes ensure that the five-year review report meets the standards in A.R.S. § 41-1056(A).

Historical Note

New Section R1-6-305 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 4. APPEALS AND PETITIONS

R1-6-401. Applicability

For purposes of this Article, the term "petition or appeal" refers to the following:

1. The A.R.S. § 41-1008(G) Petition for an alternative expiration date for fees established or increased by exempt rulemaking;
2. The A.R.S. § 41-1033(E) Appeal of an agency's decision on a petition requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule;
3. The A.R.S. § 41-1033(F) Petition to request a review of a final rule based on a person's belief that a final rule does not meet the requirements prescribed in A.R.S. § 41-1030;
4. The A.R.S. § 41-1033(G) Petition to request a review of an existing agency practice, substantive policy statement, final rule, or regulatory licensing requirement that is not specifically authorized by statute pursuant to Title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern;
5. Pursuant to A.R.S. § 41-1033(H), the Council's receipt of information indicating that an existing agency practice or substantive policy statement may constitute a rule or that a final rule does not meet the requirements prescribed in A.R.S. § 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed under A.R.S. § 41-1033(G);
6. The A.R.S. § 41-1052(B) Early Review Petition;
7. The A.R.S. § 41-1055(E) Petition for a determination that an agency is not required to file an economic, small business, and consumer impact statement;
8. The A.R.S. § 41-1056(M) Petition to require an agency that has an obsolete rule to consider including the rule in a five-year review report with a recommendation for repeal of the rule;
9. The A.R.S. § 41-1056(N) Petition to require an agency to consider including a recommendation for reducing a licensing time frame in a five-year review report;
10. The A.R.S. § 41-1056.01(D) Appeal related to the economic, small business, and consumer impact of a rule; and
11. The A.R.S. § 41-1081(F) Appeal of a delegation agreement.

Historical Note

Adopted effective April 3, 1996 (Supp. 96-2). Amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-401 renumbered to R1-6-601; new Section R1-6-401 renumbered from R1-6-201 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-402. Filing of Petitions or Appeals; Agency Response; Council Decision

A. A person filing a petition or appeal shall submit to the Council one electronic copy of the petition or appeal. The petition or appeal shall contain:
   1. The name, mailing address, e-mail address, and telephone number of the person filing the petition or appeal;
   2. The name of the person being represented by the person filing the petition or appeal, if applicable;
   3. The reasons for submitting the petition or appeal, including relevant facts, laws, and statutory authority;
   4. The reasons why the Council should grant the petition or appeal; and
   5. Any supporting documents relevant to the petition or appeal.

B. The petition or appeal shall not exceed five double-spaced pages and shall be in a clear and legible typeface.

C. If applicable, the Council shall notify the affected agency head of the petition or appeal by 5:00 p.m. of the business day following receipt of the petition or appeal. The agency may submit a response to the petition or appeal to the Council.

D. When required by statutes, within 14 calendar days after a petition or appeal is received by the Council, the Chair shall send written notice to the person filing the petition or appeal and the affected agency head stating whether the required number of Council members have requested that a given petition or appeal be considered at a Council meeting.

E. No later than seven calendar days after the Council renders a decision on a petition or appeal, the Chair shall send a letter to the affected agency head and the person filing the petition, advising them of the reasons for, and date of, the decision.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-403. Additional Requirements for an Appeal of a Delegation Agreement

A. Under A.R.S. § 41-1081(F), a person who has filed a written comment with a delegating agency in objection to all or part of a proposed delegation agreement may, within thirty days after the agency gives written notice of its decision pursuant to A.R.S. § 41-1081(E), appeal an agency's decision to enter into a delegation agreement.

B. In addition to the information required by R1-6-402(A), an appeal of a delegation agreement shall contain:
   1. The name of each agency and each political subdivision entering into the delegation agreement;
   2. The subject matter of the delegation agreement;

3. Copies of all written comments made by the appellant that object to the delegation agreement and have been filed with the delegating agency; and
4. The reasons why the appellant is objecting to the delegation agreement and filing the appeal.

C. The Council shall notify the delegating agency head of an appeal of a delegation agreement by 5:00 p.m. of the business day following receipt of the appeal.

D. The delegating agency head shall submit electronic copies of the following information and documentation by 5:00 p.m. on the third business day following notification by the Council of the appeal:
1. A memorandum that includes:
   a. The date the delegating agency gave written notice of the decision to enter into the delegation agreement;
   b. The dates of all public proceedings regarding the delegation agreement; and
   c. The name, mailing address, e-mail address, and telephone number of the contact persons for each agency and each political subdivision involved in the agreement.
2. A copy of the delegation agreement; and
3. The agency's written summary, prepared as required by A.R.S. § 41-1081(E), responding to all oral or written comments received by the agency regarding the delegation agreement.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-404. Additional Requirements for an Appeal Related to the Economic, Small Business, and Consumer Impact of a Rule

A. Under A.R.S. § 41-1056.01(D), a person who is or may be affected by an agency's final decision on a petition filed pursuant to A.R.S. § 41-1056.01(A) may, within thirty days of publication of the decision, file an appeal.

B. In addition to the information required by R1-6-402(A), an appeal of an agency's final decision on a petition filed pursuant to A.R.S. § 41-1056.01(A) shall contain a statement indicating how the person filing the appeal is or may be affected by the agency's decision.

C. The Council shall notify the affected agency head of an appeal of an agency's final decision on a petition filed pursuant to A.R.S. § 41-1056.01(A) by 5:00 p.m. of the business day following receipt of the appeal.

D. The affected agency head shall submit electronic copies of the following information and documentation by 5:00 p.m. on the third business day following notification by the Council of the appeal:
1. A memorandum that includes:
   a. The date of publication of the agency's final decision under A.R.S. § 41-1056.01(C);
   b. The name, mailing address, e-mail address, and telephone number of the agency's contact person; and
   c. Reasons why the agency believes that:
      i. The actual economic, small business, and consumer impact did not significantly exceed the estimated economic, small business, and consumer impact;
      ii. The actual economic, small business, and consumer impact was estimated on approval of the rule and the impact does not impose a significant burden on persons subject to the rule; or
      iii. The agency selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
2. A copy of final judgments, if any, issued by a court of competent jurisdiction that are based on whether the contents of the rule's economic, small business, and consumer impact statement were insufficient or inaccurate;
3. A copy of the rule being appealed; and
4. A copy of the agency's written summary of comments received, the agency's response to those comments, and the agency's final decision on whether to initiate rulemaking, prepared and published as required by A.R.S. § 41-1056.01(C).

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 5. REPEALED

R1-6-501. Repealed

Historical Note
New Section made by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-501 renumbered to R1-6-701; new Section R1-6-501 renumbered from R1-6-301 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-502. Repealed

Historical Note
New Section R1-6-502 renumbered from R1-6-302 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 6. REPEALED

R1-6-601. Repealed

Historical Note
New Section R1-6-601 renumbered from R1-6-401 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 7. REPEALED

R1-6-701. Repealed

Historical Note
New Section R1-6-701 renumbered from R1-6-501 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 8. REPEALED

R1-6-801. Repealed

Historical Note
New Section R1-6-801 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265,

effective August 9, 2017 (Supp. 17-3).

R1-6-802. Repealed

Historical Note

New Section R1-6-802 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

41-1051. Governor's regulatory review council; membership; terms; compensation; powers

A. The governor's regulatory review council is established consisting of six members who are appointed by the governor pursuant to section 38-211 and who are subject to sections 38-291 and 38-295 and the director of the department of administration or the assistant director of the department of administration who is responsible for administering the council. The director or assistant director is an ex officio member and chairperson of the council. The council shall elect a vice-chairperson to serve as chairperson in the chairperson's absence. The governor shall appoint at least one member who represents the public interest, at least one member who represents the business community, at least one member who is a small business owner, one member from a list of three persons who are not legislators submitted by the president of the senate and one member from a list of three persons who are not legislators submitted by the speaker of the house of representatives. At least one member of the council shall be an attorney licensed to practice law in this state. The governor shall appoint the members of the council for staggered terms of three years. A vacancy occurring during the term of office of any member shall be filled by appointment by the governor for the unexpired portion of the term in the same manner as provided in this section.

B. The council shall meet at least once a month at a time and place set by the chairperson and at other times and places as the chairperson deems necessary.

C. Members of the council are eligible to receive compensation in an amount of two hundred dollars for each day on which the council meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The chairperson, subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, shall employ, determine the conditions of employment of and specify the duties of administrative, secretarial and clerical employees as the chairperson deems necessary.

E. The council may make rules pursuant to this chapter to carry out the purposes of this chapter.

F. The council shall make a list of agency rules approved or returned pursuant to sections 41-1027 and 41-1052 and section 41-1056, subsection C for the previous twelve-month period available to the public on request and on the council's website.

41-1001.01. Regulatory bill of rights; small businesses

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections and audits prescribed in section 41-1009.

5. May review the full text or summary of all rulemaking activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rulemaking process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written comments or testimony on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement.

(b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.

(c) Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not base a decision regarding any filing or other matter submitted to an agency on a requirement or condition that is not specifically authorized by a statute, rule, federal law or regulation or state tribal gaming compact as provided in section 41-1030, subsection C.

9. Is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in section 41-1030, subsection D.

10. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

11. May file a complaint with the administrative rules oversight committee concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

12. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

13. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter and may appeal a final administrative decision by filing a notice of appeal pursuant to title 12, chapter 7, article 6.

14. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

15. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

16. Is entitled to receive information regarding the license application process before or at the time the person obtains an application for a license as provided in sections 41-1001.02 and 41-1079.

17. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

18. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

20. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.

21. May have the person's administrative hearing on contested cases pursuant to title 23, chapter 2 or 4 heard by an independent administrative law judge as prescribed by title 23, chapter 2 or 4.

22. Pursuant to section 41-1009, subsection E, may correct deficiencies identified during an inspection unless otherwise provided by law.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

C. Each state agency that conducts audits, inspections or other regulatory enforcement actions pursuant to section 41-1009 shall create and clearly post on the agency's website a small business bill of rights. The agency shall create the small business bill of rights by selecting the applicable rights prescribed in this section and section 41-1009 and any other agency-specific statutes and rules. The agency shall provide a written document of the small business bill of rights to the authorized on-site representative of the regulated small business. In addition to the rights listed in this section and section 41-1009, the agency notice of the small business bill of rights shall include the process by which a small business may file a complaint with the agency employees who are designated to assist members of the public or regulated community pursuant to section 41-1006. The notice must provide the contact information of the agency's designated employees. The agency notice must also state that if the regulated person has already made a reasonable effort with the agency to resolve the problem and still has not been successful, the regulated person may contact the office of ombudsman-citizens aide.

41-1008. Fees; specific statutory authority

A. Except as provided in subsection C of this section, an agency shall not:

1. Charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.

2. Make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.

3. Increase a fee in an amount that exceeds the percentage of change in the average consumer price index as published by the United States department of labor, bureau of labor statistics between that figure for the latest calendar year and the calendar year in which the last fee increase occurred. An agency may increase a fee in an amount that exceeds the percentage of change in the average consumer price index if either of the following applies:

(a) The agency submits the fee increase to the joint legislative budget committee for review before the fee is increased.

(b) The agency is required to submit an annual report that includes information about the fee to members of the legislature.

B. An agency shall identify the statute or tribal state gaming compact that authorizes the fee on documents relating to collection of the fee.

C. An agency authorized by statute or tribal state gaming compact to conduct background checks may charge a fingerprint fee without a statute expressly authorizing the fee.

D. Unless the legislature grants an express exemption through statute or session law from all requirements of this chapter for establishing or increasing a fee, an agency shall comply with all applicable rule making provisions to establish or increase the fee. The agency shall not charge or receive the fee until the rule establishing or increasing the fee is effective under the applicable law of this state.

E. A fee that is established or increased by exempt rule making from and after September 30, 2012 is effective for two years unless an extension is granted by the council.

F. After the expiration of the applicable period under subsection E of this section, the agency shall not charge or receive the fee unless the agency has complied with the rule making requirements of this chapter to establish or increase the fee.

G. A person regulated by the rule may petition the council to establish a date that is different than the date under subsection E of this section but no earlier than two years after the exempt rule is made. The agency shall respond to the petition within two weeks after the council notifies the agency that the petition has been filed. Within sixty days the council shall grant or deny the petition after considering whether the public interest requires a different date.

41-1027. Expedited rulemaking

A. An agency may conduct expedited rulemaking pursuant to this section if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following:

1. Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority.

2. Amends or repeals rules for which the statute on which the rule is authorized has been declared unconstitutional by a court with jurisdiction, there is a final judgment and no statute has been enacted to replace the unconstitutional statute.

3. Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect.

4. Adopts or incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state.

5. Reduces or consolidates steps, procedures or processes in the rules.

6. Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

7. Implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.

8. Adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency.

B. An agency shall deliver a notice of proposed expedited rulemaking to the governor, the president of the senate, the speaker of the house of representatives, the committee and the council. The notice shall contain the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicate how the proposed expedited rulemaking achieves the purpose prescribed in subsection A of this section.

C. On delivery of the notice required in subsection B of this section, the agency shall file the notice of proposed expedited rulemaking with the secretary of state for publication in the next state administrative register. The agency and the council shall post the notice of proposed expedited rulemaking on their respective websites and shall allow any person to provide written comment for at least thirty days after posting the notice. The agency shall adequately respond in writing to the comments on the proposed expedited rulemaking.

D. An agency may not submit a final expedited rule to the council that is substantially different from the proposed rule contained in the notice of proposed expedited rulemaking. However, an agency may terminate an expedited rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule. An agency shall use the criteria prescribed in section 41-1025, subsection B for determining whether a final expedited rule is substantially different from the proposed expedited rule.

E. After adequately addressing, in writing, any written objections, an agency shall file a request for approval with the council. The request shall contain the notice of final expedited rulemaking and the agency's responses to any written comments. The council may require a representative of an agency whose expedited rulemaking is under examination to attend a council meeting and answer questions. The council may communicate to the agency its comments on the expedited rulemaking within the scope of subsection A of this section and require the agency to respond to its comments or testimony in writing. A person may submit written comments to the council that are within the scope of subsection A of this section.

F. Before an agency files a notice of final expedited rulemaking with the secretary of state, the council shall approve any expedited rulemaking. The council shall not approve the rule unless:

1. The rule satisfies the criteria for expedited rulemaking pursuant to subsection A of this section.

2. The rule is clear, concise and understandable.

3. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.

4. The agency, in writing, adequately addressed the comments on the proposed rule and any supplementary proposal.

5. If applicable, the permitting requirements comply with section 41-1037.

6. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplementary proposal.

7. The rule imposes the least burden and costs to persons regulated by the rule.

G. On receipt of council approval, the agency shall file a notice of final expedited rulemaking and the council's certificate of approval with the secretary of state.

H. The expedited rulemaking becomes effective immediately on the filing of the notice of final expedited rulemaking.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1052. Council review and approval; rule expiration

A. Before filing a final rule subject to this section with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement that meets the requirements of section 41-1055. The office of economic opportunity shall prepare the economic, small business and consumer impact statement.

B. The council shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection D of this section and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The council may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection D of this section.

C. Within one hundred twenty days after receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article.

2. The economic, small business and consumer impact statement is generally accurate.

3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. The rule is written in a manner that is clear, concise and understandable to the general public.

5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority and meets the requirements prescribed in section 41-1030.

6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.

7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.

8. 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 of or justification for the rule.

9. The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

10. If a rule requires a permit, the permitting requirement complies with section 41-1037.

E. The council shall verify that a rule with new fees does not violate section 41-1008. 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.

F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present

votes to approve the rule.

G. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection D, paragraph 8 of this section, and a person submits an analysis to the council questioning whether the rule is based on valid scientific or reliable principles or methods, the council shall not approve the rule unless the council determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the council shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training and expertise.

2. The study, principle or method is based on sufficient facts or data.

3. The study is the product of reliable principles and methods.

4. The study and its conclusions, principles or methods have been tested or subjected to peer reviewed publications.

5. The known or potential error rate of the study, principle or method has been identified along with its basis.

6. The methodology and approach of the study, principle or method are generally accepted in the scientific community.

H. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

I. At any time during the thirty days immediately following receipt of the rule, a person may submit written comments to the council that are within the scope of subsection D, E, F or G of this section. The council may allow testimony at a council meeting within the scope of subsection D, E, F or G of this section.

J. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided by section 41-1056.01.

K. The absence of comments pursuant to subsection D, E, F or G of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

L. The council shall review and approve or reject a notice of proposed expedited rulemaking pursuant to section 41-1027.

M. An agency that seeks to expire a rule or rules may file a notice of intent to expire with the council. The notice shall describe the rule or rules to be expired and the reasons for expiration. The council shall place the notice on the agenda for the next scheduled council meeting for consideration. If a quorum of the council approves the notice, the council shall cause a notice of rule expiration to be prepared and provide the notice of rule expiration to the agency for filing with the secretary of state.

41-1053. Council review of expedited rules

A. After receipt of the expedited rule package from the agency, the council shall place the expedited rule on its consent agenda for approval unless a member of the council or the committee requests a hearing.

B. If a hearing is requested, the council shall act on the expedited rule pursuant to section 41-1052 or shall remand the expedited rule to the agency for initiation of a rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

C. The council, at any time a proposed expedited rule is pending, may disapprove the expedited rule making and order initiation of a regular rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary in the preamble shall include:

1. An identification of the proposed rule making, including all of the following:

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

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

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

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

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the 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.

B. The economic, small business and consumer impact statement shall include:

1. An identification of the proposed rule making.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

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 proposed rule making.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

(b) The administrative and other costs required for compliance with the proposed rule making.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

6. A statement of the probable effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize 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.

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter and is not required to file a petition pursuant to subsection E of this section for the following rule makings:

1. Initial making, but not renewal, of an emergency rule pursuant to section 41-1026.

2. Proposed expedited rule making or final expedited rule making.

E. Before filing a proposed rule with the secretary of state, an agency may petition the council for a determination that the agency is not required to file an economic, small business and consumer impact statement. The petition shall demonstrate both of the following:

1. The rule making decreases monitoring, record keeping, costs or reporting burdens on agencies, political subdivisions, businesses or persons.

2. The rule making does not increase monitoring, record keeping, costs or reporting burdens on persons subject to the proposed rule making.

F. The council shall place a petition under subsection E of this section on the agenda of its next meeting if at least four council members make such a request of the council chairperson within two weeks after the filing of the petition.

G. The preamble for a rule making that is exempt pursuant to subsection D or E of this section shall state that the rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement.

H. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.

I. If a person submits an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, the agency shall consider the analysis.

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

3. Authorization of the rule by existing statutes.

4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.

5. The clarity, conciseness and understandability of the rule.

6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.

7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

8. If applicable, that the agency completed the previous five-year review process.

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

10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the

council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.

2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.

3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.

4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.

5. Is not clear, concise and understandable.

6. Does not use general permits if required under section 41-1037.

7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.

8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.

2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.

2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

41-1056.01. Impact statements; appeals

A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on any of the following grounds:

1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.

2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.

3. The agency did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

B. The burden of proof is on the petitioner to show that any of the provisions set forth in subsection A of this section are met.

C. Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rule making or to amend or repeal the rule. The agency shall initiate any such rule making within forty-five days after publication of its final decision.

D. Any person who is or may be affected by the agency's final decision on whether to initiate a rule making pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.

E. The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.

F. If the appeal is placed on the council's agenda, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.

G. The council shall require an agency to promptly initiate a rule making or to amend or repeal the rule or the rule package, as prescribed by section 41-1024, subsection E, objected to in the petition if the council finds that any of the provisions set forth in subsection A of this section are met.

H. This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.

41-1081. Standards for delegation

A. No agency may enter into or amend any delegation agreement unless the delegation agreement clearly sets forth all of the following:

1. Each function, power or duty being delegated by the agency, the term of the agreement and the procedures for terminating the agreement.

2. The standards of performance required to fulfill the agreement.

3. The types of fees that will be imposed on regulated parties and the legal authority for imposing any such fees.

4. The qualifications of the personnel of the political subdivision responsible for exercising the delegated functions, powers or duties.

5. Record keeping and reporting requirements.

6. Auditing requirements if the delegation agreement includes the transfer of funds from the delegating agency to the political subdivision.

7. A definition of the enforcement role if enforcement authority is being delegated.

8. Procedures for resolving conflicts between the parties to the delegation agreement.

9. Procedures for amending the delegation agreement.

10. The names and addresses of primary contact persons at both the delegating agency and the political subdivision.

B. An agency that seeks to delegate functions, powers or duties shall file with the secretary of state a summary of the proposed delegation agreement. The summary shall provide the name of a person to contact in the agency with questions or comments and shall state that a copy of the proposed delegation agreement may be obtained upon request from the agency. The secretary of state shall publish the summary in the next register.

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.

E. After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.

F. A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives written notice to enter into the delegation agreement

pursuant to subsection E. The council shall place the appeal of the delegation agreement on its next meeting agenda if at least three council members make such a request of the council chairman within two weeks of the filing of the appeal.

G. Delegation agreements that are appealed to and considered by the council shall become effective upon council approval of the delegation agreement. Delegation agreements that are appealed to the council and not considered by the council are effective either thirty days after written notice of the agency's final decision is given pursuant to subsection E, or two weeks after an appeal is filed if at least three council members do not request council consideration of the delegation agreement pursuant to subsection F, whichever date is later.

H. The council shall not approve the delegation agreement if it does not meet the provisions set forth in subsection A or if the agency has not provided adequate notice and an opportunity for comment to the public.

41-1095. Review by agency; definitions

A. For an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rule has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rule adopted under the rulemaking exemption should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. The report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

2. Written criticisms of the rule received since the rule was adopted, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

3. Authorization of the rule by existing statutes.

4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.

5. The clarity, conciseness and understandability of the rule.

6. The estimated economic, small business and consumer impact of the rule.

7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

8. If applicable, that the agency completed any additional process required by law, including the requirement for the agency to publish otherwise exempt rules or provide the public with an opportunity to comment on the rules.

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

10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

11. For rules that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council may require the agency to propose an amendment or repeal of the rule by a date not earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.

2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.

3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.

4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.

5. Is not clear, concise and understandable.

6. Does not use general permits if required under section 41-1037.

7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.

8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

D. An agency may request an extension of not longer than six months from the date specified by the council pursuant to subsection C of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.

2. Demonstrates good cause for the extension.

E. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection C of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection C of this section or the extended date under subsection D of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

F. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

G. If an agency fails to submit its report pursuant to subsection A of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rule expires and the council shall:

1. Cause a notice to be published in the next register that states the rule has expired and is no longer enforceable.

2. Notify the secretary of state that the rule has expired and that the rule is to be removed from the code.

3. Notify the agency that the rule has expired and is no longer enforceable.

H. If a rule expires as provided in subsection G of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of chapter 6 of this title.

I. At least ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rule to be reviewed and the date the report is due.

J. For the purposes of this section, "agency", "council" and "rule" have the same meanings prescribed in section 41-1001.

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Office and sunset review process overview

December 5, 2023

Monette Kiepke, Performance Audit Manager

Governor's Regulatory Review Council performance audit and sunset review

- Audit report due by October 1, 2024
- Formal audit initiation letter in November 2023
- Anticipated finished in August 2024
- Legislature will review agency before July 1, 2025 (A.R.S. §41-3025.05)

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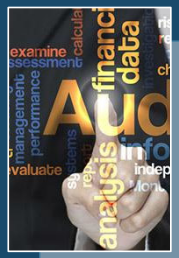
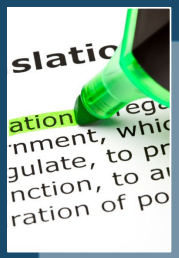
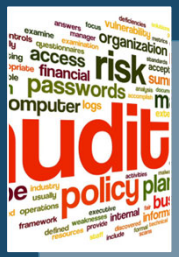
Agenda



Who we are



Why we do our work



What the audit process looks like

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Who we are

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Who we are

- Legislative agency

- Overseen by the Joint Legislative Audit Committee (JLAC)
  - JLAC's duties include:
    - Approving the audit schedule
    - Appointing an Auditor General

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Who we are

- Independent source of information and recommendations

- Audit responsibility for:
  - State agencies
  - Counties
  - Universities
  - Community college districts
  - School districts

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Who we are:
Office of the Auditor General

Types of audits

- Performance and sunset review audits
- Financial and compliance audits
- Financial investigations

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Why we do our work

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Why we do our work: Sunset reviews

- Established by Legislature
- Systematic review
- Every 8 years

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Why we do our work: Sunset reviews

- Includes 1 or more performance audits
- Sunset factor analysis, includes:
  - Agency objective and purpose
  - Extent the agency serves the entire state
  - Harm to public if terminated

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Why we do our work: Sunset reviews

- 2-year audit cycle
  - Audits generally due by October 1
- Reviews conducted by
  - Auditor General's Office
  - Committee of Reference

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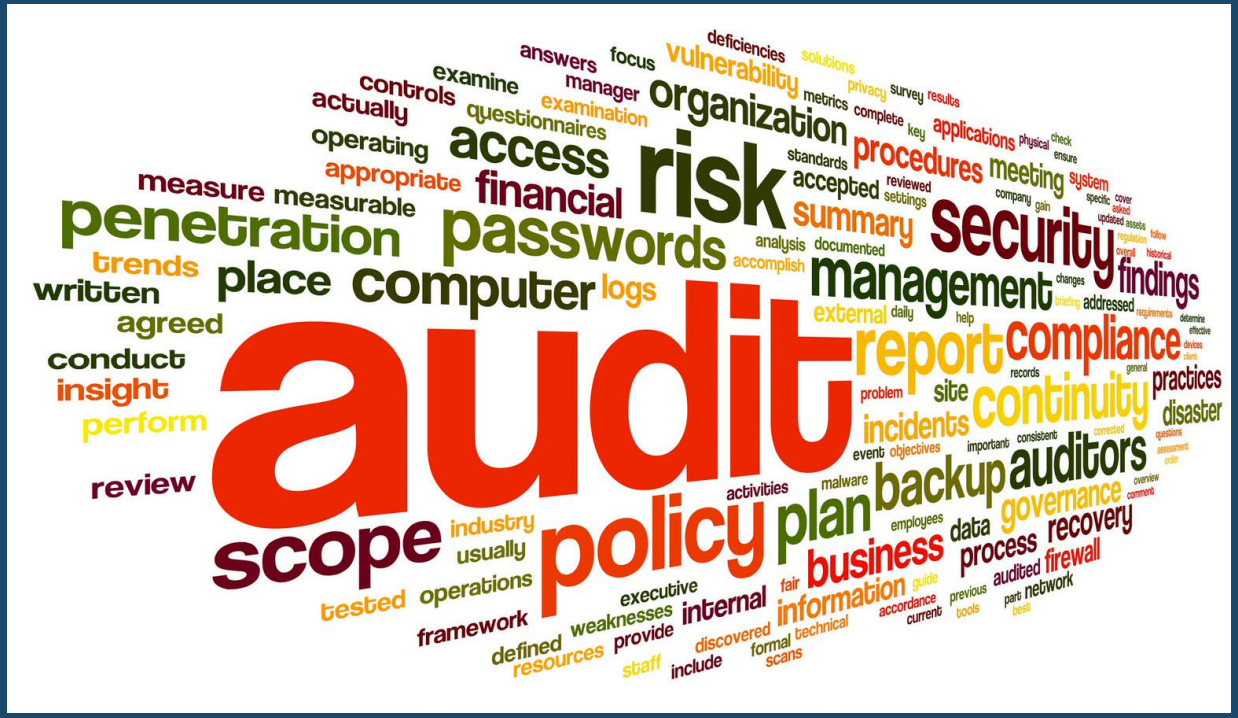
What the audit process looks like



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What the audit process looks like: Examples of work conducted

- Observe staff and board meetings
- Review agency files, data, and reports
- Interview staff
- Review written policies and procedures
- Identify criteria
  - Statutes/ rules
  - Best practices
  - Other state practices

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What the audit process looks like: Requests for evidence

Helpful pointers

- Policies and procedures
- Documents signed and dated
- Direct access
- Interview attendance

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What the audit process looks like: Technical expertise

- Internal controls reviews/financial tables
  - Internal controls over assets and financial transactions
- Information Technology (IT) reviews
  - Controls over IT operations and systems
  - IT system security

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What the audit process looks like: Access and confidentiality

Access

- Access to state agency records
- May attend executive sessions

Confidentiality

- Safeguard your confidential records
- Audit files are confidential

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What the audit process looks like: Audit phases

1. Early phase of audit
2. Fieldwork
3. Report writing and quality control

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What the audit process looks like: Collaborative approach

1. Early phase of audit
   - Entrance conference

2. Fieldwork
   - Audit updates
   - Fieldwork exit

3. Report writing and quality control
   - Draft exit

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What the audit process looks like: Legislative hearing

- Legislative committee of reference hearings
  - House and Senate, or joint meeting
  - Presentation
  - Recommendation for continuation
- Hearing time frame
  - Fall
  - No later than 3rd week in January

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What the audit process looks like: Following up

- Follow-up requirements
  - Time frame: 6- and 18-months or beyond
  - Activities: Interviews, observations, file reviews

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What the audit process looks like: Where to find our reports

List of performance audits:

https://www.azauditor.gov/list-all-performance-audits

Recent audits:

- Arizona Commerce Authority—Sunset Review
- Arizona Department of Child Safety—Sunset Review
- Arizona Foster Care Review Board—Sunset Review

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Thank you!

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