DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 2

Amend: R9-2-101, R9-2-107, R9-2-110

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: January 3, 2024

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

FROM: Council Staff

DATE: December 12, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 2

Amend: R9-2-101, R9-2-107, R9-2-110

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend three (3) rules in Title 9, Chapter 2, Article 1 related to implementation of the Smoke-Free Arizona Act. Specifically, the Department is seeking to amend the Smoke-Free Arizona rules to make the rules more clear, concise, and understandable; correct cross-references; remove redundant language; and clarify language without changing the effect of the rule, specifically clarifying the type of documentation a retail tobacco store submits to the Department to show that at least 51% of the retail tobacco store's gross income sales are on tobacco products and accessories.

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 changes to be made do not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated

and clarify language of a rule without changing its effect while amending or repealing rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) and (6).

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 related to this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

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

Not applicable. The Department indicates there are no corresponding federal laws.

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

Not applicable. The Department indicates the rules do not require the issuance of a permit, license, or agency authorization.

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 three (3) rules in Title 9, Chapter 2, Article 1 related to implementation of the Smoke-Free Arizona Act. Specifically, the Department is seeking to amend the Smoke-Free Arizona rules to make the rules more clear, concise, and understandable; correct cross-references; remove redundant language; and clarify

language without changing the effect of the rule, specifically clarifying the type of documentation a retail tobacco store submits to the Department to show that at least 51% of the retail tobacco store's gross income sales are on tobacco products and accessories.

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

October 26, 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. 2, Article 1. Expedited 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) under A.R.S. §§ 41-1027 and 41-1053.

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. R1-6-202:

1. The close of record date: September 18, 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 the procedural rights of regulated persons. In the rulemaking, the Department is changing the rules to clarify the language of a rule without changing its effect, as specified in A.R.S. § 41-1027(A)(3).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
Not applicable

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 rules

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 Lucinda Feeley at Lucinda.Feeley@azdhs.gov.

Sincerely,

Stacie Gravito Digitally signed by Stacie Gravito
Date: 2023.10.26 13:02:35 -07'00'

Stacie Gravito
Director's Designee

SG:lf

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES –

TOBACCO-RELATED PROGRAMS

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-2-101	Amend
	R9-2-107	Amend
	R9-2-110	Amend

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(A)(7) and 36-136(G)

Implementing Statutes: A.R.S. § 36-601.01(G)(11)

3. The effective date of the rules:

The rule is effective on the date 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* that pertain to the record of the final expedited rulemaking:

Notice of Docket Opening: 29 A.A.R. 1476, June 30, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 1782, August 18, 2023

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

Name: Jennifer Botsford, Office Chief Senior

Address: Arizona Department of Health Services
Division of Public Health Services, Public Health Preparedness
Office of Environmental Health
150 N. 18th Ave., Suite 220
Phoenix, AZ 85007-3248

Telephone: (602) 364-3142

Fax: (602) 364-3146

E-mail: Jennifer.Botsford@azdhs.gov

or

Name: Stacie Gravito, Interim 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, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-601.01(G)(11) requires the Arizona Department of Health Services (Department) to implement and enforce A.R.S. § 36-601.01, which was enacted as part of the Smoke-Free Arizona Act and authorizes the Department to promulgate rules for that purpose. In accordance with A.R.S. § 41-1039, on May 24, 2023, the Governor's Office approved the Department's rulemaking request to amend the Smoke-Free Arizona rules to make the rules more clear, concise, and understandable; correct cross-references; remove redundant language; and clarify language without changing the effect of the rule, specifically in regards to the type of documentation a retail tobacco store submits to the Department to show that at least 51% of the retail tobacco store's gross income sales are on tobacco products and accessories. This rulemaking is expected to benefit the general public as well as businesses that identify as a retail tobacco store.

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 pubic or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

No comments were received about 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. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

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

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

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 not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES - TOBACCO-RELATED PROGRAMS

ARTICLE 1. SMOKE-FREE ARIZONA

Section

R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. "Adult day care" means "adult day health care facility" as defined in A.R.S. § 36-401.
2. "Ashtray" means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. "Calendar quarter" means a period from:
   a. January 1 through March 31,
   b. April 1 through June 30,
   c. July 1 through September 30, or
   d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
   a. Is physically attached to a public place or non-vehicle place of employment; or
   b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor ~~of the public place or non-vehicle place of employment~~.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
   a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
   b. Excludes:
      i. An emergency exit, and

ii. A doorway for outdoor patio patrons.

15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.

16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:

a. A podiatrist;

b. A doctor of chiropractic or chiropractic assistant;

c. A dentist, dental consultant, dental hygienist, or denturist;

d. A doctor of medicine;

e. A doctor of naturopathic medicine or naturopathic medical assistant;

f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, ~~A.R.S. § 32-1668~~ A.R.S. § 32-1660, or nursing assistant;

g. A dispensing optician;

h. An optometrist;

i. A doctor of osteopathic medicine;

j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;

k. A physical therapist or physical therapist assistant;

l. A psychologist;

m. A veterinarian or veterinary technician;

n. A physician assistant;

o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;

p. A homeopathic physician or a medical assistant employed by a homeopathic physician;

q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;

r. An occupational therapist or occupational therapy assistant;

s. A respiratory therapist or respiratory therapy technician;

t. An acupuncturist;

u. An athletic trainer;

v. A massage therapist;

w. A midwife;

x. A hearing aid dispenser;

y. An audiologist; or

z. A speech-language pathologist or speech-language pathology assistant.

17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.

18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).

19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.

20. "Permeable" means permitting tobacco smoke to pass through.

21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.

22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.

23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).

24. "Tobacco products and accessories" means:

a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and

b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.

25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.

26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

R9-2-107. Retail Tobacco Store

A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.

B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:

1. The name of the proprietor of the retail tobacco store,

2. The name and address of the retail tobacco store,

3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
6. The signature of the proprietor of the retail tobacco store,
7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
8. The date of the Arizona notary's signature.

C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:

1. The name of the proprietor of the retail tobacco store~~.~~;
2. The name and address of the retail tobacco store~~.~~;
3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit~~.~~;
4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories~~.~~;
5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4), supporting documentation may include sales slips, invoices, receipts, and deposit slips;
6. The signature of the proprietor of the retail tobacco store~~.~~;
7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit~~.~~; and
8. The date of the Arizona notary's signature.

D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:

1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:

a. For the calendar quarter immediately preceding the date of the complaint; or

b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.

E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:

1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
2. The documents:
   a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
   b. Required under subsection (D)(2).

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:

1. The presence of an ashtray in an area where smoking is prohibited;
2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
3. The presence of smoking in an area where smoking is prohibited;
4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

TITLE 9. HEALTH SERVICES
CHAPTER 2. DEPARTMENT OF HEALTH SERVICES - TOBACCO-RELATED PROGRAMS

ARTICLE 1. SMOKE-FREE ARIZONA

Section

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   b. April 1 through June 30,
   c. July 1 through September 30, or
   d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
   a. Is physically attached to a public place or non-vehicle place of employment; or
   b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
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      ii. A doorway for outdoor patio patrons.
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   a. A podiatrist;
   b. A doctor of chiropractic or chiropractic assistant;
   c. A dentist, dental consultant, dental hygienist, or denturist;
   d. A doctor of medicine;
   e. A doctor of naturopathic medicine or naturopathic medical assistant;
   f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1668, or nursing assistant;

g. A dispensing optician;
h. An optometrist;
i. A doctor of osteopathic medicine;
j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
k. A physical therapist or physical therapist assistant;
l. A psychologist;
m. A veterinarian or veterinary technician;
n. A physician assistant;
o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
r. An occupational therapist or occupational therapy assistant;
s. A respiratory therapist or respiratory therapy technician;
t. An acupuncturist;
u. An athletic trainer;
v. A massage therapist;
w. A midwife;
x. A hearing aid dispenser;
y. An audiologist; or
z. A speech-language pathologist or speech-language pathology assistant.

17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).
19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
20. "Permeable" means permitting tobacco smoke to pass through.
21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
24. "Tobacco products and accessories" means:
    a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
    b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

R9-2-102. Reasonable Distance

A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.

B. A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

R9-2-103. Individual Responsibilities

A. An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A).

B. An individual in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

R9-2-104. Proprietor Responsibilities

A. A proprietor shall:

1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
4. Remove all ashtrays from all areas where smoking is prohibited; and
5. Communicate that smoking is prohibited in places of employment to:
   a. All existing employees by the effective date of this Article, and
   b. An applicant for employment at the time of the application for employment.

B. If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:

1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.

C. If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:

1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
2. Request that the individual stop smoking immediately.

D. A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.

E. A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107.

F. A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.

G. A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.

H. In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:

1. Not permit smoking in the vehicle when:
   a. More than one individual occupies the vehicle, and

b. The vehicle is used for business purposes; and
2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

R9-2-105. Sign Requirements

A. To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:
1. Are no smaller than four inches by six inches; and
2. Contain:
   a. The international no smoking symbol or the words "No Smoking";
   b. The telephone number designated by the Department for making complaints;
   c. The web site address designated by the Department for making complaints; and
   d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
3. Include a citation to A.R.S. § 36-601.01.

B. A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):
1. At every entrance,
2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
3. So that the sign is not obscured in any way.

C. A proprietor of a vehicle described in A.R.S. § 36-601.01(A)(7) shall:
1. Post at least one sign that:
   a. Is no smaller than two inches by three inches;
   b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and
   c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
2. Include a citation to A.R.S. § 36-601.01 on the sign; and
3. Firmly affix the sign to:
   a. A vehicle door window,
   b. The vehicle dashboard, or
   c. Another area in the vehicle that is visible to each occupant in the vehicle.

R9-2-106. Private Residence

A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
1. An adult day care,
2. A child care facility,
3. A child care group home, or
4. A health care institution other than an adult day care.

B. Smoking is prohibited in a health care professional's private residence:
1. In an area where the health care professional provides services to an individual, and
2. When the health care professional is providing services to an individual.

C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

R9-2-107. Retail Tobacco Store

A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.

B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:

1. The name of the proprietor of the retail tobacco store,
2. The name and address of the retail tobacco store,
3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
6. The signature of the proprietor of the retail tobacco store,
7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
8. The date of the Arizona notary's signature.

C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:

1. The name of the proprietor of the retail tobacco store,
2. The name and address of the retail tobacco store,
3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
6. The signature of the proprietor of the retail tobacco store,
7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
8. The date of the Arizona notary's signature.

D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:

1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
   a. For the calendar quarter immediately preceding the date of the complaint; or

b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.

E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
2. The documents:
   a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
   b. Required under subsection (D)(2).

R9-2-108. Outdoor Patio

A. A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
1. Is a contiguous area of a place of employment or public place;
2. Is controlled by the proprietor of the place of employment or public place; and
3. Has:
   a. At least one side that consists of:
      i. Open space;
      ii. Permeable material;
      iii. A combination of open space and permeable material; or
      iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
   b. No overhead covering or an overhead covering that consists of:
      i. Permeable material, or
      ii. A combination of open space and permeable material.

B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
1. Inform individuals that the doorway:
   a. Is not an entrance, and
   b. Is a doorway for outdoor patio patrons; and
2. Direct individuals who are not outdoor patio patrons to an entrance.

C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.

D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.

E. If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and

2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through entrances, open windows, ventilation systems, or other means.

F. A proprietor may designate an outdoor patio as an area where smoking is prohibited.

R9-2-109. Complaint; Observation; Notification; Inspection

A. When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
1. The name and address of the public place or place of employment that is the subject of the complaint;
2. The date and approximate time of the occurrence that gave rise to the complaint;
3. A description of the occurrence that gave rise to the complaint; and
4. Any other information relevant to the occurrence that gave rise to the complaint.

B. An individual shall make a complaint according to subsection (A) if the individual:
1. Conducted an inspection pursuant to:
   a. A.R.S. Title 36, Chapter 4 or Chapter 7.1; or
   b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.

C. Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
1. Notify the proprietor at the public place or place of employment about the complaint; or
2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.

D. If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:
1. The presence of an ashtray in an area where smoking is prohibited;
2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
3. The presence of smoking;
4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

R9-2-111. Notice of Violation; Notice of Assessment

A. After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may

send to the proprietor at the place of employment or public place a written notice of violation that includes:

1. The nature of the violation;
2. The date and time that the violation occurred;
3. The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
4. If a civil penalty is being assessed, a notice of assessment.

B. If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:

1. According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
2. According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:

1. The seriousness of the violation;
2. Any economic benefit that results from the violation;
3. The duration of the violation;
4. The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
   a. The type and severity of any previous violation,
   b. The number of individuals affected by the previous violations,
   c. The total number of previous violations, and
   d. The length of time from the first violation to the current violation;
5. Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
   a. Reporting violations to the Department or the Department's designee; and
   b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
      i. Informing an individual who is smoking that smoking is illegal, and
      ii. Requesting that the individual immediately stop the illegal smoking; and
6. Other factors affecting the public health and safety the Department or the Department's designee deems relevant.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real

property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

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

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum

standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

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

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

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

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

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

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

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

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

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

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

R. For the purposes of this section:

1. "Cottage food product":

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

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

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

36-601.01. Smoke-free Arizona act

(Caution: 1998 Prop. 105 applies.)

A. Definitions. The following words and phrases, whenever used in this section, shall be construed as defined in this section:

1. "Employee" means any person who performs any service on a full-time, part-time or contracted basis whether or not the person is denominated an employee, independent contractor or otherwise and whether or not the person is compensated or is a volunteer.

2. "Employer" means a person, business, partnership, association, the state of Arizona and its political subdivisions, corporations, including a municipal corporations, trust, or non-profit entity that employs the services of one or more individual persons.

3. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling. Enclosed area includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.

4. "Health care facility" means any enclosed area utilized by any health care institution licensed according to title 36 chapter 4, chapter 6 article 7, or chapter 17, or any health care professional licensed according to title 32 chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, or 42.

5. "Person" means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of a governmental subdivision, or a public or private organization of any character.

6. "Physically separated" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageway) and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas.

7. "Places of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including office buildings, work areas, auditoriums, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, stairs, elevators, health care facilities, private offices and vehicles owned and operated by the employer during working hours when the vehicle is occupied by more than one person. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

8. "Veteran and fraternal clubs" means a club as defined in A.R.S. 4-101(7)(a)(b) or (c).

9. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

10. "Retail tobacco store" means a retail store that derives the majority of its sales from tobacco products and accessories.

11. "Smoking" means inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product.

12. "Sports facilities" means enclosed areas of sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sporting events.

B. Smoking is prohibited in all public places and places of employment within the state of Arizona, except the following:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.

2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than fifty percent of rooms rented to guests in a hotel or motel are so designated.

3. Retail tobacco stores that are physically separated so that smoke from retail tobacco stores does not infiltrate into areas where smoking is prohibited under the provisions of this section.

4. Veterans and fraternal clubs when they are not open to the general public.

5. Smoking when associated with a religious ceremony practiced pursuant to the American Indian religious freedom act of 1978.

6. Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.

7. A theatrical performance upon a stage or in the course of a film or television production if the smoking is part of the performance or production.

C. The prohibition on smoking in places of employment shall be communicated to all existing employees by the effective date of this section and to all prospective employees upon their application for employment.

D. Notwithstanding any other provision of this section, an owner, operator, manager, or other person or entity in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

E. Posting of signs and ashtray removal.

1. "No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control of that place identifying where smoking is prohibited by this section and where complaints regarding violations may be registered.

2. Every public place and place of employment where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

3. All ashtrays shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager, or other person having control of the area.

F. No employer may discharge or retaliate against an employee because that employee exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.

G. The law shall be implemented and enforced by the department of health services as follows:

1. The department shall design and implement a program, including the establishment of an internet website, to educate the public regarding the provisions of this law.

2. The department shall inform persons who own, manage, operate or otherwise control a public place or place of employment of the requirements of this law and how to comply with its provisions including making information available and providing a toll-free telephone number and e-mail address to be used exclusively for this purpose.

3. Any member of the public may report a violation of this law to the department. The department shall accept oral and written reports of violation and establish an e-mail address(es) and toll-free telephone number(s) to be used exclusively for the purpose of reporting violations. A person shall not be required to disclose the person's identity when reporting a violation.

4. If the department has reason to believe a violation of this law exists, the department may enter upon and into any public place or place of employment for purposes of determining compliance with this law. However, the department may inspect public places where food or alcohol is served at any time to determine compliance with this law.

5. If the department determines that a violation of this law exists at a public place or place of employment, the department shall issue a notice of violation to the person who owns, manages,

operates or otherwise controls the public place or place of employment. The notice shall include the nature of each violation, date and time each violation occurred, and department contact person.

6. The department shall impose a civil penalty on the person in an amount of not less than $100, but not more than $500 for each violation. In considering whether to impose a fine and the amount of the fine, the department may consider whether the person has been cited previously and what efforts the person has taken to prevent or cure the violation including reporting the violation or taking action under subsection J. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment of a civil penalty by requesting a hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

7. If a civil penalty imposed by this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

8. The department may apply for injunctive relief to enforce these provisions in the superior court in the county in which the violation occurred. The court may impose appropriate injunctive relief and impose a penalty of not less than $100 but not more than $500 for each violation. Each day that a violation occurs constitutes a separate violation. If the superior court finds the violations are willful or evidence a pattern of noncompliance, the court may impose a fine up to $5000 per violation.

9. The department may contract with a third party to determine compliance with this law.

10. The department may delegate to a state agency or political subdivision of this state any functions, powers or duties under this law.

11. The director of the department may promulgate rules for the implementation and enforcement of this law. The department is exempt from the rulemaking procedures in A.R.S. § title 41, chapter 6 except the department shall publish draft rules and thereafter take public input including hold at least two public hearings prior to implementing the rules. This exemption expires May 1, 2007.

H. Beginning on June 1, 2008 and every other June 1 thereafter, the director of the Arizona department of health services shall issue a report analyzing its activities to enforce this law, including the activities of all of the state agencies or political subdivisions to whom the department has delegated responsibility under this law.

I. An owner, manager, operator or employee of place regulated by this law shall inform any person who is smoking in violation of this law that smoking is illegal and request that the illegal smoking stop immediately.

J. This law does not create any new private right of action nor does it extinguish any existing common law causes of action.

K. A person who smokes where smoking is prohibited is guilty of a petty offense with a fine of not less than fifty dollars and not more than three hundred dollars.

L. Smoke-free Arizona fund

1. The smoke-free Arizona fund is established consisting of all revenues deposited in the fund pursuant to §42-3251.02 and interest earned on those monies. The Arizona department of health services shall administer the fund. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by §35-313 and monies earned from investment shall be credited to the fund.

2. All money in the smoke-free Arizona fund shall be used to enforce the provisions of this section provided however that if there is money remaining after the department has met its enforcement obligations, that remaining money shall be deposited in the tobacco products tax fund and used for education programs to reduce and eliminate tobacco use and for no other purpose.

3. Monies in this fund are continuously appropriated, are not subject to further approval, do not revert to the general fund and are exempt from the provisions of §36-190 relating to the lapsing of appropriations.

M. This section does not prevent a political subdivision of the state from adopting ordinances or regulations that are more restrictive than this section nor does this section repeal any existing ordinance or regulation that is more restrictive than this section.

N. Tribal sovereignty —this section has no application on Indian reservations as defined in ARS 42-3301(2).

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 14

Amend: R9-7-1438, R9-7-1438.01, R9-7-1439, Appendix C

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: January 3, 2024

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

FROM: Council Staff

DATE: December 12, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7, Article 14

Amend: R9-7-1438, R9-7-1438.01, R9-7-1439, Appendix C

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend three (3) rules and one (1) appendix in Title 9, Chapter 7, Article 14 related to Registration of Nonionizing Radiation Sources and Standards for Protection Against Nonionizing Radiation. Arizona Revised Statutes (A.R.S.) § 30-672 specifies that the Department may require registration of medical lasers and intense pulsed light (IPL) devices, as defined in A.R.S § 32-516, as sources of radiation. A.R.S. §§ 32-516 and 32-3233 specify requirements for the certification of laser technicians, for programs providing training to individuals enabling them to apply for certification, and for supervision of laser technicians.

The rules for certification of laser technicians, including aesthetician and cosmetologists, are currently embedded in Title 9, Chapter 7, Article 14, but are being moved into Title 9 Chapter 16, as part of another rulemaking, to make them easier to find and to understand. To ensure that conflicting requirements for certification of laser technicians are not contained in multiple rules, the Department is removing requirements related to the certification of laser technicians from Title 9, Chapter 7, Article 14. In addition, the Department is reorganizing existing requirements for training programs and the use of medical lasers and IPL devices for

cosmetic procedures to improve clarity and understandability. The Department indicates it believes that this rulemaking will improve effectiveness and reduce regulatory burden.

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 changes to be made do not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated and clarify language of a rule without changing its effect while amending or repealing rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) and (6).

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 related to this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

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

Not applicable. The Department indicates there are no corresponding federal laws.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department states it believes the registration of a medical laser or IPL device issued to a person is a specific permit, under A.R.S. § 41-1037(A)(3) in that registration specifies the person, device, and facility location authorized by registration, as well as the scope of practice, which are necessary to protect health and safety, according to A.R.S. § 30-672. As such, the Department indicates the 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 three (3) rules and one (1) appendix in Title 9, Chapter 7, Article 14 related to Registration of Nonionizing Radiation Sources and Standards for Protection Against Nonionizing Radiation. The rules for certification of laser technicians, including aesthetician and cosmetologists, are currently embedded in Title 9, Chapter 7, Article 14, but are being moved into Title 9 Chapter 16, as part of another rulemaking, to make them easier to find and to understand. To ensure that conflicting requirements for certification of laser technicians are not contained in multiple rules, the Department is removing requirements related to the certification of laser technicians from Title 9, Chapter 7, Article 14. In addition, the Department is reorganizing existing requirements for training programs and the use of medical lasers and IPL devices for cosmetic procedures to improve clarity and understandability. The Department indicates it believes that this rulemaking will improve effectiveness and reduce regulatory burden.

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

October 31, 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 14, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: October 30, 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. To ensure that conflicting requirements for certification of laser technicians are not contained in multiple rules, the Department is removing requirements related to the certification of laser technicians from 9 A.A.C. 7, Article 14, since these requirements are being moved into 9 A.A.C. 16, as part of another rulemaking. Thus, the rulemaking meets the requirements in A.R.S. § 41-1027(A)(6). In addition, the Department is reorganizing existing requirements for training programs and the use of medical lasers and IPL devices for cosmetic procedures to improve clarity and understandability, 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. 7, Article 14, relates to a five-year-review report 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 January 2, 2024.

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 7. DEPARTMENT OF HEALTH SERVICES

RADIATION CONTROL

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

PREAMBLE

1.	Article, Part or Sections Affected (as applicable)	Rulemaking Action
	R9-7-1438	Amend
	R9-7-1438.01	Repeal
	R9-7-1439	Amend
	Appendix C	Amend

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

Authorizing statutes: A.R.S. §§ 30-654(B)(5), 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 30-654(B)(1) and (9), 30-672, 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. 2168, September 15, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 2523, October 20, 2023

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

Name: Brian D. Goretzki, Chief, Bureau of Radiation Control

Address: Arizona Department of Health Services
Public Health Licensing Services
4814 South 40th Street
Phoenix, AZ 85040

Telephone: (602) 255-4840

Fax: (602) 437-0705

E-mail: Brian.Goretzki@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.) § 30-672 specifies that the Department may require registration of medical lasers and IPL devices, as defined in A.R.S § 32-516, as sources of radiation. A.R.S. §§ 32-516 and 32-3233 specify requirements for the certification of laser technicians, for programs providing training to individuals enabling them to apply for certification, and for supervision of laser technicians. The rules for certification of laser technicians, including aesthetician and cosmetologists, are currently embedded in 9 A.A.C. 7, Article 14, but are being moved into 9 A.A.C. 16, as part of another rulemaking, to make them easier to find and to understand. To ensure that conflicting requirements for certification of laser technicians are not contained in multiple rules, the Department is removing requirements related to the certification of laser technicians from 9 A.A.C. 7, Article 14. In addition, the Department is reorganizing existing requirements for training programs and the use of medical lasers and IPL devices for cosmetic procedures to improve clarity and understandability. 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 registration of a medical laser or IPL device issued to a person is a specific permit, under A.R.S. § 41-1037(A)(3) in that registration specifies the person, device, and facility location authorized by registration, as well as the scope of practice, which are necessary to protect health and safety, according to A.R.S. § 30-672.

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:

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

Section

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

R9-7-1438. Hair ~~Reduction~~ Removal and Other Cosmetic Procedures Using Laser and Intense Pulsed Light

~~A.~~ ~~Registration. A person who seeks to perform hair reduction or other cosmetic procedures shall apply for registration of any medical laser or IPL device that is a Class II surgical device, certified as complying with the labeling standards in 21 CFR 801.109, revised April 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The applicant shall provide all of the following information to the Department with the application for registration:~~

~~1. Documentation demonstrating that the health professional is qualified in accordance with A.R.S. § 32-516 or 32-3233, has 24 hours of didactic training on the subjects listed in Appendix C, and has passed an Department-approved exam on subjects covered with a minimum grade of 80%;~~

~~2. For any health professional in practice prior to October 1, 2010, proof of 24 hours of training on the subjects listed in Appendix C;~~

~~3. Documentation endorsed by the prescribing health professional, acknowledging responsibility for the minimum level of supervision required for hair reduction procedures as defined in R9-7-1402 under "indirect supervision";~~

~~4. Procedures to ensure that the registrant has a written order from a prescribing health professional before the application of radiation;~~

~~5. If authorized, procedures to ensure that, in the absence of a prescribing health professional at the facility, the registrant has established a method for emergency medical care and assumed legal liability for the service rendered by an indirectly-supervised certified laser technician; and~~

~~6. Documentation that the indirectly-supervised certified laser technician has participated in the supervised training required by A.R.S. § 32-516 or 32-3233.~~

~~B.~~ ~~Hair Reduction Procedures~~

~~1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for hair reduction procedures, the registrant shall:~~

~~a. Ensure that the device is only used by a health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) or by a certified laser technician who is~~

working under the indirect supervision of a health professional described in A.R.S. §§ 32-516(C)(1) and 32-3233(D) and (H)(1), and

b. Ensure that a prescribing health professional purchases or orders the Class II surgical device that will be used for hair reduction procedures.

2. A registrant shall:

a. Not permit an individual to use a medical laser or IPL device for hair reduction procedures unless the individual:

i. Completes an approved laser technician didactic training program of at least 40 hours duration. To successfully complete the training program, the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a health professional acting within the health professional's scope of practice, or a certified laser technician with a minimum of 100 hours of hands-on experience per procedure being taught;

ii. Is present in the room for at least 24 hours of hands-on training, conducted by a health professional or a certified laser technician as described in subsection (B)(2)(a)(i);

iii. Performs or assists in at least 10 hair reduction procedures; and

iv. Has the qualified health professional or qualified supervising certified laser technician certify that the laser technician has completed the training and supervision as described in subsection (B)(2)(a).

b. Ensure that the laser technician follows written procedure protocols established by a prescribing health professional; and

c. Ensure that the laser technician follows any written order, issued by a prescribing health professional, which describes the specific site of hair reduction.

3. A registrant shall maintain a record of each hair reduction procedure protocol that is approved and signed by a prescribing health professional, and ensure that each protocol is reviewed by a prescribing health professional, at least annually.

4. A registrant shall:

a. Maintain each procedure protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and

b. Design each protocol to promote the exercise of professional judgment by the laser technician commensurate with the individual's education, experience, and

training. The protocol need not describe the exact steps that a qualified laser technician should take with respect to a hair reduction procedure.

5. A registrant shall require that a prescribing health professional observe the performance of each laser technician during procedures at intervals that do not exceed six months. The registrant shall maintain a record of the observation for three years from the date of the observation.

6. A registrant shall verify that a health professional is qualified to perform hair reduction procedures by obtaining evidence that the health professional has received relevant training specified in subsection (A)(1) and in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the health professional's licensing board.

7. A registrant shall provide radiation safety training to all personnel involved with hair reduction procedures, designing each training program so that it matches an individual's involvement in hair reduction procedures. The registrant shall maintain records of the training program and make them available to the Department for three years from the date of the program, during and after the individual's period of employment.

C. Other Cosmetic Procedures

1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for other cosmetic procedures, the registrant shall:

   a. Ensure that the device is only used by a health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) or by a certified laser technician who is directly supervised by a health professional as described in A.R.S. §§ 32-516(C)(2) and 32-3233(D) and (H)(2); and

   b. Ensure that a prescribing health professional purchases or orders the Class II surgical device that will be used for other cosmetic procedures.

2. A registrant shall not permit an individual to use a medical laser or IPL device for other cosmetic procedures unless the individual:

   a. Completes an approved laser technician didactic training program of at least 40 hours duration. To successfully complete the training program the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a health professional acting within the health

professional's scope of practice, or a certified laser technician with a minimum of 100 hours of hands-on experience per procedure being taught;

b. Is present in the room for at least 24 hours of hands-on training, conducted by a health professional or a certified laser technician as described in subsection (C)(2)(a); and

c. Performs or assists in at least 10 cosmetic procedures governed by subsection (C), for each type of procedure (for example: spider vein reduction, skin rejuvenation, non-ablative skin resurfacing); and

d. Has the qualified health professional or qualified supervising certified laser technician certify that the laser technician has completed the training and supervision as described in subsection (C)(2).

3. A registrant shall maintain a record of each protocol for a cosmetic procedure governed by subsection (C) that is approved and signed by a prescribing health professional, and ensure that each protocol is reviewed by a prescribing health professional, at least annually. The registrant shall:

a. Maintain each protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and

b. Design each protocol to promote the exercise of professional judgment by the laser technician commensurate with the individual's education, experience, and training. The protocol need not describe the exact steps that a qualified laser technician should take with respect to a cosmetic procedure governed by subsection (C).

4. A registrant shall verify that a health professional is qualified to perform laser, IPL, and related procedures, by obtaining evidence that the health professional has received relevant training specified in subsection (A)(1) and in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the health professional's licensing board.

5. A registrant shall provide radiation safety training to all personnel involved with cosmetic procedures governed by subsection (C), designing each training program so that it matches an individual's involvement in each procedure. The registrant shall maintain records of the training program and make them available to the Department for three years from the date of the program, during and after the individual's period of employment.

~~**D.** Persons governed by this Section shall also comply with other applicable licensing and safety laws.~~

~~**E.** A laser shall be secured so that the laser cannot be removed from the facility and the on/off switch is turned to the "off" position with the key removed when a certified laser technician or a health professional is not present in the room where the laser is located.~~

A. In addition to the definitions in A.R.S. § 32-516 and R9-7-102 and R9-7-1402, the following definitions apply in this Section and R9-7-1439 unless otherwise specified:

1. "Prescribing health professional" means a health professional who is authorized by the health professional's regulatory board to order and use a "prescription-only device," as defined in A.R.S. § 32-1901.
2. "Cosmetic procedure" means any of the following:
   a. Hair reduction,
   b. Skin rejuvenation,
   c. Non-ablative skin resurfacing,
   d. Spider vein reduction,
   e. Skin tightening,
   f. Wrinkle reduction,
   g. Laser peel,
   h. Telangiectasia reduction,
   i. Acquired adult hemangioma reduction,
   j. Facial erythema reduction,
   k. Solar lentigo reduction (age spots),
   l. Ephelis reduction (freckles),
   m. Acne scar reduction,
   n. Photo facial,
   o. Tattoo removal,
   p. Cellulite reduction, or
   q. Another, as approved by the Department after consultation with other health professional boards as defined in A.R.S. § 32-516(F)(3) or 32-3233(D)(1).

B. A person who seeks to perform hair removal or other cosmetic procedures shall apply for registration, under R9-7-1302(F)(7), of any medical laser or IPL device that is a Class II surgical device, certified by the manufacturer as complying with the labeling standards in 21 CFR 801.109, revised June 15, 2016, incorporated by reference, available under R9-7-101, and including no future editions or amendments.

C. An applicant for registration shall submit to the Department:

1. The following information, in a Department-provided format:
   a. The name, mailing address, billing address if different from the mailing address, telephone number, and e-mail address of the applicant;
   b. Any other names by which the applicant is known;
   c. The applicant's type of business organization, including:
      i. For a corporation, information as registered with the Arizona Corporation Commission;
      ii. For a partnership, the name and address of each partner and percentage of ownership;
      iii. For a sole proprietorship, the name of the owner; and
      iv. For a governmental entity, documentation showing the applicant is a governmental entity;
   d. The type of facility;
   e. For the medical laser or IPL device, as applicable:
      i. The class and type, and
      ii. The name of the manufacturer and model of the medical laser or IPL device;
   f. The physical address of the location at which the medical laser or IPL device, as applicable, will be used;
   g. The name, title, telephone number, and e-mail address of:
      i. A point of contact for the applicant at the location of use, and
      ii. A billing point of contact;
   h. The name, telephone number, and e-mail address of the prescribing health professional who will be responsible for the use of the medical laser or IPL device in subsection (C)(1)(e), including the prescribing health professional's regulatory board and professional license number;
   i. The name, telephone number, and e-mail address of the Laser Safety Officer required in R9-7-1434;
   j. Whether the applicant agrees to allow the Department to submit supplemental requests for information under A.R.S. § 41-1075(A);
   k. Attestation that the prescribing health professional in subsection (C)(1)(h):
      i. Is qualified in accordance with A.R.S. § 32-516 or 32-3233 and subsection (E);

ii. Is responsible for the use of the medical laser or IPL device;

iii. If applicable, will provide indirect supervision of a laser technician certified under 9 A.A.C. 16, Article 7, using the medical laser or IPL device for hair removal; and

iv. If applicable, will provide direct supervision of a laser technician certified under 9 A.A.C. 16, Article 7, using the medical laser or IPL device for a cosmetic procedure other than hair removal;

l. Attestation that the information or documents submitted to the Department are true and correct; and

m. The signature of both the applicant and prescribing health professional and the date signed;

2. Documentation for the individual specified according to subsection (C)(1)(c)(iii) or (g)(i), as applicable, that complies with A.R.S. § 41-1080;

3. Documentation demonstrating that the prescribing health professional in subsection (C)(1)(h) meets the requirements in subsection (E):

4. Documentation demonstrating that the Laser Safety Officer in subsection (C)(1)(i) has completed the training specified according to Appendix D; and

5. The fee in Table 13.1(F)(7).

D. If a registrant is using a medical laser or an IPL device in subsection (A), the registrant shall:

1. Designate a Laser Safety Officer, as required in R9-7-1434, who:

a. May be the registrant or the prescribing health professional; and

b. Has completed the training in Appendix D, as required in R9-7-1421(E);

2. Ensure that policies and procedures are developed, documented, and implemented that:

a. Address the applicable requirements in R9-7-1403, R9-7-1421, R9-7-1427, R9-7-1429, R9-7-1433; R9-7-1434, R9-7-1435, and R9-7-1436;

b, Include procedures to ensure that the prescribing health professional purchases or orders the medical laser or IPL device;

c. If applicable, cover situations in which the prescribing health professional is not present in the facility, according to subsection (D)(8); and

d. Cover the knowledge, skills, and experience of individuals authorized to use the medical laser or IPL device;

3. Ensure that the prescribing health professional:

a. Has established a written protocol for the application of radiation to a patient for each cosmetic procedure that may be conducted using the medical laser or IPL device, including follow-up instructions for the patient;

b. Reviews and, as necessary revises, the written protocols in subsection (D)(3)(a) at least annually; and

c. Documents the review in subsection (D)(3)(b) with a signature and date of signature;

4. Ensure that the registrant has a written order from the prescribing health professional before the application of radiation to a patient;

5. Ensure that the medical laser or IPL device is only used by:

a. A health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) who meets the requirements in subsection (E);

b. A laser technician, certified under 9 A.A.C. 16, Article 7, for the cosmetic procedure to be performed, who:

i. When performing a hair removal procedure, is working under the indirect supervision of a prescribing health professional described in A.R.S. §§ 32-516(C)(1) and 32-3233(D) and (H)(1); and

ii. When performing a cosmetic procedure other than hair removal, is working under the direct supervision of a prescribing health professional described in A.R.S. §§ 32-516(C)(1) and 32-3233(D) and (H)(1); or

c. An individual who has a provisional certificate for course completion issued according to R9-7-1439(E)(3) and:

i. Is receiving hands-on training under the supervision of an individual qualified according to R9-7-1439(F)(2); and

ii. If applicable, when a prescribing health professional is providing indirect supervision to a supervising laser technician in R9-7-1439(F)(2)(b);

6. Ensure that a laser technician follows the applicable written protocol established by the prescribing health professional according to subsection (D)(3)(a) when applying radiation to a patient using the medical laser or IPL device;

7. Ensure that, at least every six months, the prescribing health professional:

a. Observes each laser technician, while the laser technician is performing a hair removal procedure, for adherence to the applicable written protocol in subsection (D)(3)(a); and

b. Documents the observation and the assessment in subsection (D)(7)(a);

8. If the registrant is authorized by the Department to conduct hair removal procedures or other cosmetic procedures without a prescribing health professional being present in the facility:
   a. Establish a method for emergency medical care of a patient; and
   b. Assume legal liability for the services rendered in the facility by:
      i. An indirectly-supervised certified laser technician performing hair removal procedures, or
      ii. A health professional performing any cosmetic procedure;
9. Ensure that a laser technician using the medical laser or IPL device displays a valid original certificate, as issued by the Department under A.A.C. R9-16-703, R9-16-704, or R9-16-705, in a location that is viewable by the public;
10. Ensure that labels and signs are used, according to the applicable requirements in R9-7-1427 and R9-7-1429; and
11. Maintain on the premises of the facility:
   a. The policies and procedures in subsection (D)(2),
   b. The written protocols in subsection (D)(3)(a),
   c. Documentation of the review of the written protocols in subsection (D)(3)(b) for at least three years after the date of the review,
   d. Documentation of the observation and assessment in subsection (D)(7)(b) for at least three years after the date of the assessment,
   e. Documentation of the radiation safety training required in subsection (F) for at least three years after the last date of employment, and
   f. Documentation of the training required in subsection (D)(1)(b) for as long as the individual is acting as a Laser Safety Officer.

E. A registrant shall verify that a health professional is qualified to perform a cosmetic procedure using a medical laser or IPL device by obtaining documentation that the health professional:
1. Meets the requirements in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1); and
2. Has:
   a. A certificate of completion of 24 hours of didactic training issued to the health professional by a training program according to Appendix C; or
   b. Has been in practice since before October 1, 2010 and has at least 24 hours of training on the subjects in Appendix C.

F. A registrant shall:

1. Provide radiation safety training to all individuals involved with performing cosmetic procedures under subsection (D), consistent with the individual's knowledge, skills, and duties; and
2. Document the radiation safety training, including the date of the training, topics covered, name and qualifications of the individual providing the training, and names of individuals receiving the training.

G. A registrant shall ensure that:

1. A medical laser or IPL device is secured so that the medical laser or IPL device cannot be removed from the facility, and
2. The on/off switch is turned to the "off" position with the key removed when a laser technician or a health professional is not present in the room where the medical laser or IPL device is located.

R9-7-1438.01. ~~Certification and Revocation of Laser Technician Certificate~~ Repealed

~~A.~~ ~~An applicant for a laser technician certificate shall submit a completed application and certification that the applicant has received the training specified in A.R.S. §§ 32-516(A) or 32-3233(E).~~

~~B.~~ ~~The applicant shall pay a nonrefundable fee of $30.00. A duplicate certificate may be requested at the time of initial application or renewal at a fee of $10.00 per certificate. To obtain a duplicate certificate at other times a laser technician shall pay $20.00 per certificate.~~

~~C.~~ ~~Initial certificates are issued for 12 months and expire on the last day of the month. A renewal application shall be accompanied by a renewal fee of $30.00 each year in addition to $10.00 per duplicate certificate requested.~~

~~D.~~ ~~Under A.R.S. § 32-3233(I) and (J), the Department may take appropriate disciplinary action, including revocation of the certificate of a certified laser technician. The Department may discipline a certified laser technician who has had a relevant professional license suspended or revoked, or been otherwise disciplined by a health professional board or the Board of Cosmetology. The Department may also discipline the certified laser technician for falsifying documentation related to training, prescriptions, or other required documentation. As provided in Article 12 of this Chapter, the Department may assess civil penalties, suspend, revoke, deny, or put on probation a certified laser technician.~~

~~E.~~ ~~A laser technician who has been using laser and IPL devices prior to November 24, 2009 may continue to do so if the technician applies for and receives a certificate from the Department before October 1, 2010.~~

~~F.~~ ~~Certification may be issued for one or more of the following procedures:~~

1. Hair Reduction,
2. Skin Rejuvenation,
3. Non-Ablative Skin Resurfacing,
4. Spider Vein Reduction,
5. Skin Tightening,
6. Wrinkle Reduction,
7. Laser Peel,
8. Telangiectasia Reduction,
9. Acquired Adult Hemangioma Reduction,
10. Facial Erythema Reduction,
11. Solar Lentigo Reduction (Age Spots),
12. Ephelis Reduction (Freckles),
13. Acne Scar Reduction,
14. Photo Facial, or
15. Additional procedures as approved by the Department after consultation with other health professional boards as defined in A.R.S. § 32-516(F)(3) or 32-3233(D)(1).

G. For any application relating to the certification of laser technicians, as described in A.R.S. § 41-1072, there is an administrative completeness review time-frame of 30 days and a substantive review time-frame of 30 days with an overall time-frame of 60 days.

H. Certified laser technicians shall display a valid original certificate as issued by the Department in a location that is viewable by the public.

R9-7-1439. Laser and IPL Laser Technician and Laser Safety Training Programs

A. A person seeking to initiate a medical laser or IPL laser technician training program shall submit an application to the Department for certification that contains a description of the training program. In addition, the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R9-7-1438 through this Section, and Appendix C.

B. The Department shall review the application and other documents required by subsections (A) and (E) in a timely manner, using an administrative completeness review time-frame of 40 days and a substantive review time-frame of 20 days with an overall time-frame of 60 days.

C. The Department shall maintain a list of certified laser or IPL training programs.

D. Applicants for approval as a certified laser or IPL training program shall pay a nonrefundable $100.00 fee.

~~**E.** Initial certification shall be issued for 12 months and shall expire on the last day of the month. A renewal application shall be accompanied by a renewal fee of $100.00 each year.~~

~~**F.** A person seeking to initiate a medical laser or IPL laser technician safety training program shall submit an application to the Department for certification that contains a description of the training program. In addition, the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R9-7-1421 through R9-7-1444, Appendix C, and Appendix D, with emphasis on personal and public safety. The program shall also contain the training required by A.R.S. § 32-3233(E) or clearly state the portions of the training that are not provided or met if didactic certification is to take place in another program. The applicant shall conduct training in accordance with the program submitted to the Department and certified by the Department.~~

A. The Department shall maintain a list of Department-certified training programs for laser technicians according to A.R.S. § 32-3233 on the Department's website at https://docs.google.com/document/u/3/d/e/2PACX-1vT_KRgZkYEV-vg5VRGZzvpWZ-RzMVOwSCo8clPNrxMGQ6z-LkuyciUQ_7EEbT7dn6Ps8Lxysg6JNmdf/pub.

B. An applicant may request to become a Department-certified training program for laser technicians or renew approval as a Department-certified training program for laser technicians by submitting to the Department an application packet that contains:

1. The following information, in a Department-provided format:
   a. The name and address of the school providing the training program;
   b. The name, title, telephone number, and e-mail address of the administrator or designee of the school;
   c. A list of each training course for which approval is being requested;
   d. A statement that the applicant will comply with the requirements in subsection (E); and
   e. The signature and date of signature of the individual specified according to subsection (B)(1)(b);
2. A copy of the syllabus for each course that contains:
   a. The course title and course description,
   b. The number of hours of instruction provided,
   c. The duration of the course,
   d. The subjects covered,
   e. Any included learning activities, and

f. The name and license number or other credentials of each instructor for the course; and

3. A nonrefundable fee of $100.

C. The Department shall:

1. Review each application packet specified in subsection (B) according to R9-7-1223;

2. If the application is approved:

a. Notify the applicant that certification is issued for 12 months and expires on the last day of the month;

b. For an initial certification, add the applicant's school to the list of Department-certified training programs in subsection (A); and

c. For a renewal of certification, retain the applicant's school on the list of Department-certified training programs in subsection (A); and

3. If the Department learns of non-compliance with the requirements in subsection (E) or, if applicable (F), remove the training program's school from the list of Department-certified training programs in subsection (A).

D. A certified training program may provide a course in any of the cosmetic procedures included in the definition in R9-7-1438(A)(2).

E. The administrator of a Department-certified training program shall ensure that:

1. A course to prepare an individual to become a laser technician:

a. Includes at least 40 hours of didactic training;

b. Includes federal and state legal requirements;

c. Is specific to the medical laser or IPL device in use and the clinical procedures to be performed, including:

i. A description of the medical laser or IPL device;

ii. Fundamentals of laser radiation or IPL device radiation;

iii. The potential biological effects of laser or IPL device light, including absorption and wavelength effects;

iv. Operation of the medical laser or IPL device;

v. Typical laser or IPL device settings for hair removal or cosmetic procedures; and

vi. Criteria for setting the levels of Maximum Permissible Exposure (MPE) for eye and skin associated hazards;

d. Addresses hazards associated with laser or IPL device use, including:

i. The bioeffects of laser radiation on the eye and skin;

ii. Explosive, electrical, chemical, and other hazards; and

iii. Thermal effects;

e. Addresses safety considerations and methods to minimize the hazards associated with laser or IPL device use, including:

i. Controlled access to an area while the laser or IPL device is in use;

ii. Use of protective eyewear or other protective devices, as applicable; and

iii. Other methods to minimize the hazards associated with laser or IPL device use and to improve safety;

f. Addresses treatment considerations, including:

i. Anatomy and physiology of skin areas to be treated,

ii. Pre- and post-care of a patient,

iii. Expected patient response to treatment, and

iv. Potential adverse reactions to treatment

g. Is provided by a:

i. Health professional acting within the health professional's scope of practice; or

ii. Laser technician, who is certified under 9 A.A.C. 16, Article 7, with a minimum of 100 hours of hands-on experience using a medical laser or IPL device; and

h. Includes an examination for the course that consists of at least 50 multiple-choice questions on the subjects covered;

2. The minimum score for passing the examination in subsection (E)(1)(h) is 80%;

3. An individual who completes the course in subsection (E)(1) and achieves a score of at least 80% on the examination required according to subsection (E)(1)(h) is provided with a provisional certificate for course completion, as specified in A.R.S. § 32-3233(E)(1), that includes:

a. Identification of the training program,

b. Identification of the 40-hour didactic course completed,

c. The name of the individual who completed the course,

d. The date the individual completed all course requirements,

e. Attestation that the individual has met all course requirements, and

f. The signature or electronic signature of the training program administrator and the date of signature or electronic signature; and

4. Documentation related to a course is maintained for at least three years after the end of a course session and includes:

a. The syllabus for the course,

b. The name and credentials of the individual providing the course,

c. The name and attendance record of each individual taking the course, and

d. The results of the examination for each individual taking the course.

F. A Department-certified training program may offer hands-on training in the use of a medical laser or IPL device if:

1. The individual receiving the hands-on training has a provisional certificate for course completion issued according to subsection (E)(3);

2. The hands-on training is supervised by a:

a. Health professional acting within the health professional's scope of practice; or

b. Laser technician, who is certified under 9 A.A.C. 16, Article 7, with a minimum of 100 hours of hands-on experience using a medical laser or IPL device;

3. For hands-on training in the use of a medical laser or IPL device for hair removal:

a. The hands-on training includes at least 24 hours of use of a medical laser or IPL device by the individual while the supervising health professional or laser technician in subsection (F)(2) is present in the room with the individual, and

b. The supervising health professional or laser technician verifies the successful completion of the hands-on training by the individual according to subsection (G);

4. For hands-on training in the use of a medical laser or IPL device for a cosmetic procedure other than hair removal:

a. The individual receiving the hands-on training has documentation of the successful completion of the hands-on training in subsection (F)(3);

b. The individual specifies the types of cosmetic procedures, as specified in subsection (D), on which the individual will receive hands-on training and for which the individual will request certification;

c. The hands-on training includes at least 24 hours of use of a medical laser or IPL device for each type of cosmetic procedure specified according to subsection (F)(4)(b) while the supervising health professional or laser technician in subsection (F)(2) is present in the room with the individual;

d. The individual performs at least 10 cosmetic procedures of each type specified according to subsection (F)(4)(b); and

e. The supervising health professional or laser technician verifies the successful completion of the hands-on training by the individual according to subsection (G); and

5. Documentation related to the hands-on training is maintained for at least three years after the end of the hands-on training and includes:

a. The type of cosmetic procedure,

b. The type of each medical laser or IPL device used during the hands-on training,

c. The name and credentials of the individual providing the hands-on training,

d. The name of each individual taking the hands-on training, and

e. Any assessments by the individual providing the hands-on training of an individual taking the hands-on training.

G. A supervising health professional or laser technician in subsection (F)(2) verifying the successful completion of an individual's hands-on training shall specify the following:

1. The name of the individual completing the hands-on training;

2. The name, title, e-mail address, and telephone number of the supervising health professional or laser technician, including, as applicable:

a. The health professional's professional license number, or

b. The laser technician's certification number;

3. The type of license or certification held by the supervising health professional or laser technician;

4. Each type of cosmetic procedure on which the individual has completed hands-on training;

5. An attestation by the supervising health professional or laser technician that:

a. The individual specified according to subsection (G)(1) has completed the training according to subsection (F)(3) or (4), as applicable, for each cosmetic procedure specified according to subsection (G)(4);

b. The supervising health professional or laser technician was present in the room during the use of a medical laser or IPL device by the individual;

c. The supervising health professional or laser technician is qualified, according to A.R.S. § 32-3233, to provide the supervision; and

d. The supervising health professional or laser technician understands that, if the Department determines that the supervising health professional or laser technician has falsified documentation related to the hands-on training, the Department may, as applicable:

i. Report the falsification to the health professional's licensing board, or

ii. Take disciplinary action against the laser technician; and

6. The signature of the supervising health professional or laser technician and date of signing.

Appendix C. ~~Hair Removal and Other Cosmetic Laser or IPL Operator~~ Health Professional Training Program

1. General Considerations. An applicant shall ensure that:
   a. The training program is specific to the medical laser or IPL device in use and the clinical procedures to be performed;
   b. Program content is consistent with facility policy and procedure and applicable federal and state law; and
   c. The training program addresses hazards associated with laser or IPL device use.
2. Technical Considerations. The applicant's training program shall cover all of the following technical subjects:
   a. Laser and IPL device descriptions
   b. Definitions
   c. Laser and IPL device radiation fundamentals
   d. Laser mediums, types of lasers, and other light-emitting devices – solid, liquid, gas, and IPL devices
   e. Biological effects of laser or IPL device light
   f. Damage mechanisms
      i. Eye hazard
      ii. Skin hazard (includes information regarding skin type and skin anatomy)
      iii. Absorption and wavelength effects
      iv. Thermal effects
   g. Photo chemistry
   h. Criteria for setting the Maximum Permissible Exposure (MPE) for eye and skin associated hazards
   i. Explosive, electrical, and chemical hazards
   j. Photosensitive medications
   k. Fire, ionizing radiation, cryogenic hazards, and other hazards, as applicable
3. Medical Considerations. The applicant's training program shall cover all of the following medical subjects:

a. Local anesthesia techniques, including ice, EMLA cream, and other applicable topical treatments
b. Typical laser and IPL device settings for hair removal and cosmetic procedures
c. Expected patient response to treatment
d. Potential adverse reactions to treatment
e. Anatomy and physiology of skin areas to be treated
f. Indications and contraindications for use of pigment and vascular-specific lasers for cutaneous procedures

4. General Laser or IPL device safety. The applicant's training program shall cover the following general safety subjects:
   a. Laser and IPL device classifications
   b. Control measures (includes information regarding protective equipment)
   c. Manager and operator responsibilities
   d. Medical surveillance practices
   e. Federal and state legal requirements
   f. Related safety issues
      i. Controlled access
      ii. Plume management
      iii. Equipment testing, aligning, and troubleshooting

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

Section

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

R9-7-1401. Registration of Nonionizing Radiation Sources and Service Providers

A. A person shall not use a nonexempt nonionizing radiation source, unless the source is registered by the Department.

B. A person who possesses a nonexempt nonionizing source shall submit to the Department an application for registration within 30 days of its first use.

1. A person who possesses a nonexempt source listed in R9-7-1302(F) shall register the source with the Department.
2. A person applying for the registration of a nonexempt source shall use an application form provided by the Department.
3. An applicant shall provide the information identified in Appendix B of this Article.

C. A registrant shall notify the Department within 30 days of any change to the information contained in the registration, or sale of a source that results in termination of the activities conducted under the registration.

D. In addition to the application form, an applicant shall remit the applicable registration fee, specified in R9-7-1306.

E. A person who is operating more than one facility, where one or more nonexempt nonionizing sources are used, shall apply for a separate registration for each facility.

F. A person in the business of installing or servicing nonexempt nonionizing sources shall apply to the Department for registration 30 days before furnishing the service. The person shall apply for registration on a form furnished by the Department and shall provide the information required by A.R.S. § 30-672.01.

R9-7-1402. Definitions

General definitions:

"Controlled area" means any area to which human access is restricted for the purpose of protection from nonionizing radiation.

"Direct supervision" means that a licensed practitioner supervises the use of a source for medical purposes while the practitioner is present inside the facility where the source is being used.

"Indirect supervision" means: for lasers or IPL devices used for hair removal procedures, there is at a minimum, responsible supervision and control by a licensed practitioner who is easily accessible by telecommunication.

"Licensed practitioner" (See R9-7-102)

"Medical director" means a licensed practitioner, as defined in R9-7-102, who delegates a laser, IPL, or other light-emitting medical device procedure to a non-physician and is qualified to perform the procedure within the scope of practice of the license.

"Nonexempt nonionizing source" means any system or device that contains a nonionizing source listed in R9-7-1302(F).

"Operator" means a person who is trained in accordance with this Article and knowledgeable about the control and function of a nonionizing device regulated under this Article.

"Other cosmetic procedure" means a method of using medical lasers or intense pulse light (IPL) devices approved by the Federal Food and Drug Administration (FDA), for the cosmetic purpose of spider vein removal, skin rejuvenation, non-ablative skin resurfacing, skin resurfacing, port wine stain removal, epidermal pigmented skin lesion removal, or tattoo removal; and does not include hair removal.

Laser definitions:

"Accessible emission limit (AEL)" means the maximum accessible emission level of laser or collateral radiation permitted within a particular class.

"Accessible radiation" means laser or collateral radiation to which human access is possible.

"Angular subtense" means the apparent visual angle, a, as calculated from the source size and distance from the eye.

"Aperture" means an opening in the protective housing or other enclosure of a laser product, through which laser or collateral radiation is emitted, allowing human access to the radiation.

"Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiation is measured.

"Certified laser product" means that the product is certified by a manufacturer in accordance with the requirements of 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"CDRH" means the Center for Devices and Radiological Health.

"Classes of lasers" means the following categories of lasers, defined in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department: Class 1, Class 2, Class 2a, Class 3, Class 3a, Class 3b, and Class 4. This incorporation by reference contains no future editions or amendments.

“Collateral radiation” means any electronic product radiation, except laser radiation, emitted by a laser product as a result of operation of the laser or any component of the laser product that is physically necessary for operation of the laser. The accessible emission limits for collateral radiation are specified in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

“Continuous wave” (cw) means the output of a laser that is operated in a continuous rather than a pulsed mode. For purposes of this Article, a laser operating with a continuous output for a period ≥ 0.25 seconds, is regarded as a cw laser.

“Cosmetic procedure protocol” means a delegated written authorization to select specific laser or IPL settings, initiate a laser or IPL procedure, and conduct necessary follow-up procedures.

“Demonstration laser” means any laser manufactured, designed, intended, or used for purposes of demonstration, entertainment, advertising display, or artistic composition.

“Embedded laser” means an enclosed laser with an assigned class number higher than the inherent capability of the laser system in which it is incorporated, where the system’s lower classification is due to engineering features that limit accessible emission.

“Enclosed laser” means a laser that is contained within its own protective housing or the protective housing of a laser or laser system in which it is incorporated. Opening or removing the protective housing provides more access to laser radiation above the applicable MPE than is possible with the protective housing in place. (An embedded laser is a type of enclosed laser.)

“Federal performance standards for light-emitting products” means the regulations in 21CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives, and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

“Human access” means the capacity to intercept laser or collateral radiation by any part of the human body.

“Incident” means an event or occurrence that results in actual or suspected accidental exposure to laser radiation that has caused or is likely to cause biological damage.

“Integrated radiance” means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter per steradian.

“Irradiance” means the time-averaged radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimeter.

“Laser” See the definition in Article 1.

“Laser energy source” means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources, such as electrical supply mains or batteries, are not considered laser energy sources by the Department.

“Laser facility” means a facility where one or more lasers are used. For purposes of this definition a Class 1 facility is a facility that has one or more Class 1 lasers; a Class 2 facility is a facility that has one or more Class 2 or 2a lasers; a Class 3 facility is a facility that has one or more Class 3, 3a, or 3b lasers, and a Class 4 facility is a facility that has one or more Class 4 lasers. Facilities that contain more than one laser class are classified according to the highest laser class in use at the facility.

“Laser product” means any manufactured product or assemblage of components that constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product is itself considered a laser product.

“Laser protective device” means any device used to reduce or prevent exposure of personnel to laser radiation. This includes: protective eyewear, garments, engineering controls, and operational controls.

“Laser radiation” means all electromagnetic radiation emitted by a laser product, within the spectral range specified in the definition of “laser,” which is produced as a result of controlled stimulated emission or that is detectable with radiation so produced through the appropriate aperture stop and within the appropriate solid angle of acceptance.

“Laser Safety Officer (LSO)” - means any individual, qualified by training and experience in the evaluation and control of laser hazards, who is designated by the registrant and has the authority and responsibility to establish and administer the laser radiation protection program for a particular class of facility.

“Laser system” means a laser in combination with an appropriate laser energy source with or without additional incorporated components.

“Limited exposure duration (T_{max})” means an exposure duration that is specifically limited by design or intended use.

“Maintenance” means performance of those adjustments or procedures specified in operator information provided by the manufacturer with the laser product, which are to be performed by the operator to ensure the intended performance of the product. The term does not include operation or service as defined in this Section.

“Maximum permissible exposure (MPE)” means the level of laser radiation to which a person may be exposed without hazardous effect or adverse biological changes in the eye or skin. MPE values for eye and skin exposure are listed in ANSI Z136.1-2000, American National Standard

for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"Medical laser product" means any laser product that is a medical device defined in 21 U.S.C. 321(h) and is manufactured, designed, intended, or promoted for in vivo laser irradiation of any part of the human body for the purpose of: diagnosis, surgery, therapy, or relative positioning of the human body.

"Operation" means the performance of the laser product over the full range of its function. It does not include maintenance or service as defined in this Section.

"Protective housing" means those portions of a laser product that are designed to prevent human access to laser or collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this Article.

"Pulse duration" means the time increment measured between the half-peak-power points at the leading and trailing edges of a pulse.

"Pulse interval" means the period of time between identical points on two successive pulses.

"Radiance" means the time-averaged radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian.

"Radiant energy" means energy emitted, transferred, or received in the form of radiation, expressed in joules.

"Radiant exposure" means the radiant energy incident on an element of a surface divided by the area of that element, expressed in joules per square centimeter.

"Radiant power" means the time-averaged power emitted, transferred, or received in the form of radiation, expressed in watts.

"Rule of nines" means a method for estimating the extent of burns, expressed as a percentage of total body surface. In this method the body is divided into sections of 9 percent or multiples of 9 percent, each: head and neck, 9 percent; anterior trunk, 18 percent; posterior trunk, 18 percent; upper limbs, 18 percent; lower limbs, 36 percent; and genitalia and perineum, 1 percent.

"Safety interlock" means a device associated with the protective housing of a laser product to prevent human access to excessive radiation.

"Sampling interval" means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol "t".

"Secured enclosure" means an area to which casual access is impeded by various means, such as a door secured by a lock, latch, or screws.

"Service" means the performance of those procedures or adjustments described in the manufacturer's service instructions that may affect any aspect of the product's performance. The term does not include maintenance or operation as defined in this Section.

"T_{max}" See limited exposure duration.

"Uncertified laser product" means any laser that has not been certified in accordance with the requirements of 21CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

Radio frequency and microwave radiation definitions:

"Accessible emission level" means the level of radio frequency radiation emitted from any source, expressed in terms of power density in milliwatts per square centimeter or electric and magnetic field strength, as applicable, and to which human access is normally possible.

"Far field region" means the area in which locally uniform distribution of electric and magnetic field strengths exists in planes transverse to the direction of propagation. The far field region is presumed to exist at distances greater than $2D^2/\lambda$ from the antenna, where λ is the wavelength and D is the largest antenna aperture dimension.

"Maximum permissible exposure MPE" means the rms and peak electric and magnetic field strengths, their squares, or the plane-wave equivalent power densities associated with these fields and the induced and contact currents to which a person may be exposed without harmful effect and with an acceptable safety factor.

"Near field region" means the area near an antenna in which the electric and magnetic field components vary considerably in strength from point to point. For most antennas the outer boundary of the region is presumed to exist at a distance $\lambda/2\pi$ from the antenna surface, where λ is the wavelength.

"Radio frequency controlled area" means any location to which access is controlled for the purpose of protection from radio frequency radiation.

"Radio frequency source" means a source or system that produces electromagnetic radiation in the radio frequency spectrum.

"Radio frequency radiation" means electromagnetic radiation (including microwave radiation) with frequencies in the range of 0.3 megahertz to 100 gigahertz.

"Root-mean-square (rms)" means the effective value, or the value associated with joule heating, of a periodic electromagnetic wave. The rms is obtained by taking the square root of the mean of the squared value of a function.

"Safety device" means any mechanism incorporated into a radio frequency source that is designed to prevent human access to excessive levels of radio frequency radiation.

Ultraviolet, high intensity light, and intense pulsed light source definitions:

"EPA" means the United States Environmental Protection Agency.

"FDA" means the United States Food and Drug Administration.

"High intensity mercury vapor discharge (HID) lamp" means any lamp, including a mercury vapor or metal halide lamp that incorporates a high-pressure arc discharge tube with a fill that consists primarily of mercury and is contained within an outer envelope, except the tungsten filament self-ballasted mercury vapor lamp.

"Intense pulsed light device (IPL)" means, for purposes of R9-7-1438, any lamp-based device that produces an incoherent, filtered, and intense light.

"Maximum exposure time" means the greatest continuous exposure time interval recommended by the manufacturer of a product.

"Protective sunlamp eyewear" means any device designed to be worn by a user of a product to reduce exposure of the eyes to radiation emitted by the product.

"Sanitize" means treat the surfaces of equipment and devices using an EPA or FDA registered product that provides a specified concentration of chemicals, for a specified period of time, to reduce the bacterial count, including pathogens, to a safe level.

"Self-extinguishing lamp" means any HID lamp that ceases operation in conformance with the requirements of the performance standard in 21 CFR 1040.30(d), April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

"Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by ultraviolet radiation with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

"Timer" means any device incorporated into a product that terminates radiation emission after a preset time interval.

"Ultraviolet lamp" means any light source that produces ultraviolet radiation and that is intended for use in any sunlamp product.

"Ultraviolet radiation" means electromagnetic radiation in the wavelength interval from 200 to 400 nanometers in air.

"User" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other

compensation, is afforded use of a tanning device as a condition or benefit of membership or access.

R9-7-1403. General Safety Provisions and Exemptions

A. Based on consideration of the following factors, the Department may waive compliance with specific requirements of this Article:

1. Whether compliance requires product replacement or substantial modification of a product's current installation, and
2. Whether the registrant provided information requested by the Department to determine if there are alternative methods of achieving the same or a greater level of radiation protection.

B. The registrant shall:

1. Ensure that any nonionizing source is operated by an individual who is trained and has demonstrated competence in the safe use of the source.
2. Provide safety rules to each individual who operates a nonionizing radiation source and determine whether the individual is aware of operating restrictions and procedures associated with the safe use of the source.
3. Make, or cause to be made, any physical radiation surveys required by this Article.
4. Maintain the following records for three years for Department review:
    a. Results of any physical survey or calibration required by this Article;
    b. Radiation source inventories;
    c. Maintenance, service, and modification records; and
    d. Incident reports of known or suspected exposure to nonionizing radiation that exceeds any MPE specified in this Article.

C. A registrant shall not operate a nonionizing radiation source unless the source complies with all of the applicable requirements of this Article.

R9-7-1404. Radio Frequency Equipment

A. A registrant shall operate a radiation source that emits radio frequency radiation in a radio frequency controlled area, in a manner that will prevent human exposure that exceeds the MPE specified in IEEE Std C95.1-1999, Institute of Electrical and Electronics Engineers Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3kHz to 300 GHz, 1999 edition, which is incorporated by reference, published by the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, NY 10017, and on file

with the Department. This incorporation by reference contains no future editions or amendments. The registrant shall post each point of access into a radio frequency controlled area according to R9-7-1406.

B. If a registrant is required to operate a radio frequency source in a controlled area, the registrant shall employ visual or audible emission indicators that function only during production of radiation.

C. If a source of radio frequency emissions is physically separate from the source's means of activation by a distance greater than 2 meters, the registrant shall place a visual or an audible emission indicator at the source and the point of activation.

D. A registrant shall place each visual emission indicator so that the location of the indicator does not require human exposure to radio frequency radiation that exceeds the applicable MPE.

E. A registrant shall inspect each safety device designed to prevent human exposure to excessive radio frequency radiation for proper operation at intervals that do not exceed one month.

F. If a machine emits mechanically scanned radio frequency radiation, a registrant shall ensure that the machine cannot, as the result of scan failure or any other malfunction, cause a change in angular velocity or amplitude, allowing human exposure that exceeds the applicable MPE.

G. A registrant shall physically secure each radio frequency sources to prevent unauthorized use and tampering.

R9-7-1405. Radio Frequency Radiation: Maximum Permissible Exposure

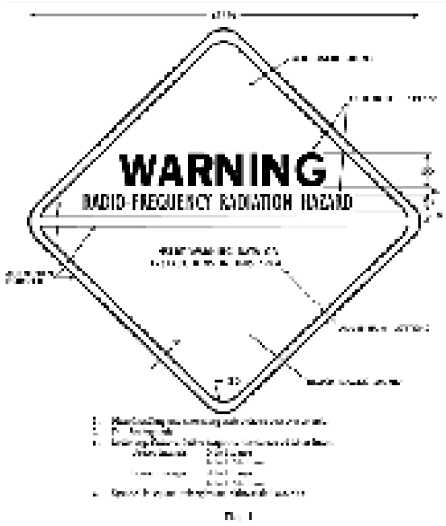
A. A registrant shall not expose a person to radio frequency radiation that exceeds the applicable MPE specified in IEEE Std C95.1-1999, Institute of Electrical and Electronics Engineers Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3kHz to 300 GHz, 1999 edition, which is incorporated by reference, published by the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, NY 10017, and on file with the Department. This incorporation by reference contains no future editions or amendments.

B. At frequencies between 300 kHz and 100 GHz a registrant may exceed the applicable MPE if exposure conditions can be shown by laboratory procedures to produce specific absorption rates (SARs) above 0.4 watts per kilogram, averaged over the whole body, and spatial peak SAR values above 8 watts per kilogram, averaged over 1 gram of tissue.

C. At frequencies between 300 kHz and 1 GHz, a registrant may exceed the applicable MPE, if the radio frequency input power to the radiating device is seven watts or less.

R9-7-1406. Radio Frequency Hazard Caution Signs, Symbols, Labeling, and Posting

A. A registrant shall post each point of access to a controlled area with caution signs of the type



designated in Figure 1.

B. A registrant shall post operating procedure restrictions or limitations, used to prevent unnecessary or excessive exposure to radio frequency radiation, in a location visible to the operator.

C. A registrant shall place each warning sign or label so that an observer is not exposed to radio frequency radiation that exceeds the applicable MPE.

R9-7-1407. Microwave Ovens

A person shall register with the Department any microwave oven that does not meet the requirements in 21 CFR 1030.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1408. Reporting of Radio Frequency Radiation Incidents

A. A registrant shall report in writing to the Department within 15 days of a known or suspected personnel exposure to radiation that exceeds the applicable MPE incorporated by reference in R9-7-1405.

B. A registrant shall report to the Department within 24 hours of a known or suspected personnel exposure to radiation that exceeds 150% of an applicable MPE incorporated by reference in R9-7-1405.

C. A registrant shall immediately report to the Department a known or suspected personnel exposure to radiation that exceeds 500% of an applicable MPE incorporated by reference in R9-7-1405.

R9-7-1409. Medical Surveillance for Workers Who May Be Exposed to Radio Frequency

Radiation

A. Upon request by the Department, a registrant shall provide a medical examination to an individual exposed to radiation reported to the Department according to R9-7-1408.

B. A registrant shall provide a copy of the results to the Department if an individual undergoes a medical examination, requested under subsection (A).

R9-7-1410. Radio Frequency Compliance Measurements

A. For obtaining measurements to determine compliance with R9-7-1405, the Department shall use an instrument capable of measuring the field strength and frequency of radiation.

B. The Department shall ensure that each instrument used for compliance measurements is calibrated every 12 months. The calibration shall be performed in a manner that meets the standards in IEEE Std C95.1-1999, incorporated by reference in R9-7-1404(A).

C. For compliance measurements of exposure conditions in the near field, the Department shall obtain measurements of both the electric and magnetic field components. The applicable protection standards for near field measurements are the mean squared electric and magnetic field strengths (using the applicable MPE) referenced in R9-7-1405.

D. If the Department is obtaining measurements to determine compliance in far field exposure conditions, the Department may use measurements of power density in milliwatts per square centimeter or the calculated equivalent plane wave power density, based on measurement of either the electric or magnetic field strength. The applicable protection standards are the power density values (using the applicable MPE) referenced in R9-7-1405.

E. In obtaining measurements in accordance with this Section, the Department shall measure the electric and magnetic field strength:

1. Obtained at an emission frequency of 300 megahertz or less; and
2. Expressed in terms of power density.

F. For mixed or broadband fields at frequencies for which there are different protection standards, the Department shall determine the fraction of the applicable MPE incurred within each frequency interval. To achieve compliance the sum of all the fractions shall not exceed unity (1).

G. The Department shall obtain compliance measurements at a distance of five centimeters or greater from any object.

H. A registrant shall obtain measurements that are averaged over a six-minute period for pulsed and non-pulsed modes of radio frequency emission and make a correction for duty cycle in determining the average field strength.

R9-7-1412. Tanning Operations

A registrant shall establish and maintain written policies and procedures that are part of a radiation safety program to assure compliance with the requirements in R9-7-1412 through R9-7-1416.

R9-7-1413. Tanning Equipment Standards

A. A registrant operating a tanning facility shall use sunlamp products that are certified by the manufacturer to comply with 21 CFR 1040.20, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments. For sunlamp products in use before the effective date of this Article, the Department shall determine compliance based on the standard in effect at the time of manufacture, as shown on the equipment identification label.

B. A registrant shall replace burned-out or defective lamps or filters, before any use of a tanning device.

C. A registrant shall replace a burned-out or defective lamp or filter with a lamp or filter intended for use in that equipment, as specified on the sunlamp product label, or that is equivalent to a lamp or filter specified on the sunlamp product label under the FDA regulations and polices applicable to the sunlamp product at the time of manufacture. If an equivalent lamp or filter is used instead of the Original Equipment Manufacturer (OEM) lamp or filter specified on the product label, the registrant shall maintain a copy of the equivalency certification, provided by the lamp supplier, on file for review by Department inspectors.

D. A registrant shall ensure that each sunlamp product has a timer and control system that complies with 21 CFR 1040.20(c), April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments. In addition the registrant shall ensure that:

1. The timer interval does not exceed the manufacturer's maximum, recommended exposure time;
2. The timer is functional and accurate to within +/- 10% of the maximum timer interval of the product;
3. The timer does not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle;
4. The timer is tested annually for accuracy;
5. For a new facility (including existing facilities with change of ownership) a remote timer control system is installed before operation of sunlamp products. For an existing facility

that has sunlamp products not equipped with a remote timer control system, a remote timer control system (outside of the sunlamp product room) is installed no later than 6 months after the effective date of this Section; and

6. Each sunlamp product is equipped with an emergency shutoff mechanism that allows manual termination of the UV exposure by the user.

E. A registrant shall provide physical barriers between each sunlamp product to protect users from injury caused by touching or breaking a lamp.

F. A registrant that employs a stand-up sunlamp product shall:

1. Use physical barriers, handrails, floor markings, or other methods to indicate the proper exposure distance between the ultraviolet lamps and the user's skin;
2. Construct each tanning booth so that it can withstand the stress of use and the impact of a falling person;
3. Provide access to a tanning booth with doors of rigid construction that open outward, handrails, and non-slip floors; and
4. Control the interior temperature of a sunlamp product so that it never exceeds 100 degrees Fahrenheit (38 degrees Centigrade).

R9-7-1414. Tanning Equipment Operators

A. A registrant shall ensure that at least one operator is present during operating hours. The operator shall:

1. Limit the occupancy of the tanning room to one person when the tanning equipment is in use;
2. Prevent use of the tanning equipment by anyone under 18 years of age unless the person has written permission from a parent or guardian;
3. Limit exposure time to the manufacturer's recommendation on the equipment label or in the operator's manual;
4. Limit exposure time during a 24-hour period to the maximum recommended for a 24-hour period by the manufacturer; and
5. Maintain a record of each user's total number of tanning visits and exposure times for Department inspection. The registrant shall maintain the records for three years from the date on the record.

B. Before use of tanning equipment, an operator shall:

1. Provide the user sanitized protective sunlamp eyewear and directions for its use;
2. Demonstrate the use of any physical aids, necessary to maintain correct exposure distance for the user, as recommended by the manufacturer of the tanning equipment;

3. Set the exposure timer so that the user is not exposed to excess radiation;
4. Instruct the user on the maximum exposure time and correct distance from the radiation source as recommended by the manufacturer of the tanning equipment; and
5. Instruct the user about the location and correct operation of the emergency shutoff switch.

C. An operator shall control a sunlamp's timer. A registrant shall:

1. Provide training to operators that covers:
    a. The requirements of this Section;
    b. Facility operating procedures, including:
        i. Determination of skin type and associated duration of exposure;
        ii. Procedures for use of minor and adult user consent forms;
        iii. Potential harm associated with photosensitizing foods, cosmetics, and medications;
        iv. Requirements for use of protective eyewear by users of the equipment; and
        v. Proper sanitizing procedures for the facility, equipment, and eyewear;
    c. The manufacturer's procedures for operation and maintenance of tanning equipment;
    d. Recognition of injury or overexposure; and
    e. Emergency procedures used in the case of an injury.
2. Maintain records of training for Department review, which include dates and material covered, for three years from the date the training is provided.
3. Post a list of operators at the facility.

D. Before the first use of a tanning facility in each calendar year by a user:

1. An operator shall request that the user read a copy of the warnings in R9-7-1415(A);
2. The operator shall obtain the user's signature on a statement as an acknowledgment that the user has heard or read and understands the warnings in R9-7-1415(A); and
3. For illiterate or visually handicapped persons, the operator shall read the warnings in R9-7-1415(A) in the presence of a witness. Both the witness and the operator shall sign the statement described in subsection (D)(2).

R9-7-1415. Tanning Facility Warning Signs

A. A registrant shall post the warning sign shown in this subsection within 1 meter (39.37 inches) of each tanning device, ensuring that the sign is clearly visible and easily viewed by the user before the tanning device is operated.

B. A registrant shall post a warning sign, which contains the statement shown, at or near the reception area.

PERSONS UNDER AGE 18 ARE REQUIRED TO HAVE
PARENT OR LEGAL GUARDIAN SIGN AN AUTHORIZATION
TO TAN IN THE PRESENCE OF A TANNING
FACILITY OPERATOR

C. The lettering on each warning sign shall be at least 10 millimeters high for all words shown in capital letters and at least 5 millimeters high for all lower case letters.

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DANGER - UL TRAVIOLET RADIA TION

1. Follow instructions.
2. Avoid overexposure. As with natural sunlight, exposure can cause eye and skin injury and aller gic reactions. Repeated exposure may cause premature aging of the skin, dryness, wrinkling, and skin cancer.
3. Wear protective eyewear.

FAILURE TO USE PROTECTIVE EYEWEAR MA Y RESUL T IN SEVERE BURNS OR LONG TERM INJUR Y TO THE EYES.

4. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications or have a history of skin problems or believe you are especially sensitive to sunlight.
5. If you do not tan in the sun, you are unlikely to tan from use of this device.

R9-7-1416. Reporting of Tanning Injuries

A. A registrant shall report any incident involving an eye injury; skin burn; fall injury, if the fall occurs within the tanning device or while entering or exiting the device; laceration; infection believed to have been transmitted by use of the tanning device; or any other injury reasonably related to the use of the tanning device.

B. A registrant shall provide a written report of an incident to the Department within 10 working days of its occurrence or within 10 working days of the date the registrant became aware of the incident.

C. The report shall include:

1. The name of the user;
2. The name and location of the tanning facility;
3. A description of and the circumstances associated with the injury;
4. The name and address of the health care provider treating the user, if any; and
5. Any other information the registrant considers relevant to the incident.

R9-7-1418. High Intensity Mercury Vapor Discharge (HID) Lamps

A person shall register with the Department any HID lamp that does not meet the requirements in 21 CFR 1040.30, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1421. Laser Safety

A. The requirements contained in this Section apply to laser products that are used in accordance with the manufacturer's classification and instructions. If certain engineering controls are impractical during manufacture or research and development activities, the LSO shall specify alternate requirements to obtain equivalent laser safety protection.

B. A registrant shall establish and maintain a laser radiation safety program.

C. If R9-7-1433 is applicable, a registrant shall conduct a laser radiation protection survey to ensure compliance with R9-7-1433 before initial use, following system modifications, and at intervals that do not exceed six months. During a survey the registrant shall:

1. Determine whether each laser protective device is labeled correctly, functioning within the design specifications, and meets required standards for the type and class of laser in use;
2. Determine whether each warning device is functioning within design specifications;
3. Determine whether each controlled area is identified, controlled, and posted with accurate warning signs in accordance with this Article;
4. Reevaluate potential hazards from surfaces that are associated with Class 3 and Class 4 beam paths; and
5. Evaluate the laser and collateral radiation hazard incident to the use of lasers.

D. The registrant shall maintain records of:

1. Results of all physical surveys made to determine compliance with this Article;
2. Any restriction in operating procedures necessary to prevent unnecessary or excessive exposure to laser or collateral radiation;
3. Any incident for which reporting to the Department is required pursuant to R9-7-1436;
4. Results of medical surveillance to determine extent of injury resulting from exposure to laser or collateral radiation;
5. Inventory to account for all sources of radiation possessed by the licensee.

E. A registrant shall provide the Laser Safety Officer with training that covers the subjects listed in Appendix D.

R9-7-1422. Laser Protective Devices

A. A registrant shall ensure that each laser product has a protective housing that prevents access to laser and collateral radiation if it exceeds the exposure limits for Class 1 lasers in R9-7-1426. If a laser's accessible emission levels must exceed the limits for Class 1 lasers, the registrant shall use a laser from the lowest class that will enable the registrant to perform the intended function.

B. To prevent access to radiation above the applicable MPE, a registrant shall ensure that each laser has a safety interlock, which prevents operation of the laser if a person has removed any portion of the protective housing that can be removed or displaced without the use of tools during normal operation or maintenance. The registrant shall ensure that:

1. Service, testing, or maintenance of a laser does not render the interlocks inoperative or increase radiation outside the protective housing to levels that exceed the applicable MPE, unless a controlled area is established as specified in R9-7-1433;
2. For pulsed lasers, interlocks are designed to prevent the laser from firing;
3. For Class 3b and 4 continuous wave (cw) lasers, interlocks turn off the power supply or interrupt the beam.
4. An interlock does not allow automatic accessibility to radiation emission above the applicable MPE when the interlock is closed; and
5. Multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing is provided if failure of a single interlock could result in:
    a. Human access to levels of laser radiation that exceed the radiant power accessible emission limit for Class 3a laser radiation, or
    b. Laser radiation that exceeds the accessible emission limit for Class 2, emitted directly through the opening created by removal or displacement of a portion of the protective housing.

C. A registrant shall ensure that a laser with viewing ports, viewing optics, or display screens, included as an integral part of the enclosed laser or laser system has:

1. A suitable means to attenuate laser and collateral radiation transmitted through the optical system to less than the accessible emission limit for collateral radiation required by 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments; and
2. Specific written administrative procedures developed by the LSO, and use controls, such as interlocks or filters, if there is increased hazard to the eye or skin associated with the use of optical systems such as lenses, telescopes, or microscopes.

D. A registrant shall ensure that each Class 3 or 4 laser product provides a visual or audible indication before the emission of accessible laser radiation that exceeds the limits for Class 1, as follows:

1. For Class 3, except for laser products that allow access to less than 5 milliwatts peak visible laser radiation, and Class 4 lasers, the indication occurs before the emission of the radiation and allows enough time for action to avoid exposure;
2. Any visual indicator is clearly visible through protective eyewear designed specifically for the wavelength of the emitted laser radiation;
3. If the laser and laser energy source are housed separately and can be operated at a separation distance of greater than 2 meters, both the laser and laser energy source incorporate visual or audible indicators; and
4. Any visual indicators are positioned so that viewing does not require human access to laser radiation that exceeds the applicable MPE.

E. In addition to the information signs, symbols, and labels prescribed in R9-7-1427, R9-7-1428, and R9-7-1429, each registrant shall provide, near the signs, symbols, and labels within the laser facility, operating procedure restrictions and any other safety information required to ensure compliance with this Article and minimize exposure to laser and collateral radiation.

R9-7-1423. Laser Prohibitions

A. A registrant shall not require or permit an individual to look directly into a laser beam or directly at specular reflections of a laser beam, or align a laser by eye while looking along the axis of the laser beam if the intensity of the beam or the beam's reflections exceeds the applicable MPE.

B. A registrant shall not permit an individual to enter a controlled area if the skin exposure exceeds the applicable MPE, unless the registrant provides and requires the use of protective clothing, gloves, and shields.

C. A registrant shall ensure that any laser product, emitting spatially scanned laser radiation, does not, as a result of scan failure or any other failure that causes a change in angular velocity or amplitude, permit human access to laser radiation that exceeds the accessible emission limits applicable to that class of product.

R9-7-1425. Laser Product Classification

A. Each laser product is classified on the basis of emission level, emission duration, and wavelength of accessible laser radiation emitted over the full range of resulting operational capability, any time during the useful life of the product, according to the federal performance standards for light-emitting products contained in 21 CFR 1040.10, April 1, 2004, which is incorporated by

reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

B. Any person that modifies a certified laser product in a manner that affects any aspect of performance or intended functions of the product, shall recertify and reidentify the product in accordance with 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

C. Any laser system that is incorporated into a laser product that is subject to the requirements of this Article, and capable, without modification, of producing laser radiation when removed from the laser product, is considered a laser product, subject to the applicable requirements of this Article. Upon removal of the laser system described in this subsection, the laser product is classified on the basis of accessible laser radiation emission.

R9-7-1426. Laser and Collateral Radiation Exposure Limits

A. A registrant shall not use, or permit the use of a laser product that will result in a human exposure that exceeds the applicable MPE or accessible emission limit (AEL) listed in ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. Accessible emission limits are listed in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. These incorporations by reference contain no future editions or amendments.

B. A registrant shall not allow exposure to collateral radiation that exceeds any accessible emission limit in 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1427. Laser Caution Signs, Symbols, and Labels

A. Except as otherwise authorized by the Department, a registrant shall use signs, symbols, and labels prescribed by this Section and the design and colors specified in ANSI Z136.1-2000, American

National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

B. A registrant shall ensure that the word "invisible" immediately precedes the word "radiation" on labels and signs required by this Section for lasers that only produce wavelengths of laser and collateral radiation that are outside of the range of 400 to 710 nanometers.

C. A registrant shall ensure that the words "visible and invisible" immediately precede the word "radiation" on labels and signs required by this Section for lasers that produce wavelengths of laser and collateral radiation that are both within and outside the range of 400 to 710 nanometers.

D. A registrant shall position any label placed on lasers or signs posted in laser facilities so that the reader of the label or sign is not exposed to laser or collateral radiation that exceeds the applicable MPE or accessible emission limit while reading the label or sign.

E. A registrant shall use labels and signs that are clearly visible, legible, and permanently attached to the laser or facility.

F. A registrant shall ensure that a permanent and legible label is affixed to each laser, identifying the classification of the laser in accordance with 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

G. For a Class 3 or Class 4 laser a registrant shall ensure that a permanent and legible label is affixed to each laser, specifying the maximum output of laser radiation, the pulse duration if applicable, and the laser medium or emitted wavelength.

H. For a Class 3 or Class 4 laser, used in the practice of medicine, a registrant shall ensure that a permanent and legible label is affixed to each laser providing one or more of the following warnings near each aperture that emits laser radiation or collateral radiation that exceeds the applicable MPE, as follows:

1. "AVOID EXPOSURE - Laser radiation is emitted from this aperture" if the radiation emitted through the aperture is laser radiation;
2. "AVOID EXPOSURE - Hazardous electromagnetic radiation is emitted from this aperture" if the radiation emitted through the aperture is collateral radiation; or
3. "AVOID EXPOSURE - Hazardous x-rays are emitted from this aperture" if the radiation emitted through the aperture is collateral x-ray radiation.

I. A registrant shall ensure that there is a label on each non-interlocked or defeatable interlocked portion of the protective housing or enclosure that permits human access to laser or collateral radiation. The label shall include one or more of the following warnings, as applicable:

1. For laser radiation that exceeds the applicable accessible emission limit for a Class 1 or Class 2 laser, but does not exceed the applicable accessible emission limit for a Class 3 laser, the warning: "DANGER - Laser radiation when open, AVOID DIRECT EXPOSURE TO THE BEAM."
2. For laser radiation that exceeds the applicable accessible emission limit for a Class 3 laser, the warning: "DANGER - Laser radiation when open, AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION."
3. For collateral radiation that exceeds an applicable accessible emission limit:
    a. If the applicable limit for collateral laser radiation is exceeded, the warning: "CAUTION - Hazardous electromagnetic radiation when open"; and
    b. If the applicable limit for collateral x-ray radiation is exceeded, the warning: "CAUTION - Hazardous x-ray radiation".
4. For a protective housing or an enclosure that has a defeatable interlock, the warning "and interlock defeated" in addition to the warnings in subsections (1) through (3).

R9-7-1429. Posting of Laser Facilities

Unless other methods are approved by the Department, a registrant shall post each laser facility in accordance with ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1433. Laser Use Areas that are Controlled

A. A registrant shall establish a controlled area for a laser if it is possible for a person to be exposed to laser radiation from a Class 3b laser, except a Class 3b laser of less than 5 milliwatts visible peak power, or a Class 4 laser that exceeds the applicable MPE or AEL in R9-7-1426.

B. A registrant shall ensure that a controlled area associated with a Class 3b laser is:

1. The responsibility of a LSO;
2. Posted in accordance with this Article; and
3. Access controlled by the LSO or a trained, designated representative.

C. A registrant shall ensure that a controlled area associated with a Class 4 laser is:

1. The responsibility of a LSO;
2. Posted in accordance with this Article;
3. Access controlled by the LSO or a trained, designated representative; and
4. If an indoor controlled area:
    a. Equipped with latches, interlocks, or another means of preventing unexpected entry into the controlled area;
    b. Equipped with a control-disconnect switch, panic button, or an equivalent device for deactivating the laser during an emergency;
    c. Operated so that the person in charge of the controlled area can momentarily override the safety interlocks during tests that require continuous operation to provide access to other personnel if there is no optical radiation hazard at the point of entry and the entering personnel are wearing required protective devices; and
    d. Controlled in a way that reduces the transmitted values of laser radiation through optical paths such as windows, to levels at or below the applicable ocular MPE and AEL in R9-7-1426. If a laser beam with an irradiance or radiant-exposure above the applicable MPE or AEL will exit the indoor controlled area (as in the case of exterior atmospheric beam paths), the registrant and the operator are responsible for ensuring that the beam path is limited to controlled air space or controlled ground space.

D. If a panel or protective cover is removed or an interlock bypassed for service, testing, or maintenance, a registrant shall establish an accessible controlled area. The registrant, through a LSO or a designated representative, shall comply with laser safety requirements for all potentially-exposed individuals.

R9-7-1434. Laser Safety Officer (LSO)

A. Each registrant shall designate a Laser Safety Officer (LSO).

B. The LSO shall administer the laser radiation protection program and shall:

1. Ensure that maintenance or service for Class 3b and Class 4 lasers is performed only by technicians trained to provide the maintenance or service by either the manufacturer's service organization or the registrant;
2. Approve or reject written service, maintenance, and operating procedures;
3. Investigate, document, and report all incidents as required by R9-7-1436;
4. Select protective eyewear as required by R9-7-1435, along with any other protective equipment;

5. For health care facilities, establish authorization and operating procedures, including preoperative and postoperative checklists, for use by operating room personnel;
6. Ensure that authorized personnel are trained in the assessment and control of laser hazards;
7. Select signs, symbols, and labels as required by R9-7-1427;
8. Perform laser radiation protection surveys as required by R9-7-1421 and R9-7-1441;
9. Classify or verify the classification of lasers and laser systems used under the LSO's jurisdiction;
10. Evaluate the hazard of laser use areas, treatment areas, and controlled areas, as required by R9-7-1421(C).

R9-7-1435. Laser Protective Eyewear

A. A registrant shall require that protective eyewear, as specified by the LSO, be worn by an individual who has access to:
1. Class 4 laser radiation; or
2. Class 3b laser radiation.

B. A registrant shall, through the LSO, provide protective eyewear that is:
1. Marked with a label that indicates the optical density protection afforded for the relevant laser wavelength;
2. Maintained so that the protective properties of the eyewear are preserved;
3. Inspected at intervals that do not exceed six months to ensure integrity of the protective properties; and
4. Removed from service if the protective properties of the eyewear fall below the optical density on the label.

C. A registrant shall maintain records of protective eyewear maintenance, inspection, and removal from service for five years.

R9-7-1436. Reporting Laser Incidents

A. A registrant shall notify the Department by telephone within 24 hours of any incident that has caused or may have caused:
1. Permanent loss of sight in either eye; or
2. Third-degree burns of the skin involving more than 5 percent of the body surface as estimated by the rule of nines.

B. A registrant shall notify the Department by telephone within five working days of any incident that has or may have caused:

1. Any second-degree burn of the skin larger than one inch (2.54 centimeter) in greatest diameter; or
2. Any third-degree burn of the skin; or
3. An eye injury with any potential loss of sight.

C. Each registrant shall file a written report with the Department of any known exposure of an individual to laser radiation or collateral radiation within 30 days of its discovery, describing:

1. Each exposure of the individual to laser or collateral radiation that exceeds the applicable MPE; and
2. Any incident that triggered a notice requirement in subsections (A) or (B).

D. Each report required by subsection (C) shall describe the extent of exposure to each individual including:

1. An estimate of the individual's exposure;
2. The level of laser or collateral radiation involved;
3. The cause of the exposure; and
4. The corrective steps taken or planned to prevent a recurrence.

E. A registrant shall not operate or permit the operation of any laser product or system that does not meet the applicable requirements in this Article.

R9-7-1437. Special Lasers

A registrant operating a laser system with an unenclosed beam path shall:

1. Conduct an evaluation before operating the laser to determine the expected beam path and the potential hazards from reflective surfaces. Based on the evaluation the registrant shall exclude reflective surfaces from the beam path at all points where the laser radiation exceeds an applicable MPE;
2. Evaluate the stability of the laser platform to determine the constraints placed upon the beam traverse and the extent of the range of control; and
3. Refrain from operating or making a laser ready for operation until the area along all points of the beam path, where the laser radiation will exceed the applicable MPE, is clear of individuals, unless the individuals are wearing the correct protective devices.

R9-7-1438. Hair Reduction and Other Cosmetic Procedures Using Laser and Intense Pulsed Light

A. Registration. A person who seeks to perform hair reduction or other cosmetic procedures shall apply for registration of any medical laser or IPL device that is a Class II surgical device, certified as complying with the labeling standards in 21 CFR 801.109, revised April 1, 2010, incorporated by

reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The applicant shall provide all of the following information to the Department with the application for registration:

1. Documentation demonstrating that the health professional is qualified in accordance with A.R.S. § 32-516 or 32-3233, has 24 hours of didactic training on the subjects listed in Appendix C, and has passed an Department-approved exam on subjects covered with a minimum grade of 80%;
2. For any health professional in practice prior to October 1, 2010, proof of 24 hours of training on the subjects listed in Appendix C;
3. Documentation endorsed by the prescribing health professional, acknowledging responsibility for the minimum level of supervision required for hair reduction procedures as defined in R9-7-1402 under "indirect supervision";
4. Procedures to ensure that the registrant has a written order from a prescribing health professional before the application of radiation;
5. If authorized, procedures to ensure that, in the absence of a prescribing health professional at the facility, the registrant has established a method for emergency medical care and assumed legal liability for the service rendered by an indirectly-supervised certified laser technician; and
6. Documentation that the indirectly-supervised certified laser technician has participated in the supervised training required by A.R.S. § 32-516 or 32-3233.

B. Hair Reduction Procedures

1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for hair reduction procedures, the registrant shall:
    a. Ensure that the device is only used by a health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) or by a certified laser technician who is working under the indirect supervision of a health professional described in A.R.S. §§ 32-516(C)(1) and 32-3233(D) and (H)(1), and
    b. Ensure that a prescribing health professional purchases or orders the Class II surgical device that will be used for hair reduction procedures.
2. A registrant shall:
    a. Not permit an individual to use a medical laser or IPL device for hair reduction procedures unless the individual:

i. Completes an approved laser technician didactic training program of at least 40 hours duration. To successfully complete the training program, the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a health professional acting within the health professional's scope of practice, or a certified laser technician with a minimum of 100 hours of hands-on experience per procedure being taught;

ii. Is present in the room for at least 24 hours of hands-on training, conducted by a health professional or a certified laser technician as described in subsection (B)(2)(a)(i);

iii. Performs or assists in at least 10 hair reduction procedures; and

iv. Has the qualified health professional or qualified supervising certified laser technician certify that the laser technician has completed the training and supervision as described in subsection (B)(2)(a).

b. Ensure that the laser technician follows written procedure protocols established by a prescribing health professional; and

c. Ensure that the laser technician follows any written order, issued by a prescribing health professional, which describes the specific site of hair reduction.

3. A registrant shall maintain a record of each hair reduction procedure protocol that is approved and signed by a prescribing health professional, and ensure that each protocol is reviewed by a prescribing health professional, at least annually.

4. A registrant shall:

a. Maintain each procedure protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and

b. Design each protocol to promote the exercise of professional judgment by the laser technician commensurate with the individual's education, experience, and training. The protocol need not describe the exact steps that a qualified laser technician should take with respect to a hair reduction procedure.

5. A registrant shall require that a prescribing health professional observe the performance of each laser technician during procedures at intervals that do not exceed six months. The registrant shall maintain a record of the observation for three years from the date of the observation.

6. A registrant shall verify that a health professional is qualified to perform hair reduction procedures by obtaining evidence that the health professional has received relevant training specified in subsection (A)(1) and in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the health professional's licensing board.
7. A registrant shall provide radiation safety training to all personnel involved with hair reduction procedures, designing each training program so that it matches an individual's involvement in hair reduction procedures. The registrant shall maintain records of the training program and make them available to the Department for three years from the date of the program, during and after the individual's period of employment.

C. Other Cosmetic Procedures

1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for other cosmetic procedures, the registrant shall.
    a. Ensure that the device is only used by a health professional described in A.R.S. §§ 32-516(F)(3) and 32-3233(D)(1) or by a certified laser technician who is directly supervised by a health professional as described in A.R.S. §§ 32-516(C)(2) and 32-3233(D) and (H)(2); and
    b. Ensure that a prescribing health professional purchases or orders the Class II surgical device that will be used for other cosmetic procedures.
2. A registrant shall not permit an individual to use a medical laser or IPL device for other cosmetic procedures unless the individual:
    a. Completes an approved laser technician didactic training program of at least 40 hours duration. To successfully complete the training program the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a health professional acting within the health professional's scope of practice, or a certified laser technician with a minimum of 100 hours of hands-on experience per procedure being taught;
    b. Is present in the room for at least 24 hours of hands-on training, conducted by a health professional or a certified laser technician as described in subsection (C)(2)(a); and

c. Performs or assists in at least 10 cosmetic procedures governed by subsection (C), for each type of procedure (for example: spider vein reduction, skin rejuvenation, non-ablative skin resurfacing); and

d. Has the qualified health professional or qualified supervising certified laser technician certify that the laser technician has completed the training and supervision as described in subsection (C)(2).

3. A registrant shall maintain a record of each protocol for a cosmetic procedure governed by subsection (C) that is approved and signed by a prescribing health professional, and ensure that each protocol is reviewed by a prescribing health professional, at least annually. The registrant shall:

a. Maintain each protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and

b. Design each protocol to promote the exercise of professional judgment by the laser technician commensurate with the individual's education, experience, and training. The protocol need not describe the exact steps that a qualified laser technician should take with respect to a cosmetic procedure governed by subsection (C).

4. A registrant shall verify that a health professional is qualified to perform laser, IPL, and related procedures, by obtaining evidence that the health professional has received relevant training specified in subsection (A)(1) and in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the health professional's licensing board.

5. A registrant shall provide radiation safety training to all personnel involved with cosmetic procedures governed by subsection (C), designing each training program so that it matches an individual's involvement in each procedure. The registrant shall maintain records of the training program and make them available to the Department for three years from the date of the program, during and after the individual's period of employment.

D. Persons governed by this Section shall also comply with other applicable licensing and safety laws.

E. A laser shall be secured so that the laser cannot be removed from the facility and the on/off switch is turned to the "off" position with the key removed when a certified laser technician or a health professional is not present in the room where the laser is located.

R9-7-1438.01. Certification and Revocation of Laser Technician Certificate

A. An applicant for a laser technician certificate shall submit a completed application and certification that the applicant has received the training specified in A.R.S. §§ 32-516(A) or 32-3233(E).

B. The applicant shall pay a nonrefundable fee of $30.00. A duplicate certificate may be requested at the time of initial application or renewal at a fee of $10.00 per certificate. To obtain a duplicate certificate at other times a laser technician shall pay $20.00 per certificate.

C. Initial certificates are issued for 12 months and expire on the last day of the month. A renewal application shall be accompanied by a renewal fee of $30.00 each year in addition to $10.00 per duplicate certificate requested.

D. Under A.R.S. § 32-3233(I) and (J), the Department may take appropriate disciplinary action, including revocation of the certificate of a certified laser technician. The Department may discipline a certified laser technician who has had a relevant professional license suspended or revoked, or been otherwise disciplined by a health professional board or the Board of Cosmetology. The Department may also discipline the certified laser technician for falsifying documentation related to training, prescriptions, or other required documentation. As provided in Article 12 of this Chapter, the Department may assess civil penalties, suspend, revoke, deny, or put on probation a certified laser technician.

E. A laser technician who has been using laser and IPL devices prior to November 24, 2009 may continue to do so if the technician applies for and receives a certificate from the Department before October 1, 2010.

F. Certification may be issued for one or more of the following procedures:

1. Hair Reduction,
2. Skin Rejuvenation,
3. Non-Ablative Skin Resurfacing,
4. Spider Vein Reduction,
5. Skin Tightening,
6. Wrinkle Reduction,
7. Laser Peel,
8. Telangiectasia Reduction,
9. Acquired Adult Hemangioma Reduction,
10. Facial Erythema Reduction,
11. Solar Lentigo Reduction (Age Spots),
12. Ephelis Reduction (Freckles),
13. Acne Scar Reduction,
14. Photo Facial, or

15. Additional procedures as approved by the Department after consultation with other health professional boards as defined in A.R.S. § 32-516(F)(3) or 32-3233(D)(1).

G. For any application relating to the certification of laser technicians, as described in A.R.S. § 41-1072, there is an administrative completeness review time-frame of 30 days and a substantive review time-frame of 30 days with an overall time-frame of 60 days.

H. Certified laser technicians shall display a valid original certificate as issued by the Department in a location that is viewable by the public.

R9-7-1439. Laser and IPL Laser Technician and Laser Safety Training Programs

A. A person seeking to initiate a medical laser or IPL laser technician training program shall submit an application to the Department for certification that contains a description of the training program. In addition, the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R9-7-1438 through this Section, and Appendix C.

B. The Department shall review the application and other documents required by subsections (A) and (E) in a timely manner, using an administrative completeness review time-frame of 40 days and a substantive review time-frame of 20 days with an overall time-frame of 60 days.

C. The Department shall maintain a list of certified laser or IPL training programs.

D. Applicants for approval as a certified laser or IPL training program shall pay a nonrefundable $100.00 fee.

E. Initial certification shall be issued for 12 months and shall expire on the last day of the month. A renewal application shall be accompanied by a renewal fee of $100.00 each year.

F. A person seeking to initiate a medical laser or IPL laser technician safety training program shall submit an application to the Department for certification that contains a description of the training program. In addition, the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R9-7-1421 through R9-7-1444, Appendix C, and Appendix D, with emphasis on personal and public safety. The program shall also contain the training required by A.R.S. § 32-3233(E) or clearly state the portions of the training that are not provided or met if didactic certification is to take place in another program. The applicant shall conduct training in accordance with the program submitted to the Department and certified by the Department.

R9-7-1440. Medical Lasers

A. A registrant shall ensure that a Class 3 and Class 4 laser product used in the practice of medicine has a means for measuring the level of laser radiation with an error in measurement of no greater than +20%, when calibrated in accordance with the laser product manufacturer's calibration procedure.

B. A registrant shall calibrate a laser used in the practice of medicine according to the manufacturer's specified calibration procedure, at intervals that do not exceed those specified by the manufacturer.

C. In a medical facility where several medical disciplines or a number of different practitioners use Class 3b and Class 4 lasers, a registrant shall form a Laser Safety Committee to govern laser activity, establish use criteria, and approve operating procedures, as follows:

1. With regard to membership of the committee the registrant shall include at least one representative of the Nursing staff, the LSO, one management representative, and one representative of each medical discipline that uses the lasers;
2. The committee shall review actions by the LSO related to hazard evaluation and the monitoring and control of laser hazards; and
3. The committee shall approve or deny requests by potential operators and ancillary personnel to operate or assist in the operation of a laser under the direction of a licensed practitioner.

D. A registrant shall use Class 3b and Class 4 Lasers that have a guard mechanism on the switch to control patient exposure and prevent inadvertent exposure.

E. A registrant shall establish a written laser safety training program that provides a thorough understanding of established procedures for each type of laser in use and the medical procedures associated with use of the laser. The registrant shall make program documentation available for Department review and, at minimum, address all of the following in the documentation:

1. Regulatory requirements and the laser classification system;
2. Fundamentals of laser operation and the significance of specular and diffuse reflections;
3. Biological effects of laser radiation on the eye and skin;
4. Non-beam hazards (for example: electrical, chemical, and reaction by-product hazards) and ionizing radiation hazards (for example: x-rays from power sources and target interactions, if applicable) of lasers; and
5. Responsibilities of management and employees regarding control measures.

R9-7-1441. Laser Light Shows and Demonstrations

A. Before a conducting laser light show or laser demonstration, a registrant shall provide documentation to the Department that a variance from 21 CFR 1040.10 has been obtained from the FDA.

B. A registrant shall notify the Department in writing, at least three working days in before a proposed laser light show or demonstration, and include all of the following information:

1. The location, time, and date of the light show or demonstration;
2. Sketches showing the locations of each laser, operator, performer, laser beam path, viewing screen, wall, mirror ball, or any other reflective or diffuse surface that could be hit by or reflect the laser beam;
3. Scanning beam patterns, scan velocity, and frequency in occupied areas; and
4. Physical surveys and calculations made to comply with this Article.

C. A registrant shall supply any additional information required by the Department for the safety evaluation of the proposed activity.

D. Before an outdoor laser light show, a registrant shall notify the Federal Aviation Administration of the proposed show.

E. If a light show or demonstration involves laser radiation emissions outside the spectral range of 400 to 700 nanometers, a registrant shall prevent the emissions from exceeding the applicable Class 1 accessible emission limit.

F. If it is likely that an audience member or any operator, performer, or employee will view laser or collateral radiation, a registrant shall prevent the radiation from exceeding the applicable Class 1 accessible emission limit.

G. Even if it is unlikely that an individual, including any operator, performer, or employee in the vicinity of a laser light show or demonstration will view or be exposed to laser or collateral radiation, a registrant shall prevent the radiation from exceeding the applicable Class 2 accessible emission limit.

H. A registrant shall identify any area where levels of laser radiation exceed the applicable Class 2 accessible emission limit by posting warning signs and using barriers or guards to prevent entry.

I. If a registrant uses a scanning device, the registrant shall not use a device which, as a result of scan failure or any other failure, can change its angular velocity or amplitude, permitting audience exposure to laser radiation that exceeds the applicable Class 1 accessible emission limit.

J. If a mirror ball is used with a scanning laser, a registrant shall meet the requirements of subsections (F) and (G) when the mirror ball is stationary or during any failure mode that results in a change in the rotational speed of the mirror ball.

K. A registrant shall ensure that an operator is at all times directly and personally supervising a laser light show or demonstration, except in cases where the maximum laser power output level is less than 5 milliwatts (all spectral lines) and the laser beam path is located at all times at least 6 meters above any surface upon which an individual in the audience is permitted to stand, and at any

point, more than 2.5 meters in lateral separation from any position where an individual in the audience is permitted during the performance.

L. A registrant shall prevent laser radiation levels from exceeding the applicable Class 2 accessible emission limit at any point less than three meters above any surface upon which an individual in the audience is permitted to stand and 2.5 meters in lateral separation from any position where an individual in the audience is permitted, unless physical barriers are present that prevent human access to the radiation.

M. A registrant shall limit the maximum power output of any laser to a level sufficient to produce the desired effect.

N. If a registrant is required to limit output power to a level less than the available power to meet the requirements of this Article, the registrant shall adjust, measure, and record the laser output power before the laser light show or demonstration.

O. A registrant shall functionally test and evaluate all safety devices and procedures necessary to comply with this Article after setup, and before a laser light show or demonstration.

P. A registrant shall secure a laser system, when not in use, against unauthorized operation or tampering.

Q. A registrant shall perform laser alignment procedures with the laser output power reduced to the lowest practicable level, and ensure that any operator, performer, or other employee wears protective eyewear as necessary to prevent exposure to radiation levels that exceed the applicable MPE. The registrant shall only allow individuals who are performing the alignment be present during alignment procedures.

R. A registrant shall not conduct a laser light show or demonstration unless the Department has specifically exempted the show or demonstration from the requirements of 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1442. Measurements and Calculations to Determine MPE Limits for Lasers

A registrant shall take measurements to determine MPE values in a manner consistent with the procedures contained in ANSI Z136.1-2000, American National Standard for Safe Use of Lasers, 2000 edition, which is incorporated by reference, published by the Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, FL 32826, and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-1443. Laser Compliance Measurement Instruments

A registrant shall ensure that the radiation output measurement is performed with an instrument that is calibrated and designed for use with the laser that is being evaluated for compliance. The registrant shall specify the date of calibration, accuracy of calibration, wavelength range, and power or energy of calibration on a legible, clearly visible label attached to the instrument.

R9-7-1444. Laser Classification Measurements

A. A registrant shall measure accessible emission for classification:

1. Under the operational conditions and procedures that maximize accessible emission levels, including start-up, stabilized operation, and shutdown of the laser or laser facility;
2. With all controls and adjustments listed in the operating and service instructions adjusted for the maximum accessible emission level of laser radiation that is not expected to be detrimental to the functional integrity of the laser or enclosure;
3. At points in space to which human access is possible for a given laser configuration. If operations include the defeat of safety interlocks or removal of portions of the protective housing or enclosure, the registrant shall measure accessible emission at points accessible in that configuration;
4. With the measuring instrument detector positioned so that the maximum possible radiation is measured by the instrument; and
5. With the laser coupled to the type of laser energy source specified as compatible by the laser manufacturer and producing the maximum emission of accessible laser radiation.

B. A registrant shall perform measurements of accessible emission levels, used to classify laser and collateral radiation in accordance with 21 CFR 1040.10, April 1, 2004, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments.

Appendix A. Radio Frequency Devices (Include, but are not limited to, the following)

Dielectric heaters and sealers

Medical diathermy units

Radar

R.F. activated alarm systems

Sputter devices

R.F. activated lasers

Edge gluers

Industrial microwave ovens and dryers

Asher-etcher equipment

R.F. welding equipment

Medical surgical coagulators

Appendix B. Application Information

The Department shall issue a registration if an applicant provides the following information and fee as required in R9-7-1401(D). The Department shall provide an application form to the applicant with a guide and upon request, assist the applicant to ensure that correct information is provided on the application form.

Name and mailing address of applicant

Person responsible for radiation safety program

Type of facility

Legal structure and ownership

Radiation source information

Shielding information

Equipment operator instructions and restrictions

Classification of professional in charge

Type of request: amendment, new, or renewal

Protection survey results, if applicable

Radiation Safety Officer name, if applicable

Laser class and type, if applicable

Information required by Article 14 for the specific source

Use location

Telephone number

Facility subtype

Signature of certifying agent

Equipment identifiers

Scale drawing

Physicist name and training, if applicable

Contact person

Applicable fee listed in Article 13 schedule

Appendix C. Hair Removal and Other Cosmetic Laser or IPL Operator Training Program

1. General Considerations. An applicant shall ensure that:
    a. The training program is specific to the medical laser or IPL device in use and the clinical procedures to be performed;
    b. Program content is consistent with facility policy and procedure and applicable federal and state law; and
    c. The training program addresses hazards associated with laser or IPL device use.
2. Technical Considerations. The applicant's training program shall cover all of the following technical subjects:
    a. Laser and IPL device descriptions
    b. Definitions
    c. Laser and IPL device radiation fundamentals
    d. Laser mediums, types of lasers, and other light-emitting devices – solid, liquid, gas, and IPL devices
    e. Biological effects of laser or IPL device light
    f. Damage mechanisms
        i. Eye hazard
        ii. Skin hazard (includes information regarding skin type and skin anatomy)
        iii. Absorption and wavelength effects
        iv. Thermal effects
    g. Photo chemistry
    h. Criteria for setting the Maximum Permissible Exposure (MPE) for eye and skin associated hazards
    i. Explosive, electrical, and chemical hazards
    j. Photosensitive medications
    k. Fire, ionizing radiation, cryogenic hazards, and other hazards, as applicable
3. Medical Considerations. The applicant's training program shall cover all of the following medical subjects:
    a. Local anesthesia techniques, including ice, EMLA® cream, and other applicable topical treatments
    b. Typical laser and IPL device settings for hair removal and cosmetic procedures
    c. Expected patient response to treatment
    d. Potential adverse reactions to treatment
    e. Anatomy and physiology of skin areas to be treated

f. Indications and contraindications for use of pigment and vascular-specific lasers for cutaneous procedures

4. General Laser or IPL device safety. The applicant's training program shall cover the following general safety subjects:
    a. Laser and IPL device classifications
    b. Control measures (includes information regarding protective equipment)
    c. Manager and operator responsibilities
    d. Medical surveillance practices
    e. Federal and state legal requirements
    f. Related safety issues
        i. Controlled access
        ii. Plume management
        iii. Equipment testing, aligning, and troubleshooting

Appendix D. Laser Operator and Laser Safety Officer Training

1. Operators and personnel that work around lasers:
    a. Fundamentals of laser operation (for example: physical principles, construction, and other basic information)
    b. Bioeffects of laser radiation on the eye and skin
    c. Significance of specular and diffuse reflections
    d. Non-beam hazards of lasers (for example: electrical, chemical, and reaction byproducts)
    e. Ionizing radiation hazards (includes information regarding x-rays from power sources and target interactions, if applicable)
    f. Laser and laser system classifications
    g. Control measures
    h. Responsibilities of managers and operators
    i. Medical surveillance practices (if applicable)
    j. CPR for personnel servicing lasers with exposed high voltages, the capability of producing potentially lethal electrical currents, or both.
2. The LSO or other individual responsible for the safety program, evaluation of hazards, and implementation of control measures, or any others, if directed by management to obtain a thorough knowledge of laser safety:
    a. The subjects covered in subsection (1)

b. Laser terminology
c. Laser types, wavelengths, pulse shapes, modes, power and energy
d. Basic radiometric units and measurement devices
e. MPE levels for eye and skin under all conditions
f. Laser hazard evaluations, range equations, and other calculations

3. Technical Considerations
    a. Laser and IPL device descriptions
    b. Definitions
    c. Laser and IPL device radiation fundamentals
    d. Laser mediums, types of lasers, and other light-emitting devices (includes information regarding diodes and solid, liquid, gas, and IPL devices)
    e. Biological effects of laser or IPL device light
    f. Damage mechanisms
        i. Eye hazard
        ii. Skin hazard (includes information regarding skin type and skin anatomy)
        iii. Absorption and wavelength effects
        iv. Thermal effects
    g. Photo chemistry
    h. Photosensitive medications
    i. Criteria for setting the Maximum Permissible Exposure (MPE) levels for eye and skin associated hazards
    j. Explosive, electrical, and chemical hazards
    k. Fire, ionizing radiation, cryogenic hazards, and other hazards as applicable

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.

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.

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.

32-3232. Supervision

Only a health professional, who has prescribing authority and who is acting within the health professional's scope of practice, may administer or supervise another health professional, who is acting within the health professional's scope of practice, in the administration of prescription medication or a prescription-only device for a cosmetic purpose pursuant to this article, whether by injection or any other means, to a patient.

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.

36-136. 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 HEALTH SERVICES
Title 9, Chapter 8

Amend: R9-8-118, R9-8-403, R9-8-701, R9-8-702, R9-8-703, R9-8-705, R9-8-706, R9-8-707, R9-8-708, R9-8-711, R9-8-801

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: January 3, 2024

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

FROM: Council Staff

DATE: December 12, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 8

Amend: R9-8-118, R9-8-403, R9-8-701, R9-8-702, R9-8-703, R9-8-705, R9-8-706, R9-8-707, R9-8-708, R9-8-711, R9-8-801

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend eleven (11) rules in Title 9, Chapter 8, Articles 1, 4, 7, and 8. These Articles are related to Food, Recreational, and Institutional Sanitation for Food Establishments, Children's Camps, Public Schools, and Public and Semipublic Swimming Pools and Bathing Places, respectively.

Specifically, for the rules in Article 1 related to Food Establishments, the Department indicates Laws 2021, Ch. 118, required the Department to add an exemption from routine inspections and other regulatory activities for small businesses licensed by the Department of Liquor Licenses and Control as a microbrewery, farm winery or craft distillery. This rulemaking implements the required exemption. Furthermore, the Department is amending rules in Articles 4, 7, and 8 to clarify rule language, update outdated cross-references, and remove outdated rule language.

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 states the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated, but reduce a burden due to outdated requirements and clarifying rules without compromising health and safety.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) and (6).

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 related to this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

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

Not applicable. The Department indicates there are no corresponding federal laws.

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

Not applicable. The Department indicates the rules do not require the issuance of a permit, license, or agency authorization.

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 eleven (11) rules in Title 9, Chapter 8, Articles 1, 4, 7, and 8 regarding Food, Recreational, and Institutional Sanitation. For the rules in Article 1 the Department is seeking to add an exemption from routine inspections and other regulatory activities for small businesses licensed by the Department of Liquor Licenses and Control as a microbrewery, farm winery or craft distillery as required in Laws 2021, Ch. 118. Furthermore, the Department is amending rules in Articles 4, 7, and 8 to clarify rule language, update outdated cross-references, and remove outdated rule language.

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

October 26, 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. 8, Articles 1, 4, 7, and 8

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) under A.R.S. §§ 41-1027 and 41-1053.

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. R1-6-202:

1. The close of record: October 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 the procedural rights of regulated persons. In the rulemaking, the Department is implementing new statutory changes in Article 1, which further reduces the regulatory burden on microbreweries, farm wineries, and craft distilleries, as specified in A.R.S. § 41-1027(A)(4). In addition, the Department is changing the rules to repeal obsolete phase-in requirements, as specified in A.R.S. § 41-1027(A)(6).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
Not applicable

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

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 Lucinda Feeley at Lucinda.Feeley@azdhs.gov.

Sincerely,

Stacie Gravito

Digitally signed by Stacie Gravito
Date: 2023.10.26 13:03:04 -07'00'

Stacie Gravito
Director's Designee

SG:lf

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES –

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-8-118	Amend
	R9-8-403	Amend
	R9-8-701	Amend
	R9-8-702	Amend
	R9-8-703	Amend
	R9-8-705	Amend
	R9-8-706	Amend
	R9-8-707	Amend
	R9-8-708	Amend
	R9-8-711	Amend
	R9-8-801	Amend

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. §§ 36-132(A)(1) and A.R.S. § 36-136(G)

Implementing statutes: A.R.S. § 36-136(Q), as amended by Laws 2021, Ch. 118

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 final expedited rulemaking:

Notice of Docket Opening: 28 A.A.R. 2169, September 15, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 2157, September 15, 2023

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

Name: Jennifer Botsford, Bureau Chief

Address: Arizona Department of Health Services

Division of Public Health Services, Public Health Preparedness,

Bureau of Environmental Health Services
150 N. 18th Ave., Suite 220
Phoenix, AZ 85007
Telephone: (602) 364-3142
Fax: (602) 364-3146
E-mail: Jennifer.Botsford@azdhs.gov
or
Name: Myrna Motta, Office Chief
Address: Arizona Department of Health Services
Division of Public Health Services, Public Health Preparedness,
Bureau of Environmental Health Services
Office of Food Safety and Environmental Services
150 N. 18th Ave., Suite 220
Phoenix, AZ 85007
Telephone: (602) 364-0929
Fax: (602) 364-3146
E-mail: Myrna.Motta@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, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-136, as amended by Laws 2021, Ch. 118, requires the Arizona Department of Health Services (Department) to add exemption requirements for small businesses licensed by the Department of Liquor Licenses and Control as a microbrewery, farm winery or craft distillery. The Department plans to amend the rules in Chapter 8, Article 1 to comply with the statutory changes made by Laws 2021, Ch. 118. The Department also plans to amend Article 4, as authorized by A.R.S. Title 36, Chapter 39, and Article 8, as authorized by

A.R.S. § 36-136(I)(10). In addition, the Department plans to amend the rules in Article 7, as specified in A.R.S. § 36-136(I)(9), to correct cross-references and clarify language in the rules. After obtaining an exception from the Governor's rulemaking moratorium established under Executive Order 2022-01, and rulemaking approval pursuant to A.R.S. § 41-1039, the Department is making changes to the rules in 9 A.A.C. 8 to comply with the legislative requirement; improve the effectiveness of the rules, and make them less burdensome; correct cross-references; amend rules that are outdated, redundant, or otherwise no longer necessary; and make the rules clearer, more concise, and more understandable. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated, but reduce a burden due to outdated requirements without compromising health and safety.

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 pubic 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:

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:

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

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

There are no federal rules applicable to the subject of the rule.

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:

Not applicable

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 not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD ESTABLISHMENTS

Section

ARTICLE 4. CHILDREN'S CAMPS

ARTICLE 7. PUBLIC SCHOOLS

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

ARTICLE 1. FOOD ESTABLISHMENTS

R9-8-118. Exempt from Requirements and Inspections

A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.

B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:

1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
2. Group homes, as defined in A.R.S. § 36-551;
3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
12. FOOD that is:
    a. Served at a noncommercial social event, such as a potluck;
    b. Prepared at a cooking school if:
        i. The cooking school is conducted in the kitchen of an owner-occupied home,

ii. Only one meal per day is prepared and served by students of the cooking school,

iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and

iv. The students of the cooking school are provided with written notice that the FOOD is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;

c. Not ~~potentially hazardous~~ time/temperature control for safety food 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. A demonstration of FOOD preparation or cooking class offered by:

i. A culinary school or educational institution and all FOOD prepared is consumed by attending students;

ii. A school or business and samples are not offered for human consumption; and

iii. A business where an individual provides, prepares, cooks, and consumes their own FOOD.

f. Offered at a child care facility and limited to commercially pre-packaged FOOD that is not ~~potentially hazardous~~ time/temperature control for safety food and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or

g. Offered at locations that sell only commercially pre-packaged FOOD that is not ~~potentially hazardous~~ time/temperature control for safety food;

13. A cottage FOOD product, as defined in A.R.S. § 36-136(Q), prepared for commercial purposes that:

a. Is not ~~potentially hazardous~~ time/temperature control for safety food as defined in A.R.S. § 36-136(I)(4)(g); or

b. Is not a FOOD that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and

c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:

i. Has a certificate of completion from completing a food handler training course from an accredited program;

ii. Maintains an active certification of completion; and

iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and

d. Is PACKAGED at the home with an attached label that includes:

i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);

ii. A list of the ingredients in the cottage FOOD;

iii. The date the cottage FOOD was prepared; and

iv. The statement: This product was produced in a home kitchen that may process common FOOD allergens and is not subject to public health inspection; and

v. If applicable, a statement that the cottage FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities.

14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.

15. Microbreweries, farm wineries, or craft distilleries licensed by the Department of Liquor Licenses and Control that sell only commercially prepackaged wrapped foods, crackers, or pretzels that are not time or temperature controlled and are served for immediate consumption.

16. Spirituous liquor, as defined in A.R.S. § 4-101, produced on the premises licensed by the Department of Liquor Licenses and Control including the area in which production and manufacturing of spirituous liquor occurs and does not provide, allow, or expose a common use cup, glass, or other receptacle used for drinking purposes without the receptacle being thoroughly cleansed and sanitized between consecutive uses, as specified in A.R.S. § 36-136.

C. A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage FOOD for commercial purpose.

D. To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:

1. Complete a food handler training course from an accredited program;

2. Register with the Department by submitting:

a. An application in a Department-provided format that includes:

i. The food preparer's name, address, telephone number, and e-mail address;

ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;

iii. The address, including the county, of the home where the cottage FOOD is prepared;

iv. Whether the home where the cottage FOOD is prepared is a facility for developmentally disabled individuals; and

v. A description of each cottage FOOD prepared for commercial purposes;

b. A copy of the food preparer's certificate of completion for the completed food handler training course;

c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and

d. An attestation in a Department-provided format that the food preparer:

i. Has reviewed Department-provided information on FOOD safety and safe FOOD handling practices;

ii. Based on the Department-provided information, believes that the cottage FOOD prepared for commercial purposes is not ~~potentially hazardous~~ time/temperature control for safety food or is not a FOOD that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and

iii. Includes the food preparer's printed name and date.

3. Maintain an active certification of completion for the completed food handler training course;

4. Renew the registration in subsection (D)(2) every three years;

5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and

6. Display the food preparer's certificate of registration when operating as a temporary FOOD ESTABLISHMENT and selling cottage FOOD.

E. Food establishments shall have until January 31, 2022 to comply with the certified food protection manager requirement specified in this Article.

ARTICLE 4. CHILDREN'S CAMPS

R9-8-403. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or county is 60 days. The applicant and the Department or a county may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or a county is 30 days and begins on May 1 of each year or on the date the application is received if after May 1.

1. The Department or a county shall ~~mail~~ provide written notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
    a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the license application.
    b. If the Department or a county issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department or a county receives the missing information from the applicant.
    c. If the applicant fails to submit to the Department or a county all the information and documents listed in the notice of deficiencies within 60 days of the date the Department or a county ~~mailed~~ provided the notice of deficiencies, the Department or county deems the license application withdrawn.
2. If the Department or a county issues a license to the applicant during the administrative completeness review time-frame, the Department or a county does not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is ~~mailed~~ provided to the applicant.

1. The Department or a county shall ~~mail~~ provide a children's camp license or a written notification of denial of the license application to the applicant within the substantive review time-frame.
2. As part of the substantive-review time-frame for a children's camp license, the Department or a county may conduct an inspection of the children's camp to determine whether the

children's camp has complied with the applicable requirements in subsection (C)(4) or (C)(5).

3. If the Department or a county issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department or a county issues the request until the date the Department or a county receives all of the information.
4. If an applicant applying to the Department meets all the requirements under ~~A.R.S. Title 8, Chapter 6, Article 1~~ A.R.S. Title 36, Chapter 39, Article 1, and these rules, the Department shall issue a license to the applicant.
5. If an applicant applying to a county meets all the requirements under ~~A.R.S. Title 8, Chapter 6, Article 1~~ A.R.S. Title 36, Chapter 39, Article 1, these rules, and county requirements consistent with A.R.S. Title 8, Chapter 6, Article 1, a county shall issue a license to the applicant.
6. If the Department or a county disapproves a license application, the Department or a county shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.

D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department or a county considers the next business day as the time-frame's last day.

ARTICLE 7. PUBLIC SCHOOLS

R9-8-701. Definitions

In this Article, unless otherwise specified:

~~1. "Ample water supply" means sufficient water quantity and water pressure to operate all of a school's drinking fountains, bathtubs, showers, lavatories, water closets, and urinals at all times from:~~

~~a. A public water system that complies with 18 A.A.C. 4; or~~

~~b. An underground water source that complies with 18 A.A.C. 11, Articles 4 and 5 or with A.R.S. § 45-811.01.~~

~~2.~~ 1. "Animal" means a mammal, bird, reptile, amphibian, fish or invertebrate, such as an insect, spider, worm, snail, clam, crab, or starfish.

~~3. "Aquifer" means the same as in A.R.S. § 49-201.~~

~~4.~~ 2. "Bathroom" means a restroom that contains a shower head or bathtub.

~~5.~~ 3. "Bathtub" means a receptacle, in which a user sits, with a faucet that supplies hot and cold water, or warm water, for filling the receptacle and a drain connected to a ~~sanitary sewer~~ sewage collection system.

~~6.~~ 4. "Bottled water" means the same as in R9-8-201.

~~7.~~ 5. "Bottled water cooler" means a device that is not connected to a plumbing system and provides a vertically falling stream of drinking water from a source approved by the Department under 9 A.A.C. 8, Article 2, or that complies with 18 A.A.C. 4; 18 A.A.C. 11, Articles 4 and 5, or A.R.S. § 45-811.01.

~~8. "Calendar year" means January 1 through December 31.~~

~~9.~~ 6. "Classroom" means an interior area of a school used primarily for instruction of students.

~~10.~~ 7. "Clean" means ~~free of dirt or debris.~~ free of dirt, litter, or the remains of something that has been broken or torn into pieces.

~~11.~~ 8. "Cold water" means water with a temperature from 33º F to 74º F.

~~12.~~ 9. "Common drinking cup" means a hand-held container not connected to a plumbing system that:

a. Holds liquid for human consumption,

b. Comes into contact with a user's mouth, and

c. Is used by more than one individual.

~~13. "Complaint" means information indicating the need for inspection due to possible violations of this Article.~~

~~14. "Constructed underground storage facility" means the same as in A.R.S. § 45-802.01.~~

~~15. "Debris" means litter or the remains of something that has been broken or torn into pieces.~~

~~16.~~ 10. "Department" means the Arizona Department of Health Services.

~~17.~~ 11. "Device" means a piece of equipment that performs a specific function.

~~18.~~ 12. "Drinking fountain" means a fixture connected to a plumbing system that provides a non-vertical stream of drinking water from an opening and drains into a ~~sanitary sewer~~ sewage collection system.

~~19.~~ 13. "Drinking water" means water for human consumption that meets the requirements of 18 A.A.C. 4, or 18 A.A.C. 11, Article 4.

~~20.~~ 14. "Dumpster" means a container designed for mechanical lifting and dumping by a refuse collection vehicle that transports the container's contents.

~~21.~~ 15. "Faucet" means a fixture connected to a plumbing system that provides and regulates the flow of drinking water from the plumbing system.

~~22.~~ 16. "Fixture" means a permanent attachment to a structure.

~~23.~~ 17. "Floor drain" means an opening in a floor surface that leads to a ~~sanitary sewer~~ sewage collection system.

~~24.~~ 18. "Food establishment" means an entity that stores, prepares, packages, serves, or

otherwise provides food for human consumption directly to a consumer or indirectly through a delivery service.

~~25.~~ 19. "Habitat" means a place where an animal is kept while on school grounds.

~~26.~~ 20. "Hot water" means water with a temperature from 95º F to 120º F.

~~27.~~ 21. "Human consumption" means an individual's use of water for activities such as drinking, bathing, showering, handwashing, cooking, dishwashing, laundering, cleaning, or using a water closet.

~~28. "Hydration" means the process of replacing fluids lost by a human body.~~

~~29.~~ 22. "Lavatory" means a sink or a basin with a faucet that supplies hot and cold water, or warm water, and with a drain connected to a ~~sanitary sewer~~ sewage collection system.

~~30. "Local health department" means:~~

~~a. The administrative division of an Arizona county, city, or town that manages environmental and health-related issues; or~~

~~b. A public health services district under A.R.S. Title 48, Chapter 33.~~

~~31. "Managed underground storage facility" means the same as in A.R.S. § 45-802.01.~~

~~32.~~ 23. "Non-absorbent" means not capable of absorbing or soaking up liquids.

~~33.~~ 24. "Non-classroom" means an indoor area in a school, such as the school office, nurse's office, library, or cafeteria, that are not used primarily for instruction of students.

~~34.~~ 25. "Overflow rim" means the raised edge around a drinking fountain's basin.

~~35.~~ 26. "Participant" means:

a. A member of the staff or a student of a school, or

b. A member of the staff or a student from another school, when the individual is present on the grounds of the school specified in subsection (a) for a school-organized activity.

~~36.~~ 27. "Plumbing system" means fixtures, pipes, and related parts assembled to carry drinking water into a structure and carry sewage out of the structure.

~~37.~~ 28. "Portable water container" means any type of device, not connected to a plumbing system, provided by a school, such as a bottle, cup, pitcher, or insulated cylindrical cooler, in which drinking water is held or carried.

~~38.~~ 29. "Private school" means the same as in A.R.S. § 15-101.

~~39.~~ 30. "Public water system" means the same as in A.R.S. § 49-352.

~~40.~~ 31. "Refuse" means the same as in A.A.C. R18-13-302.

~~41.~~ 32. "Refuse container" means a portable receptacle used for refuse storage until the refuse is placed into a dumpster.

33. "Regulatory authority" means:

a. The Arizona Department of Health Services; or

b. One of the following entities as specified in A.R.S. § 36-136(E):

i. A local health department;

ii. A county environmental department; or

iii. A public health services district.

~~42.~~ 34. "Responsible person" means:

a. For an accommodation school defined in A.R.S. § 15-101, the county school superintendent with the powers and duties prescribed in A.R.S. Title 15, Chapter 3, Article 1;

b. For a charter school defined in A.R.S. § 15-101, the governing board defined in A.A.C. R7-2-1401;

c. For the Arizona State Schools for the Deaf and the Blind, the board of directors for the Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 2;

d. For a school operated by a school district, the school district's governing board defined in A.R.S. § 15-101.

~~43.~~ 35. "Restroom" means a structure or room that contains at least one lavatory and water closet or at least one lavatory, water closet, and urinal.

~~44. "Sanitary sewer" means the same as in A.R.S. § 45-101.~~

~~45.~~ 36. "Sanitize" means ~~the same as in A.A.C. R9-5-101~~ using heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.

~~46.~~ 37. "School" means an institution offering instruction:

a. That is:

i. An accommodation school defined in A.R.S. § 15-101;

ii. The Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 1;

iii. A charter school defined in A.R.S. § 15-101; or

iv. A school operated by a school district defined in A.R.S. § 15-101; and

b. That is not a private school.

~~47.~~ 38. "Sewage" means the same as in A.A.C. R18-13-1102.

39. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect,

contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.

~~48.~~ 40. "Shower head" means a fixture connected to a plumbing system that allows drinking water to fall on a user's body.

~~49.~~ 41. "Shower room" means a structure or room that contains at least one shower head and one floor drain, but does not contain a bathtub, lavatory, water closet, or urinal.

~~50.~~ 42. "Underground water source" means:

a. ~~An aquifer,~~ An aquifer defined in A.R.S. § 49-201;

b. ~~A constructed underground storage facility, or~~ A constructed underground storage facility defined in A.R.S. § 45-802.01; or

c. ~~A managed underground storage facility.~~ A managed underground storage facility defined in A.R.S. § 45-802.01.

~~51.~~ 43. "Urinal" means the same as in A.R.S. § 45-311.

~~52.~~ 44. "Warm water" means water with a temperature from 75º F to 94º F.

~~53.~~ 45. "Water closet" means the same as in A.R.S. § 45-311.

~~54.~~ 46. "Water cooler" means a fixture connected to a plumbing system for cooling water and dispensing a vertically falling stream of drinking water.

R9-8-702. General Provisions

A. A responsible person shall ensure that a school complies with the provisions of this Article and with federal and state statutes and rules and local ordinances governing subjects included in ~~A.R.S. § 36-136(H)(9)~~ A.R.S. § 36-136(I)(9).

B. A violation of this Article is a public nuisance under A.R.S. § 36-601.

R9-8-703. Restroom, Bathroom, and Shower Room Requirements

A. A responsible person shall ensure that a school provides restrooms or bathrooms that:

1. Are clean; and
2. Have:
   a. Floors of a non-absorbent material;
   b. Floors that slope to a drain connected to a ~~sanitary sewer~~ sewage collection system;
   c. Water closets with seats of the split or U-shaped type made of non-absorbent material;
   d. Interior surfaces that are clean, washable, and free from gaps;
   e. Toilet paper at all water closets; and
   f. Soap and single-use paper towels or air hand dryers at all lavatories.

B. If a school provides a shower room, the responsible person shall ensure that the shower room:

1. Is clean;
2. Does not have a school-provided cloth towel unless, after each use, the cloth towel is machine washed with detergent and machine dried; and
3. Has:
    a. Hot and cold, or warm water from all shower heads;
    b. Floors of a non-absorbent material;
    c. Floors that slope to a drain connected to a ~~sanitary sewer~~ sewage collection system; and
    d. Interior surfaces that are clean, washable, and free of gaps.

C. A responsible person shall ensure that restrooms, bathrooms, and shower rooms are maintained to avoid odors.

R9-8-705. Indoor Areas

A responsible person shall ensure that:

1. Indoor classroom and non-classroom areas are clean; and
2. If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or ~~air hand dryers~~ an air hand dryer.

R9-8-706. Water Supply

A. A responsible person shall ensure that a school has an ample water supply~~.~~ that:

1. Maintains water quality and water pressure, and water temperature as specified in R9-8-703(B)(3)(a), for the school's drinking fountains, showers, lavatories, water closets, and urinals at all times, and
2. Is provided by an approved water supplier in accordance with 18 A.A.C. 4.

B. A responsible person shall ensure that a school's drinking water is dispensed from:

1. A clean drinking fountain that:
    a. Provides, from an opening, a stream of water that does not touch anything before reaching a user's mouth;
    b. Has an opening that is higher than the overflow rim to prevent the opening's submersion; and
    c. Has a device to prevent a user's mouth from touching the opening from which the water streams;
2. A clean and sanitized water cooler;
3. A clean and sanitized bottled water cooler;
4. A clean and sanitized lavatory faucet; or
5. A clean and sanitized portable water container.

C. If a portable water container or the bottle from a school's bottled water cooler is to be refilled, a responsible person shall ensure that the portable water container or the bottle is:

1. ~~Washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1;~~ Maintained by a food establishment regulated by 9 A.A.C. 8, Article 1; and
2. ~~Stored in a clean area; and~~ Filled with water from an approved water supplier specified in subsection (A).
3. ~~Refilled with drinking water from any of the sources of drinking water specified in subsection (B).~~

D. A responsible person shall ensure that a school does not provide a common drinking cup to students. ~~unless the common drinking cup is washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1, after each use.~~

E. A responsible person shall ensure that a school provides:

1. Drinking fountains, water coolers, or bottled water coolers according to Tables 1 and 2; and
2. At least one drinking fountain, water cooler, or bottled water cooler on each floor of the school that contains a classroom, regardless of the number of students.

Table 1. Kindergarten to Eighth Grade

Number of Students	**Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers***
1-50	1
51-100	2
101-150	3
151-200	4
201-250*	5

*For each additional 1-50 students, another drinking fountain, water cooler, or bottled water cooler is required.

Table 2. Ninth Grade to Twelfth Grade

Number of Students	**Minimum Number of Drinking Fountains, Water Coolers, or**

	Bottled Water Coolers*
1-100	1
101-200	2
201-300	3
301-400	4
401-500*	5

*For each additional 1-100 students, another drinking fountain, water cooler, or bottled water cooler is required.

F. A responsible person shall ensure a school provides drinking water that is:

1. Accessible from the school grounds; and
2. Sufficient to maintain the hydration of all participants at school-organized outdoor activities.

R9-8-707. Sewage Disposal

A responsible person shall ensure that a school's:

1. Water closets and urinals flush sewage to a ~~sanitary sewer~~ sewage collection system;
2. Lavatories, showers, bathtubs, and other plumbing fixtures drain sewage to a ~~sanitary sewer~~ sewage collection system; and
3. ~~Sanitary sewer lines~~ Sewage collection systems are maintained in accordance with the recommendations of the ~~local health department~~ regulatory authority.

R9-8-708. Refuse Management

A responsible person shall ensure that a school:

1. Stores refuse in durable, non-absorbent, and washable containers;
2. Provides:
    a. Indoor refuse containers in each classroom and in each non-classroom area; and
    b. Accessible outdoor refuse containers;
3. Maintains refuse containers so that refuse does not accumulate in school buildings or on school grounds; and
4. Disposes of refuse by using an approved collection agency and approved disposal sites that are maintained and operated according to 18 A.A.C. 13, Article 3.

R9-8-711. Inspections

The ~~Department~~ regulatory authority shall inspect:

1. A school for compliance with this Article at least once each calendar year, January 1 through December 31, and
2. Areas of a school pertinent to the details of a complaint upon receipt of the complaint.

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

R9-8-801. Definitions

In this Article, unless otherwise specified:

1. "Artificial lake" has the same meaning as in A.A.C. R18-5-201.
2. "Backwash" has the same meaning as in A.A.C. R18-5-201.
3. "Bathing place" means a volume of water that is used for water contact recreation.
4. "Clean" means free from slime, scum, dirt, or other debris.
5. "Deck" has the same meaning as in A.A.C. R18-5-201.
6. "Department" means the Arizona Department of Health Services.
7. "Incontinent" means unable to restrain a bowel movement.
8. "Local health department" has the same meaning as in ~~R9-18-101~~ A.R.S. § 36-671.
9. "Maximum bathing load" has the same meaning as in A.A.C. R18-5-201.
10. "Natural bathing place" has the same meaning as in A.A.C. R18-5-201.
11. "Operate" has the same meaning as in A.A.C. R18-5-201.
12. "Operator" means an individual who owns, runs, maintains, or otherwise controls or directs the functioning of a bathing place.
13. "Oxidation-reduction potential" means the measurement in millivolts of the potential for transfer of electrons from one atom or molecule to another in water.
14. "Potable water" has the same meaning as in A.A.C. R18-5-201.
15. "Ppm" means parts per million.
16. "Private residential spa" has the same meaning as in A.A.C. R18-5-201.
17. "Private residential swimming pool" has the same meaning as in A.A.C. R18-5-201.
18. "Public health services district" has the same meaning as "district" in A.R.S. § 48-5801.
19. "Public spa" has the same meaning as in A.A.C. R18-5-201.
20. "Public swimming pool" has the same meaning as in A.A.C. R18-5-201.
21. "Regulatory authority" means the Department or a local health department or public health services district operating under a delegation of authority from the Department.
22. "Sanitary facility" means a designated area that includes a toilet, urinal, sink, or shower.

23. “Scum” means a film that forms on the surface of water.
24. “Semi-artificial bathing place” means a lake, pond, river, stream, swimming hole, or hot spring that is modified to be used for water contact recreation.
25. “Semipublic spa” has the same meaning as in A.A.C. R18-5-201.
26. “Semipublic swimming pool” has the same meaning as in A.A.C. R18-5-201.
27. “Shallow area” has the same meaning as in A.A.C. R18-5-201.
28. “Shock treatment” means adding chlorine to water to elevate the free chlorine residual to 20 ppm and destroy ammonia and nitrogenous and organic contaminants in the water.
29. “Slime” means a glutinous or viscous liquid matter.
30. “Spa” has the same meaning as in A.A.C. R18-5-201.
~~31. “Surface water” has the same meaning as in A.A.C. R18-11-101.~~
~~32.~~ 31. “Swimming pool” has the same meaning as in A.A.C. R18-5-201.
~~33.~~ 32. “Turnover rate” has the same meaning as in A.A.C. R18-5-201.
~~34.~~ 33. “Wading pool” has the same meaning as in A.A.C. R18-5-201.
~~35.~~ 34. “Water circulation system” has the same meaning as in A.A.C. R18-5-201.
~~36.~~ 35. “Water circulation system components” has the same meaning as in A.A.C. R18-5-201.
~~37.~~ 36. “Water fountain” means a bathing place that functions by using mechanical means to propel a stream of water out of an opening or structure.
~~38.~~ 37. “Water contact recreation” means an activity for enjoyment in which an individual wets all or part of the individual’s body with water.

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD ESTABLISHMENTS

ARTICLE 4. CHILDREN'S CAMPS

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CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD ESTABLISHMENTS

R9-8-101. Purpose and Definitions

A. The Department incorporates by reference the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration and shall comply with the 2017 Food Code (FC) as specified in this Article. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and is available for order at: https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm239035.htm, refer to publication number IFS17.

B. The Department incorporates FC Chapter 1 in whole, unless otherwise specified:
1. Part 1-1 Title, Intent, Scope; and
2. Part 1-2 Definitions in part.

C. In FC Part 1-2, Section 1-201.10(B), the Department:
1. Uses the word "License" in place of the word "Permit."
2. Uses the word "License holder" in place of the word "Permit holder."
3. Modifies the following:
   a. "Additive" means:
      i. "Food additive" means the same as in A.R.S. § 36-901(7), but also includes marijuana and marijuana concentrate, as defined in A.R.S. § 36-2850, when used by a marijuana establishment in compliance with and according to A.R.S. Title 36, Chapter 28.2 and 9 A.A.C. 18; and
      ii. "Color additive" means the same as in A.R.S. § 36-901(2).
   b. "Adulterated" means possessing one or more of the conditions enumerated in A.R.S. § 36-904(A), but does not include the addition of marijuana or marijuana concentrate, as defined in A.R.S. § 36-2850, when used by a marijuana establishment in compliance with and according to A.R.S. Title 36, Chapter 28.2 and 9 A.A.C. 18.
   c. "Approved" means acceptable to the REGULATORY AUTHORITY or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
   d. "Consumer" means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT and does not offer the FOOD for resale.
   e. "Food Establishment" does not include:
      i. An establishment that offers only prePACKAGED FOOD that are not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;
      ii. A produce stand that only offers whole, uncut fresh fruits and vegetables;
      iii. A kitchen in a private home if only FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, is prepared for sale or service at a function such as a religious or charitable (organization's bake sale if allowed by LAW and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is not subject to regulation and inspection by the REGULATORY AUTHORITY;
      iv. An area where FOOD that is prepared as specified in Subparagraph (iii) of this definition is sold or offered for human consumption;
      v. A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal offered, the number of guests served does not exceed 18, and the CONSUMER is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated and inspected by the REGULATORY AUTHORITY; or
      vi. A private home that receives catered or home-delivered FOOD.
   f. "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped compliant with LAW.
   g. "Person in charge" means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation of the FOOD ESTABLISHMENT at the time of inspection.
   h. "Regulatory authority' means the Department or a public health services district, local health department, department of environmental services, or department of environmental quality carrying out delegated functions, powers, and duties on behalf of the Department.

D. In addition to the requirements in FC Part 1-2, Section 1-201.10(B), the Department requires definitions for:
1. "Administrative completeness review time-frame" means the same as in A.R.S. § 41-1072.
2. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
3. "Applicant" means an individual requesting a FOOD ESTABLISHMENT license.
4. "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, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
5. "Department" means the Arizona Department of Health Services.
6. "Developmental disability" means the same as in A.R.S. § 36-551.
7. "FC" means the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration incorporated by reference in subsection (A).

8. "Inspection report" means a document used to record the compliance status of a FOOD ESTABLISHMENT and conveys compliance information to the license holder or PERSON IN CHARGE at the conclusion of an inspection.
9. "License" means the same as "permit" as in the FC.
10. "License holder" means the same as "permit holder" as in the FC.
11. "Marijuana" means the same as in A.R.S. § 36-2850.
12. "Marijuana concentrate" means the same as in A.R.S. § 36-2850.
13. "Marijuana establishment" means the same as in A.R.S. § 36-2850.
14. "Overall time-frame" means the same as in A.R.S. § 41-1072.
15. "Public health nuisance" means an act, condition, or thing, specified in A.R.S. § 36-601, or any practice contrary to the health laws of this state that is harmful to the health of the public.
16. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.

R9-8-102. Management and Personnel

A. The Department incorporates FC Chapter 2 in whole unless otherwise specified:
1. Part 2-1 Supervision;
2. Part 2-2 Employee Health in part;
3. Part 2-3 Personal Cleanliness;
4. Part 2-4 Hygienic Practices; and
5. Part 2-5 Responding to Contamination Events.

B. In addition to the requirements in FC Part 2-2, the Department in:
1. Section 2-201.12(B)(3), adds hepatitis A virus requirements specified in A.A.C. R9-6-343(B)(1) through (3);
2. Section 2-201.13(C)(2),
   a. Deletes "The FOOD EMPLOYEE provides to the PERSON IN CHARGE written medical documentation from a HEALTH PRACTITIONER that states the FOOD EMPLOYEE is free from Typhoid fever.^{P}" and
   b. Adds Typhoid fever requirements in A.A.C. R9-6-388(A)(4)(a) and (b).

R9-8-103. Food

A. The Department incorporates FC Chapter 3 in whole, unless otherwise specified:
1. Part 3-1 Characteristics;
2. Part 3-2 Sources, Specifications, and Original Containers and Records;
3. Part 3-3 Protection From Contamination After Receiving in part;
4. Part 3-4 Destruction of Organisms of Public Health Concern;
5. Part 3-5 Limitation of Growth of Organisms of Public Health Concern;
6. Part 3-6 Food Identity, Presentation, and On-Premises Labeling;
7. Part 3-7 Contaminated Food; and
8. Part 3-8 Special Requirements for Highly Susceptible Populations.

B. In FC Part 3-3, the Department:
1. In paragraph 3-301.11(B), requires employees to use "non-latex SINGLE-USE gloves."
2. In paragraph 3-304.15(E), requires "Latex gloves may not be used in direct contact with FOOD."

R9-8-104. Equipment, Utensils, and Linens

The Department incorporates FC Chapter 4 in whole:
1. Part 4-1 Materials for Construction and Repair;
2. Part 4-2 Design and Construction;
3. Part 4-3 Numbers and Capacities;
4. Part 4-4 Location and Installation;
5. Part 4-5 Maintenance and Operation;
6. Part 4-6 Cleaning of Equipment;
7. Part 4-7 Sanitization of Equipment and Utensils;
8. Part 4-8 Laundering; and
9. Part 4-9 Protection of Clean Items.

9-8-105. Water, Plumbing, and Waste

A. The Department incorporates FC Chapter 5 in whole, unless otherwise specified:
1. Part 5-1 Water in part;
2. Part 5-2 Plumbing System;
3. Part 5-3 Mobile Water Tank and Mobile Food Establishment Water Tank;
4. Part 5-4 Sewage, Other Liquid Waste, and Rainwater; and
5. Part 5-5 Refuse, Recyclables, and Returnable.

B. In FC Part 5-1, the Department in Section 5-101.13 requires "BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources in accordance with LAW."

R9-8-106. Physical Facilities

A. The Department incorporates FC Chapter 6 in whole:
1. Part 6-1 Materials for Construction and Repair;
2. Part 6-2 Design, Construction, and Installation;
3. Part 6-3 Numbers and Capacities;
4. Part 6-4 Location and Placement; and
5. Part 6-5 Maintenance and Operation.

B. In addition to the requirements in FC Part 6-5, the Department requires:
1. A license holder for a VENDING MACHINE to affix to a VENDING MACHINE a permanent sign that includes:
   a. A unique identifier for the VENDING MACHINE, and
   b. A telephone number for CONSUMERS to contact the license holder.
2. A license holder operating a water vending machine shall comply with A.A.C. R18-4-216 and other applicable LAW.

R9-8-107. Poisonous or Toxic Materials

The Department incorporates FC Chapter 7 in whole:
1. Part 7-1 Labeling and Identification;
2. Part 7-2 Operational Supplies and Applications; and
3. Part 7-3 Stock and Retail Sale.

R9-8-108. Compliance and Enforcement

A. The Department incorporates FC Chapter 8 in whole, unless otherwise specified:
1. Part 8-1 Code Applicability;
2. Part 8-2 Plans Submission and Approval;
3. Part 8-3 Permit to Operate in part;
4. Part 8-4 Inspection and Correction of Violations in part; and
5. Part 8-5 Prevention of Foodborne Disease Transmission by Employees.

B. In FC Part 8-3, the Department does not accept requirement in Section 8-303.30, Denial of Application for Permit, Notice.

C. In addition to the requirements in FC Part 8-3, Section 8-302.14, the Department requires an applicant for a FOOD ESTABLISHMENT application include:
1. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
2. Whether the applicant agrees to allow the REGULATORY AUTHORITY to submit a supplemental request for additional information or documentation in subsection (E);
3. An attestation that the applicant authorizes the REGULATORY AUTHORITY to verify all information provided in the application packet; and
4. An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit an application for each location.

D. In addition to the requirements in FC Part 8-3, Section 8-303.20, the Department requires a licensee for a FOOD ESTABLISHMENT license renewal include:
1. Except for a FOOD ESTABLISHMENT operated by a state prison or behavioral health facility licensed by the Department, a FOOD ESTABLISHMENT'S license number and expiration date;
2. Whether the applicant agrees to allow the REGULATORY AUTHORITY to submit supplemental request for additional information or documentation in subsection (E); and
3. An attestation that the applicant authorizes the REGULATORY AUTHORITY to verify all information provided in the application packet.

E. In addition to FC Part 8-3, the Department adds application and license renewal time-frame requirements:
1. The overall time-frame begins, for:
   a. An application packet, on the date a REGULATORY AUTHORITY receives the applicant's application packet.
   b. A license renewal packet, on the date a REGULATORY AUTHORITY receives the applicant's license renewal packet.
2. An applicant and a REGULATORY AUTHORITY may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
3. Within the administrative completeness review time-frame specified in Table 1.1, a REGULATORY AUTHORITY shall:
   a. Provide a notice of administrative completeness to an applicant; or
   b. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
4. If the REGULATORY AUTHORITY provides a notice of deficiencies to an applicant:
   a. 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 REGULATORY AUTHORITY receives the missing information or documents from the applicant;
   b. If the applicant submits the missing information or documents to the REGULATORY AUTHORITY within the time-frame in Table 1.1, the substantive review time-frame resumes on the date the REGULATORY AUTHORITY receives the missing information or documents; and
   c. If the applicant does not submit the missing information or documents to the regulatory authority within the time-frame in Table 1.1, the regulatory authority shall consider the application withdrawn.

5. If a REGULATORY AUTHORITY issues a license or notice of approval during the administrative completeness review time-frame, the REGULATORY AUTHORITY may choose not to issue a separate written notice of administrative completeness.
6. Within the substantive review time-frame specified in Table 1.1, a REGULATORY AUTHORITY:
   a. Shall approve or deny:
      i. An application, or
      ii. A license renewal;
   b. May make one written comprehensive request for additional information or documentation; and
   c. May make supplemental requests for additional information and documentation if agreed to by the applicant or license holder.
7. If a REGULATORY AUTHORITY provides a written comprehensive request for additional information or documentation or a supplemental request to an applicant or license holder:
   a. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the REGULATORY AUTHORITY receives the information and documents requested; and
   b. An applicant or license holder shall submit the information and documents listed in the written comprehensive request in a format provided by the REGULATORY AUTHORITY within 15 calendar days after the date of the written comprehensive request or supplemental request.
8. The REGULATORY AUTHORITY shall issue to an applicant or license holder, as applicable:
   a. An approval for:
      i. An application, or
      ii. A license renewal; or
   b. A denial, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if an applicant or license holder:
      i. Does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or
      ii. Does not comply with A.R.S. § 36-136 and this Article.

F. In FC Part 8-4, the Department:
1. In Section 8-402.11 requires "The REGULATORY AUTHORITY to comply with A.R.S. § 41-1009 when performing inspections."
2. Does not accept requirements in:
   a. Section 8-402.20, Refusal, Notification of Right to Access, and Final Request for Access;
   b. Section 8-402.30, Refusal, Reporting;
   c. Section 8-402.40, Inspection Order to Gain Access; and
   d. Section 8-403.10, Documenting Information and Observation.
3. In Section 8-403.50 requires "A REGULATORY AUTHORITY treat the inspection report as a public document and shall make it available for disclosure to a PERSON who requests it as provided in LAW."
4. In Section 8-404.12 requires "A REGULATORY AUTHORITY approve or deny resumption of operations within five days after receipt of the license holder's request to resume operations."

Table 1.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review	Respond to Deficiency Notice	Substantive Review
Application	A.R.S. § 36-136(I)(4)	90	45	180	45
License Renewal	A.R.S. § 36-136(I)(4)	90	45	180	45

R9-8-110. Mobile Food Units

A. In addition to the definitions in A.R.S. § 36-1761 and in this Article, the following definitions apply to this Section, unless otherwise specified:
1. "Commissary" means a facility that:
   a. Is APPROVED by a REGULATORY AUTHORITY as safe and sanitary for FOOD preparation consistent with the FC and other state statutes and laws; and
   b. Provides support and servicing activities to a mobile food unit that may include:
      i. A cooking facility or commercial kitchen used to prepare FOOD for sale and consumption;
      ii. A space for storing FOOD, including refrigeration, and supplies;
      iii. A source for potable water and disposing of wastewater;
      iv. A source for refuse disposal; and
      v. An area for cleaning equipment or a mobile food unit.
2. "Commercially processed" means FOOD prepared or packaged by a FOOD manufacturer or licensed-permanent FOOD ESTABLISHMENT compliant with LAW.
3. "County" means a public health services district, local health department, department of environmental services, or department of environmental quality authorized to issue a mobile food unit state-license.

4. "Individually packaged" means pre-packaged FOOD that are ready for consumption and are not re-packaged prior to sale to consumers.
5. "Food manufacturer" means a business engaged in making FOOD from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating FOOD, including FOOD crops or ingredients.
6. "Other servicing area" means a facility that may provide one or more services, such as:
   a. Disposing of refuse,
   b. Disposing of wastewater,
   c. Recharging potable water tank,
   d. Disposing of excreta, or
   e. Cleaning mobile food unit.
7. "Permit" means a document issued by a county authorizing a state-licensed mobile food unit, whose state-license was issued by a different county, to operate in the county issuing the permit according to A.R.S. § 36-1761(A)(3).
8. "Pre-packaged foods" means edible products sealed in a box, bag, can, or other container and sold to retailers or consumers in the same packaged box, bag, can, or other container.
9. "State-license" means a document:
   a. Issued by the county where a mobile food unit's commissary is located according to A.R.S. 36-1761(A)(3)(c); and
   b. Authorizes the mobile food unit to dispense FOOD for immediate service and human consumption.
10. "Statewide inspection" means a visual examination of a mobile food unit to ensure that the mobile food unit meets the standards specified A.R.S. § 36-1761 and in this Article.

B. A mobile food vendor shall not operate a mobile food unit:
1. Without a state-license authorizing the mobile food unit to dispense FOOD for immediate service and human consumption;
2. Without a service agreement with an APPROVED commissary according to A.R.S. § 36-1761(A);
3. In another county, other than the county that issued the mobile food unit's state-license, without a permit authorizing the mobile food unit to dispense FOOD for immediate service and human consumption; and
4. If the mobile food unit maintains or engages in a public health nuisance specified A.R.S. § 36-601.

C. A mobile food vendor shall for each mobile food unit:
1. Obtain a state-license that includes a statewide inspection specified in subsection (H).
2. Obtain a renewal state-license annually that includes a statewide inspection specified in subsection (H).
3. Except for the county in which a mobile food unit has a state-license, obtain a permit annually for each county where the mobile food unit operates.
4. Ensure all employees have a valid food handler card or a certificate from an accredited food handler training-provider as specified in the FC.
5. Comply with random statewide inspections at no additional cost except as provided in A.R.S. § 11-269.24.

D. A mobile food unit:
1. Shall display in a conspicuous location for public viewing the mobile food unit's:
   a. State-license, and
   b. County permits, if applicable.
2. Shall clearly indicate on the sides or back of the exterior of the vehicle in permanent letters the name of the licensed FOOD ESTABLISHMENT.
3. Shall report to a commissary or other serving area, as applicable, at least every 96 hours following A.R.S. § 11-269.24 or as determined by the county in which the mobile food unit's commissary is located for receiving necessary services during operations to ensure public health and safety.
4. May sell a cottage FOOD prepared for commercial purposes specified in R9-8-118(B)(13).
5. Is not required to operate a specific distance from the perimeter of an existing commercial establishment or restaurant.
6. Shall operate during hours determined by the mobile food vendor.
7. Shall ensure toilet facilities are accessible to employees at a location where the mobile food unit is proposed to stay during all hours of operation.

E. A mobile food unit's state-license shall indicate the mobile food unit classification based on the type of FOOD dispensed and the amount of handling and preparation required:
1. Type I mobile food unit is a FOOD ESTABLISHMENT that dispenses FOOD that are commercially processed, individually PACKAGED and frozen that requires time/temperature control for safety.
2. Type II mobile food unit is a FOOD ESTABLISHMENT that dispenses FOOD that requires limited handling and preparation and:
   a. Includes assemble-serve, heat-serve, and hold-serve of commercially processed FOOD;
   b. Except for bacon-wrapped hotdogs pre-wrapped at a mobile food unit's commissary, shall not cook raw animal FOOD for service from the mobile food unit;
   c. Shall only use produce that is commercially pre-washed or washed in advance at a commissary; and
   d. All cooking, processing, preparing, grilling, assembling, storage, and service of any FOOD shall be conducted from the mobile food unit and commissary.
3. Type III mobile food unit is a FOOD ESTABLISHMENT that prepares, cooks, holds, and serves FOOD and:
   a. Includes assemble-serve, heat-serve, cook-serve, and hold-serve of commercially processed FOOD;
   b. May prepare raw animal FOOD for service from the mobile food unit; and

c. All cooking, processing, preparing, grilling, assembling, storage, and service of any FOOD shall be conducted inside the mobile food unit and commissary.

F. A mobile food vendor for each mobile food unit shall have a written agreement with a commissary or other servicing area, as applicable, located in the county that issues a mobile food unit's state-license:

1. Is APPROVED by a REGULATORY AUTHORITY as safe and sanitary for FOOD preparation consistent with the FC and other state statutes and laws;
2. Has a signed agreement with a commissary that includes:
   a. The commissary's name, address, and telephone number;
   b. The commissary's permit number issued by a REGULATORY AUTHORITY;
   c. The mobile food vendor's name, address, and telephone number;
   d. The manager's name, address, and telephone number, if applicable;
   e. A list of services to be provided to the mobile food vendor; and
   f. The expiration date of the agreement, if applicable; or
3. Has a signed agreement with an other servicing area that includes:
   a. The other servicing area's name, address, and telephone number;
   b. The other servicing area's permit number, if applicable, issued by a REGULATORY AUTHORITY or other jurisdiction having authority to regulate the other servicing area;
   c. The mobile food vendor's name, address, and telephone number;
   d. The manager's name, address, and telephone number, if applicable;
   e. A list of services to be provided to the mobile food vendor; and
   f. The expiration date of the agreement, if applicable.

G. A mobile food vendor for each mobile food unit shall maintain a service log in a Department-provided format that:

1. Documents the type of services, specified in subsection (E), and dates received;
2. Is maintained in the mobile food unit for at least a period of 30 days; and
3. Is made available to a REGULATORY AUTHORITY upon request.

H. In addition to complying with the FC incorporated by reference in this Article, a mobile food unit is required to maintain general physical and operation requirements for:

1. Installation of compressors, generators, and similar mechanical units that are not an integral part of the FOOD preparation or storage equipment;
2. Waste disposal requirements during and after operation on public or private property, which may not include the size or dimensions of any required solid waste receptacle; and
3. A mobile food unit and equipment used in the mobile food unit shall:
   a. Be free of dirt, debris, insects, and vermins;
   b. Be maintained in a clean and sanitary condition;
   c. Be in good repair and maintained according to manufacturer's requirement, as applicable;
   d. Be properly ventilated; and
   e. Not maintain or engage a public health nuisance.

I. A mobile food unit statewide inspection shall ensure:

1. A Type I mobile food unit:
   a. Has equipment, including compressors, generators, and similar mechanical units approved by the National Sanitation Foundation or American National Standards Institute;
   b. If selling or dispensing open FOOD, has a handwashing station that:
      i. Is at least a 5 gallon insulated container for potable water that ensures proper handwashing consistent with FC;
      ii. Has a catch-bucket to retain waste water generated from handwashing that is 15% greater than the potable water tank; and
      iii. Has adequate soap and paper towels for time in service; and
   c. Does not cook, prepare, or assemble FOOD.
2. A Type II mobile food unit:
   a. Has equipment, including compressors, generators, and similar mechanical units are approved by the National Sanitation Foundation or American National Standards Institute;
   b. Has a potable water tank that is at least five gallons;
   c. Has a waste water tank that is 15% greater than the potable water tank and any other applicable hot water storage or water storage capacity;
   d. Has a handwash sink;
   e. Has a combination mixing faucet of hot and cold water at all sinks;
   f. Has plumbing connections;
   g. Has a waste water tank to drain at lowest point of tank;
   h. Has a water tank with a fill connection located at the top;
   i. Has a National Sanitation Foundation or American National Standards Institute approved FOOD grade water hose;
   j. Has a water heater or other APPROVED hot water source; and
   k. Has a quick-disconnect design for sewer and potable water.
3. In addition to subsection (I)(2)(a) through (k), a Type III mobile food unit:

a. Has a three-compartment sink that includes:
   i. A potable water system under pressure, supplying hot and cold water with a minimum capacity of 30 gallons permanently installed for warewashing, sanitization, and handwashing;
   ii. A waste water capacity that is 15% greater than the potable water tank; and
   iii. A minimum flow rate of one-half gallon per minute; and
b. May include a FOOD preparation sink for the purpose of washing product if an additional 20 gallons of potable water is available for use.

J. Except for the Department, regulatory authorities through delegation in the county where a mobile food vendor's commissary is located shall issue state licensure and statewide inspection standards adopted pursuant to this Section.

R9-8-111. Compliance and Enforcement, Annex 1

A. The Department incorporates FC Annex 1 in whole, unless otherwise specified:
1. Section 1, Purpose;
2. Section 2, Explanation;
3. Section 3, Principle;
4. Section 4, Recommendation; and
5. Section 5, Parts in part.

B. In Annex 1, Section 5, the Department does not accept Part 8-911.10(B).

C. In addition to Annex 1, Section 5, the Department adds licensure suspension or revocation requirements that:
1. A REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT license if the license holder:
   a. Maintains or engages in a public health nuisance;
   b. Falsifies records to interfere with or obstruct an investigation or regulatory process of the REGULATORY AUTHORITY; or
   c. Provides false or misleading information to a regulatory authority.
2. A license revocation or suspension hearing shall be conducted as follows:
   a. If a REGULATORY AUTHORITY is the Department, a hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10;
   b. If a REGULATORY AUTHORITY is a public health district, local health department, department of environmental services, or department of environmental quality, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 or Article 10.

D. In addition to Annex 1, Section 5, the Department adds cease and desist requirements that:
1. If a REGULATORY AUTHORITY determines a FOOD ESTABLISHMENT is creating, maintaining, or engaging a public health nuisance the REGULATORY AUTHORITY shall serve the FOOD ESTABLISHMENT'S license holder a written cease and desist order pursuant to A.R.S. Title 36, Chapter 6, Article 1.
2. If a written notice of appeal is not provided as specified in A.R.S. § 36-601(B), the cease and desist order shall become final.

R9-8-112. References, Annex 2

The Department incorporates FC Annex 2 in whole:
1. Section 1, United States Code and Code of Federal Regulations;
2. Section 2, Bibliography;
3. Section 3, Principle; and
4. Section 4, Food Defense Guidance from Farm to Table.

R9-8-113. Public Health Reasons and Administrative Guidelines, Annex 3

The Department incorporates FC Annex 3 in whole:
1. Section 1, Purpose and Definitions;
2. Section 2, Management and Personnel;
3. Section 3, Food;
4. Section 4, Equipment, Utensils, and Linens;
5. Section 5, Water, Plumbing, and Waste;
6. Section 6, Physical Facilities;
7. Section 7, Poisonous or Toxic Materials; and
8. Section 8, Compliance and Enforcement.

R9-8-114. Management of Food Safety Practices, Annex 4

The Department incorporates FC Annex 4 in whole:
1. Section 1, Active Managerial Control;
2. Section 2, Introduction to HACCP;
3. Section 3, The HACCP Principles;
4. Section 4, The Process Approach - A Practical Application of HACCP;
5. Section 5, FDA Retail HACCP Manuals;
6. Section 6, Advantages of Using the Principles of HACCP;
7. Section 7, Summary;
8. Section 8, Acknowledgements; and
9. Section 9, Resources and References.

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

R9-8-115. Conducting Risk-based Inspections, Annex 5

The Department incorporates FC Annex 5 in whole:

1. Section 1, Purpose and Scope;
2. Section 2, Risk-Based Routine Inspections;
3. Section 3, What is Needed to Properly Conduct a Risk-Based Inspection;
4. Section 4, Risk-Based Inspection Methodology;
5. Section 5, Achieving On-Site and Long-Term Compliance;
6. Section 6, Inspection Form and Scoring;
7. Section 7, Closing Conference; and
8. Section 8, Summary.

R9-8-116. Food Processing Criteria, Annex 6

The Department incorporates FC Annex 6 in whole:

1. Section 1, Introduction;
2. Section 2, Reduced Oxygen Packaging; and
3. Section 3, Smoking and Curing.

R9-8-117. Model Forms, Guides, and Other Aids, Annex 7

The Department incorporates FC Annex in whole:

1. Section 1, Employee Health Information;
2. Section 2, Adoption Information; and
3. Section 3, Summary Information.

R9-8-118. Exempt from Requirements and Inspections

A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.

B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:

1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
2. Group homes, as defined in A.R.S. § 36-551;
3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
12. FOOD that is:
    a. Served at a noncommercial social event, such as a potluck;
    b. Prepared at a cooking school if:
        i. The cooking school is conducted in the kitchen of an owner-occupied home,
        ii. Only one meal per day is prepared and served by students of the cooking school,
        iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
        iv. The students of the cooking school are provided with written notice that the FOOD is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
    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. A demonstration of FOOD preparation or cooking class offered by:
        i. A culinary school or educational institution and all FOOD prepared is consumed by attending students;
        ii. A school or business and samples are not offered for human consumption; and
        iii. A business where an individual provides, prepares, cooks, and consumes their own FOOD.
    f. Offered at a child care facility and limited to commercially pre-packaged FOOD that is not potentially hazardous and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
    g. Offered at locations that sell only commercially pre-packaged FOOD that is not potentially hazardous;
13. A cottage FOOD product, as defined in A.R.S. § 36-136(Q), prepared for commercial purposes that:
    a. Is not potentially hazardous as defined in A.R.S. § 36-136(I)(4)(g); or

b. Is not a FOOD that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:
i. Has a certificate of completion from completing a food handler training course from an accredited program;
ii. Maintains an active certification of completion; and
iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and
d. Is PACKAGED at the home with an attached label that includes:
i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);
ii. A list of the ingredients in the cottage FOOD;
iii. The date the cottage FOOD was prepared; and
iv. The statement: This product was produced in a home kitchen that may process common FOOD allergens and is not subject to public health inspection; and
v. If applicable, a statement that the cottage FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities.

14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.

C. A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage FOOD for commercial purpose.

D. To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:

1. Complete a food handler training course from an accredited program;
2. Register with the Department by submitting:
a. An application in a Department-provided format that includes:
i. The food preparer's name, address, telephone number, and e-mail address;
ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;
iii. The address, including the county, of the home where the cottage FOOD is prepared;
iv. Whether the home where the cottage FOOD is prepared is a facility for developmentally disabled individuals; and
v. A description of each cottage FOOD prepared for commercial purposes;
b. A copy of the food preparer's certificate of completion for the completed food handler training course;
c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
d. An attestation in a Department-provided format that the food preparer:
i. Has reviewed Department-provided information on FOOD safety and safe FOOD handling practices;
ii. Based on the Department-provided information, believes that the cottage FOOD prepared for commercial purposes is not potentially hazardous or is not a FOOD that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
iii. Includes the food preparer's printed name and date.
3. Maintain an active certification of completion for the completed food handler training course;
4. Renew the registration in subsection (D)(2) every three years;
5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
6. Display the food preparer's certificate of registration when operating as a temporary FOOD ESTABLISHMENT and selling cottage FOOD.

E. Food establishments shall have until January 31, 2022 to comply with the certified food protection manager requirement specified in this Article.

R9-8-119. Manufactured Food Plants

A. The following definitions apply to this Section, unless otherwise specified:

1. "Consumer" means a person who:
a. Is a member of the public,
b. Takes possession of FOOD,
c. Is not functioning in the capacity of an operator of a manufacture food plant, and
d. Does not offer the FOOD for resale.
2. "FOOD PROCESSING PLANT" means a commercial operation that:
a. Manufactures, packages, labels, or stores FOOD for human consumption;
b. Provides FOOD for sale or distribution to other business entities such as FOOD ESTABLISHMENTS and retailers; and
c. Does not provide FOOD directly to a consumer.

B. In FC Part 3-2, Subpart 3-202, the Department:

1. In paragraph 3-203.11(A) requires "Except as specified in (B), (C), and (D) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or preparation in a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY."
2. In paragraph 3-203.12(C) requires "The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:

a. Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and
b. If SHELLSTOCK are removed from their tagged or labeled container:
   i. Using only one tagged or labeled container at a time, or
   ii. Using more than one tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:
      (a) Is submitted by the license holder and APPROVED as specified under § 8-103.11,
      (b) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and
      (c) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.

ARTICLE 4. CHILDREN'S CAMPS

R9-8-401. Definitions

In this Article, unless otherwise requires:

1. "Applicant" means an individual requesting a license from the Department or a county to operate a children's camp.
2. "Bathing place" has the same meaning as in 9 A.A.C. 8, Article 8.
3. "Camp director" means an individual who runs, maintains, or otherwise controls or directs the functions of a children's camp.
4. "Children's camp" has the same meaning as in A.R.S. § 36-3901.
5. "County" means a governmental entity that has a delegation agreement with the Department as prescribed in A.R.S. § 36-3915.
6. "Delegation agreement" has the same meaning as in A.R.S. § 41-1001.
7. "Department" means the Arizona Department of Health Services.
8. "Food establishment" has the same meaning as in 9 A.A.C. 8, Article 1.

R9-8-402. Initial and Renewal License Application Process

A. An applicant shall submit a completed license application form in subsection (B) to:
1. The county in which the children's camp is located, if the county has a delegation agreement with the Department under A.R.S. § 36-3915; or
2. The Department, if there is no delegation agreement.

B. An applicant shall submit a completed license application form provided by the Department or a county that contains:
1. The name, mailing address, and telephone number of the children's camp;
2. The county in which the children's camp is located;
3. The name, telephone number, and mailing address of the applicant;
4. The name, telephone number, and if applicable, e-mail address of the camp director;
5. The dates of operation of the children's camp;
6. The number of individuals the children's camp can accommodate;
7. Whether there is a food establishment in the children's camp;
8. Whether there is a bathing place in the children's camp;
9. The potable water supply source at the children's camp;
10. The type of sewage disposal system;
11. Whether the application is for an initial or a renewal license; and
12. The signature of the applicant.

C. With the completed license application, an applicant shall include a map that specifies the location of the children's camp, and:
1. For an initial license:
   a. If applying to the Department, a fee of $100, or
   b. If applying to a county, a fee established according to A.R.S. § 36-3903.
2. For a renewal license:
   a. If applying to the Department, a fee of $25 or
   b. If applying to a county, a fee established according to A.R.S. § 36-3903.

D. The Department or a county begins reviewing applications on May 1 of each year.

R9-8-403. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or county is 60 days. The applicant and the Department or a county may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or a county is 30 days and begins on May 1 of each year or on the date the application is received if after May 1.
1. The Department or a county shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the license application.

b. If the Department or a county issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department or a county receives the missing information from the applicant.
c. If the applicant fails to submit to the Department or a county all the information and documents listed in the notice of deficiencies within 60 days of the date the Department or a county mailed the notice of deficiencies, the Department or county deems the license application withdrawn.

2. If the Department or a county issues a license to the applicant during the administrative completeness review time-frame, the Department or a county does not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.

1. The Department or a county shall mail a children's camp license or a written notification of denial of the license application to the applicant within the substantive review time-frame.
2. As part of the substantive-review time-frame for a children's camp license, the Department or a county may conduct an inspection of the children's camp to determine whether the children's camp has complied with the applicable requirements in subsection (C)(4) or (C)(5).
3. If the Department or a county issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department or a county issues the request until the date the Department or a county receives all of the information.
4. If an applicant applying to the Department meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, and these rules, the Department shall issue a license to the applicant.
5. If an applicant applying to a county meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, these rules, and county requirements consistent with A.R.S. Title 8, Chapter 6, Article 1, a county shall issue a license to the applicant.
6. If the Department or a county disapproves a license application, the Department or a county shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.

D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department or a county considers the next business day as the time-frame's last day.

ARTICLE 7. PUBLIC SCHOOLS

R9-8-701. Definitions

In this Article, unless otherwise specified:

1. "Ample water supply" means sufficient water quantity and water pressure to operate all of a school's drinking fountains, bathtubs, showers, lavatories, water closets, and urinals at all times from:
   a. A public water system that complies with 18 A.A.C. 4; or
   b. An underground water source that complies with 18 A.A.C. 11, Articles 4 and 5 or with A.R.S. § 45-811.01.
2. "Animal" means a mammal, bird, reptile, amphibian, fish or invertebrate, such as an insect, spider, worm, snail, clam, crab, or starfish.
3. "Aquifer" means the same as in A.R.S. § 49-201.
4. "Bathroom" means a restroom that contains a shower head or bathtub.
5. "Bathtub" means a receptacle, in which a user sits, with a faucet that supplies hot and cold water, or warm water, for filling the receptacle and a drain connected to a sanitary sewer.
6. "Bottled water" means the same as in R9-8-201.
7. "Bottled water cooler" means a device that is not connected to a plumbing system and provides a vertically falling stream of drinking water from a source approved by the Department under 9 A.A.C. 8, Article 2, or that complies with 18 A.A.C. 4; 18 A.A.C. 11, Articles 4 and 5, or A.R.S. § 45-811.01.
8. "Calendar year" means January 1 through December 31.
9. "Classroom" means an interior area of a school used primarily for instruction of students.
10. "Clean" means free of dirt or debris.
11. "Cold water" means water with a temperature from 33º F to 74º F.
12. "Common drinking cup" means a hand-held container not connected to a plumbing system that:
    a. Holds liquid for human consumption,
    b. Comes into contact with a user's mouth, and
    c. Is used by more than one individual.
13. "Complaint" means information indicating the need for inspection due to possible violations of this Article.
14. "Constructed underground storage facility" means the same as in A.R.S. § 45-802.01.
15. "Debris" means litter or the remains of something that has been broken or torn into pieces.
16. "Department" means the Arizona Department of Health Services.
17. "Device" means a piece of equipment that performs a specific function.
18. "Drinking fountain" means a fixture connected to a plumbing system that provides a non-vertical stream of drinking water from an opening and drains into a sanitary sewer.
19. "Drinking water" means water for human consumption that meets the requirements of 18 A.A.C. 4, or 18 A.A.C. 11, Article 4.
20. "Dumpster" means a container designed for mechanical lifting and dumping by a refuse collection vehicle that transports the container's contents.

21. "Faucet" means a fixture connected to a plumbing system that provides and regulates the flow of drinking water from the plumbing system.
22. "Fixture" means a permanent attachment to a structure.
23. "Floor drain" means an opening in a floor surface that leads to a sanitary sewer.
24. "Food establishment" means an entity that stores, prepares, packages, serves, or otherwise provides food for human consumption directly to a consumer or indirectly through a delivery service.
25. "Habitat" means a place where an animal is kept while on school grounds.
26. "Hot water" means water with a temperature from 95º F to 120º F.
27. "Human consumption" means an individual's use of water for activities such as drinking, bathing, showering, handwashing, cooking, dishwashing, laundering, cleaning, or using a water closet.
28. "Hydration" means the process of replacing fluids lost by a human body.
29. "Lavatory" means a sink or a basin with a faucet that supplies hot and cold water, or warm water, and with a drain connected to a sanitary sewer.
30. "Local health department" means:
    a. The administrative division of an Arizona county, city, or town that manages environmental and health-related issues; or
    b. A public health services district under A.R.S. Title 48, Chapter 33.
31. "Managed underground storage facility" means the same as in A.R.S. § 45-802.01.
32. "Non-absorbent" means not capable of absorbing or soaking up liquids.
33. "Non-classroom" means an indoor area in a school, such as the school office, nurse's office, library, or cafeteria, that are not used primarily for instruction of students.
34. "Overflow rim" means the raised edge around a drinking fountain's basin.
35. "Participant" means:
    a. A member of the staff or a student of a school, or
    b. A member of the staff or a student from another school, when the individual is present on the grounds of the school specified in subsection (a) for a school-organized activity.
36. "Plumbing system" means fixtures, pipes, and related parts assembled to carry drinking water into a structure and carry sewage out of the structure.
37. "Portable water container" means any type of device, not connected to a plumbing system, provided by a school, such as a bottle, cup, pitcher, or insulated cylindrical cooler, in which drinking water is held or carried.
38. "Private school" means the same as in A.R.S. § 15-101.
39. "Public water system" means the same as in A.R.S. § 49-352.
40. "Refuse" means the same as in A.A.C. R18-13-302.
41. "Refuse container" means a portable receptacle used for refuse storage until the refuse is placed into a dumpster.
42. "Responsible person" means:
    a. For an accommodation school defined in A.R.S. § 15-101, the county school superintendent with the powers and duties prescribed in A.R.S. Title 15, Chapter 3, Article 1;
    b. For a charter school defined in A.R.S. § 15-101, the governing board defined in A.A.C. R7-2-1401;
    c. For the Arizona State Schools for the Deaf and the Blind, the board of directors for the Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 2;
    d. For a school operated by a school district, the school district's governing board defined in A.R.S. § 15-101.
43. "Restroom" means a structure or room that contains at least one lavatory and water closet or at least one lavatory, water closet, and urinal.
44. "Sanitary sewer" means the same as in A.R.S. § 45-101.
45. "Sanitize" means the same as in A.A.C. R9-5-101.
46. "School" means an institution offering instruction:
    a. That is:
        i. An accommodation school defined in A.R.S. § 15-101;
        ii. The Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 1;
        iii. A charter school defined in A.R.S. § 15-101; or
        iv. A school operated by a school district defined in A.R.S. § 15-101; and
    b. That is not a private school.
47. "Sewage" means the same as in A.A.C. R18-13-1102.
48. "Shower head" means a fixture connected to a plumbing system that allows drinking water to fall on a user's body.
49. "Shower room" means a structure or room that contains at least one shower head and one floor drain, but does not contain a bathtub, lavatory, water closet, or urinal.
50. "Underground water source" means:
    a. An aquifer,
    b. A constructed underground storage facility, or
    c. A managed underground storage facility.
51. "Urinal" means the same as in A.R.S. § 45-311.
52. "Warm water" means water with a temperature from 75º F to 94º F.

53. "Water closet" means the same as in A.R.S. § 45-311.
54. "Water cooler" means a fixture connected to a plumbing system for cooling water and dispensing a vertically falling stream of drinking water.

R9-8-702. General Provisions

A. A responsible person shall ensure that a school complies with the provisions of this Article and with federal and state statutes and rules and local ordinances governing subjects included in A.R.S. § 36-136(H)(9).

B. A violation of this Article is a public nuisance under A.R.S. § 36-601.

R9-8-703. Restroom, Bathroom, and Shower Room Requirements

A. A responsible person shall ensure that a school provides restrooms or bathrooms that:
1. Are clean; and
2. Have:
   a. Floors of a non-absorbent material;
   b. Floors that slope to a drain connected to a sanitary sewer;
   c. Water closets with seats of the split or U-shaped type made of non-absorbent material;
   d. Interior surfaces that are clean, washable, and free from gaps;
   e. Toilet paper at all water closets; and
   f. Soap and single-use paper towels or air hand dryers at all lavatories.

B. If a school provides a shower room, the responsible person shall ensure that the shower room:
1. Is clean;
2. Does not have a school-provided cloth towel unless, after each use, the cloth towel is machine washed with detergent and machine dried; and
3. Has:
   a. Hot and cold, or warm water from all shower heads;
   b. Floors of a non-absorbent material;
   c. Floors that slope to a drain connected to a sanitary sewer; and
   d. Interior surfaces that are clean, washable, and free of gaps.

C. A responsible person shall ensure that restrooms, bathrooms, and shower rooms are maintained to avoid odors.

R9-8-704. Cafeterias and Food Service

A. A responsible person for a school that stores, prepares, or serves food on the premises shall ensure that the school complies with 9 A.A.C. 8, Article 1, except when the food is brought to the school by staff or a student for personal consumption.

B. If a school contracts with a food establishment to prepare and deliver food to the school, the responsible person shall:
1. Ensure that the food establishment has a current license or permit issued under 9 A.A.C. 8, Article 1; and
2. Retain a copy of the food establishment's current license or permit, required in subsection (B)(1), for inspection.

R9-8-705. Indoor Areas

A responsible person shall ensure that:
1. Indoor classroom and non-classroom areas are clean; and
2. If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or air hand dryers.

R9-8-706. Water Supply

A. A responsible person shall ensure that a school has an ample water supply.

B. A responsible person shall ensure that a school's drinking water is dispensed from:
1. A clean drinking fountain that:
   a. Provides, from an opening, a stream of water that does not touch anything before reaching a user's mouth;
   b. Has an opening that is higher than the overflow rim to prevent the opening's submersion; and
   c. Has a device to prevent a user's mouth from touching the opening from which the water streams;
2. A clean and sanitized water cooler;
3. A clean and sanitized bottled water cooler;
4. A clean and sanitized lavatory faucet; or
5. A clean and sanitized portable water container.

C. If a portable water container or the bottle from a school's bottled water cooler is to be refilled, a responsible person shall ensure that the portable water container or the bottle is:
1. Washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1;
2. Stored in a clean area; and
3. Refilled with drinking water from any of the sources of drinking water specified in subsection (B).

D. A responsible person shall ensure that a school does not provide a common drinking cup unless the common drinking cup is washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1, after each use.

E. A responsible person shall ensure that a school provides:
1. Drinking fountains, water coolers, or bottled water coolers according to Tables 1 and 2; and
2. At least one drinking fountain, water cooler, or bottled water cooler on each floor of the school that contains a classroom, regardless of the number of students.

Table 1. Kindergarten to Eighth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-50	1
51-100	2
101-150	3
151-200	4
201-250*	5

* For each additional 1-50 students, another drinking fountain, water cooler, or bottled water cooler is required.

Table 2. Ninth Grade to Twelfth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-100	1
101-200	2
201-300	3
301-400	4
401-500*	5

* For each additional 1-100 students, another drinking fountain, water cooler, or bottled water cooler is required.

F. A responsible person shall ensure a school provides drinking water that is:
1. Accessible from the school grounds; and
2. Sufficient to maintain the hydration of all participants at school-organized outdoor activities.

R9-8-707. Sewage Disposal

A responsible person shall ensure that a school's:
1. Water closets and urinals flush sewage to a sanitary sewer;
2. Lavatories, showers, bathtubs, and other plumbing fixtures drain sewage to a sanitary sewer; and
3. Sanitary sewer lines are maintained in accordance with the recommendations of the local health department.

R9-8-708. Refuse Management

A responsible person shall ensure that a school:
1. Stores refuse in durable, non-absorbent, and washable containers;
2. Provides:
   a. Indoor refuse containers in each classroom and in each non-classroom area; and
   b. Accessible outdoor refuse containers;
3. Maintains refuse containers so that refuse does not accumulate in school buildings or on school grounds; and
4. Disposes of refuse according to 18 A.A.C. 13, Article 3.

R9-8-709. Animal Standards

A. A responsible person shall ensure that an animal in a school:
1. Is kept in a habitat that:
   a. Has water free of algae, insects, and particulate matter;

b. Is maintained to avoid odors from rotting food or excess animal wastes; and
c. Is not in the same room as food preparation areas, as specified in 9 A.A.C. 8, Article 1;
2. May be removed from the animal's habitat at the direction of a teacher;
3. When out of the animal's habitat, is under the control of a teacher or a student of the school, if the animal is:
a. A bird, reptile, amphibian, or invertebrate;
b. A large mammal, such as a horse, sheep, pig, goat, or cow;
c. A rabbit or hare; or
d. A rodent, such as a mouse, rat, hamster, guinea pig, or gerbil;
4. Has a current immunization against rabies, if the animal is a dog, cat or ferret, as documented by:
a. A dog license issued by a state or county agency;
b. A rabies immunization certificate from a veterinarian licensed under 3 A.A.C. 11;
c. A receipt for veterinary services, showing the administration of a rabies vaccine; or
d. A written statement attesting to the current immunization of the animal against rabies; and
5. Is not:
a. A non-human primate;
b. A deer mouse, or other wild mouse of the genus *Peromyscus*; and
c. A bat, skunk, raccoon, fox, wolf-hybrid or coyote, except when brought into a classroom for an educational display, as defined in R12-4-401, by a person who has complied with provisions in 12 A.A.C. 4, Article 4, obtained a permit or license issued by the Arizona Game and Fish Department, and is experienced in handling the animal.

B. A responsible person shall ensure that a room, in which an animal in a school is kept:
1. Is free of animal waste, except in the habitat; and
2. Has:
a. A lavatory with soap and single-use paper towels or air hand dryers; or
b. A product to sanitize the hands of an individual who touches an animal or its habitat.

R9-8-710. Pest Control

A responsible person shall ensure that indoor classroom and non-classroom areas are kept free of insects and rodents, except when the insects or rodents are being kept as specified in R9-8-709 or are food for animals being kept as specified in R9-8-709.

R9-8-711. Inspections

The Department shall inspect:
1. A school for compliance with this Article at least once each calendar year, and
2. Areas of a school pertinent to the details of a complaint upon receipt of the complaint.

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

R9-8-801. Definitions

In this Article, unless otherwise specified:
1. "Artificial lake" has the same meaning as in A.A.C. R18-5-201.
2. "Backwash" has the same meaning as in A.A.C. R18-5-201.
3. "Bathing place" means a volume of water that is used for water contact recreation.
4. "Clean" means free from slime, scum, dirt, or other debris.
5. "Deck" has the same meaning as in A.A.C. R18-5-201.
6. "Department" means the Arizona Department of Health Services.
7. "Incontinent" means unable to restrain a bowel movement.
8. "Local health department" has the same meaning as in R9-18-101.
9. "Maximum bathing load" has the same meaning as in A.A.C. R18-5-201.
10. "Natural bathing place" has the same meaning as in A.A.C. R18-5-201.
11. "Operate" has the same meaning as in A.A.C. R18-5-201.
12. "Operator" means an individual who owns, runs, maintains, or otherwise controls or directs the functioning of a bathing place.
13. "Oxidation-reduction potential" means the measurement in millivolts of the potential for transfer of electrons from one atom or molecule to another in water.
14. "Potable water" has the same meaning as in A.A.C. R18-5-201.
15. "Ppm" means parts per million.
16. "Private residential spa" has the same meaning as in A.A.C. R18-5-201.
17. "Private residential swimming pool" has the same meaning as in A.A.C. R18-5-201.
18. "Public health services district" has the same meaning as "district" in A.R.S. § 48-5801.
19. "Public spa" has the same meaning as in A.A.C. R18-5-201.
20. "Public swimming pool" has the same meaning as in A.A.C. R18-5-201.
21. "Regulatory authority" means the Department or a local health department or public health services district operating under a delegation of authority from the Department.
22. "Sanitary facility" means a designated area that includes a toilet, urinal, sink, or shower.
23. "Scum" means a film that forms on the surface of water.

24. "Semi-artificial bathing place" means a lake, pond, river, stream, swimming hole, or hot spring that is modified to be used for water contact recreation.
25. "Semipublic spa" has the same meaning as in A.A.C. R18-5-201.
26. "Semipublic swimming pool" has the same meaning as in A.A.C. R18-5-201.
27. "Shallow area" has the same meaning as in A.A.C. R18-5-201.
28. "Shock treatment" means adding chlorine to water to elevate the free chlorine residual to 20 ppm and destroy ammonia and nitrogenous and organic contaminants in the water.
29. "Slime" means a glutinous or viscous liquid matter.
30. "Spa" has the same meaning as in A.A.C. R18-5-201.
31. "Surface water" has the same meaning as in A.A.C. R18-11-101.
32. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
33. "Turnover rate" has the same meaning as in A.A.C. R18-5-201.
34. "Wading pool" has the same meaning as in A.A.C. R18-5-201.
35. "Water circulation system" has the same meaning as in A.A.C. R18-5-201.
36. "Water circulation system components" has the same meaning as in A.A.C. R18-5-201.
37. "Water fountain" means a bathing place that functions by using mechanical means to propel a stream of water out of an opening or structure.
38. "Water contact recreation" means an activity for enjoyment in which an individual wets all or part of the individual's body with water.

R9-8-802. Applicability

This Article does not apply to:

1. A private residential swimming pool,
2. A private residential spa,
3. A bathing place used for medical treatment or physical therapy supervised by licensed medical personnel, or
4. A body of water that is not used as a bathing place.

R9-8-803. Public and Semipublic Swimming Pool and Spa Water Quality and Disinfection Standards

A. An operator of a public or semipublic swimming pool or spa shall ensure that:
1. The swimming pool or spa is filled only with potable water;
2. The water in the swimming pool or spa:
   a. Complies with the water quality standards in this Section when the swimming pool or spa is open for water contact recreation;
   b. Maintains a pH of between 7.2 and 7.8;
   c. Maintains a total alkalinity of between 60 and 100 ppm; and
   d. Is sufficiently clear so that the main drain in the swimming pool or spa is visible from the deck of the swimming pool or spa;
3. The surface of the water in the swimming pool or spa is free from scum and floating debris;
4. The bottom and sides of the swimming pool or spa are free from sediment, dirt, slime, and algae;
5. The chemical disinfection level, pH, total alkalinity, and temperature of the water is tested at least once daily; and
6. A daily operating log that includes the results of the tests in subsection (A)(5) is maintained for 12 months from the date of the test and is available to a regulatory authority or a member of the public upon request.

B. An operator of a public or semipublic swimming pool or spa:
1. Shall not use chloramine as a primary disinfectant in the swimming pool or spa;
2. Shall not add gaseous disinfectant directly into the swimming pool;
3. Shall not add dry or liquid disinfectant directly into the swimming pool or spa for routine disinfection; and
4. May add dry or liquid disinfectant directly into the swimming pool or spa for shock treatment.

C. An operator of a public or semipublic swimming pool or spa using chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization in the swimming pool or spa shall ensure that the water in the swimming pool or spa maintains an oxidation-reduction potential equal to or greater than 650 millivolts and that cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, do not exceed 150 ppm.

D. An operator of a public or semipublic swimming pool shall ensure that the water in the swimming pool meets one of the following chemical disinfection standards:
1. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
2. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
3. An oxidation-reduction potential equal to or greater than 650 millivolts.

E. An operator of a public or semipublic spa shall ensure that:
1. A chlorine gas disinfection system is not used in the spa;
2. The water temperature in the spa does not exceed 40EC; and
3. The water in the spa meets one of the following chemical disinfection standards:
   a. A free chlorine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
   b. A free bromine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
   c. An oxidation-reduction potential equal to or greater than 650 millivolts.

R9-8-804. Public and Semipublic Swimming Pool and Spa Water Circulation Requirements

A. An operator of a public or semipublic swimming pool or spa shall ensure that:

1. The swimming pool or spa water circulation system complies with the water circulation requirements in 18 A.A.C. 5, Article 2; and
2. The swimming pool or spa is equipped with:
   a. A flow meter as specified in 18 A.A.C. 5, Article 2; and
   b. A vacuum cleaning system as specified in 18 A.A.C. 5, Article 2.

B. An operator may draw water from a swimming pool for a water slide or a water fountain without filtering or disinfecting the water.

R9-8-805. Public and Semipublic Swimming Pool and Spa Maximum Bathing Loads

An operator of a public or semipublic swimming pool or spa shall ensure that the maximum bathing load, as specified in 18 A.A.C. 5, Article 2, is not exceeded.

R9-8-806. Posting Requirements

An operator of a public or semipublic swimming pool or spa shall ensure that a sign is posted within 50 feet of the swimming pool or spa, that includes the following instructions:

1. Use the toilet before entering the pool or spa;
2. Take a shower before entering the pool or spa;
3. Do not enter the pool with a cold, skin or other body infection, open wound, diarrhea, or any other contagious condition;
4. If incontinent, wear tight fitting rubber or plastic pants or a swim diaper; and
5. Observe all safety regulations.

R9-8-807. Public and Semipublic Swimming Pool and Spa and Bathing Place Facility Sanitation

A. An operator of a public or semipublic swimming pool or spa shall ensure that a sanitary facility at the public or semipublic swimming pool is maintained in a clean condition.

B. An operator of a public or semipublic swimming pool or bathing place shall provide a soap dispenser with liquid or powdered soap at each sink in a sanitary facility.

R9-8-808. Bathing Place Towels

If a towel is provided by a bathing place to an individual using the bathing place, an operator of the bathing place shall ensure that the towel is washed with soap or detergent and hot water and thoroughly dried after each individual use.

R9-8-809. Disposal of Sewage, Filter Backwash, and Wasted Swimming Pool or Spa Water

An operator of a public or semipublic swimming pool or spa shall ensure that sewage, filter backwash, and swimming pool or spa water are disposed of according to A.A.C. R18-5-236.

R9-8-810. Fecal Contamination in Public and Semipublic Swimming Pools and Spas

A. If solid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed,
2. The feces in the swimming pool or spa are removed and disposed of in a toilet,
3. The chemical disinfection level of the water in the swimming pool or spa is tested to determine whether the water complies with the water quality and disinfection standards in R9-8-803, and
4. The swimming pool or spa is not reopened until a test conducted under subsection (A)(3) indicates that the water complies with the water quality and disinfection standards in R9-8-803.

B. If liquid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed;
2. The swimming pool or spa is closed for at least 24 hours;
3. As much of the liquid feces as possible in the swimming pool or spa is removed and disposed of in a toilet;
4. The swimming pool or spa is chemically treated with a shock treatment;
5. The water in the swimming pool or spa is tested 24 hours after applying the shock treatment to determine whether the water complies with the water quality and disinfection standards in R9-8-803; and
6. The swimming pool or spa is not reopened until a test conducted under subsection (B)(5) indicates that the water complies with the water quality and disinfection standards in R9-8-803.

R9-8-811. Natural and Semi-artificial Bathing Place and Artificial Lake Water Quality Standards

An operator of a public or semipublic natural bathing place, a semi-artificial bathing place, or an artificial lake shall ensure that the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake meets the narrative and numeric water quality standards in 18 A.A.C. 11, Article 1 when the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake is open for water contact recreation.

R9-8-812. Inspections

A. A regulatory authority shall inspect a bathing place to determine whether the bathing place complies with this Article.

B. A regulatory authority shall inspect a public swimming pool at least once each month that the swimming pool is open for water contact recreation.

R9-8-813. Cease and Desist and Abatement

A. Engaging in any practice in violation of this Article is a public nuisance.

B. If a regulatory authority has reasonable cause to believe that an operator of a public or semipublic swimming pool or bathing place is creating or maintaining a public nuisance at the public or semipublic swimming pool or bathing place, the regulatory authority shall order the operator to discontinue the activity and to abate the public nuisance as follows:

1. The regulatory authority shall serve on the operator a written cease and desist and abatement order requiring the operator to discontinue the activity and to remove the public nuisance at the operator's expense within 24 hours after service of the order. The order shall contain:
   a. A reference to the statute or rule that is alleged to have been violated or on which the order is based,
   b. A description of the operator's right to request a hearing, and
   c. A description of the operator's right to request an informal settlement conference.
2. The regulatory authority shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the operator or other party's last address of record with the regulatory authority or by any other method reasonably calculated to effect actual notice to the operator or other party.
3. The operator or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the regulatory authority within 30 days after service of the order. The operator or other party appealing the order shall serve the notice of appeal upon the regulatory authority by personal delivery or certified mail, return receipt requested, to the office of the regulatory authority or by any other method reasonably calculated to effect actual notice on the regulatory authority. Appealing an order does not release the operator from the obligation to comply with the order.
4. If a notice of appeal is timely filed, the regulatory authority shall do one of the following:
   a. If the regulatory authority is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 is delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
   b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
5. If a written notice of appeal is not timely filed, the order becomes final.
6. A regulatory authority shall inspect the public or semipublic swimming pool or bathing place 24 hours after service of the order to determine whether the operator has complied with the order. If the regulatory authority determines upon inspection that the operator has not ceased the activity and abated the public nuisance, the regulatory authority shall cause the public nuisance to be removed.

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.

C-4.

BOARD OF PHARMACY
Title 4, Chapter 23

Amend: R4-23-101, R4-23-119, R4-23-201, R4-23-202, R4-23-203, R4-23-205, Article 3, R4-23-301, R4-23-302

Repeal: R4-23-303, R4-23-304, R4-23-305

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 11, 2023

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

FROM: Council Staff

DATE: **January 3, 2024**

SUBJECT: **BOARD OF PHARMACY**
Title 4, Chapter 23

Amend: R4-23-101, R4-23-119, R4-23-201, R4-23-202, R4-23-203, R4-23-205, Article 3, R4-23-301, R4-23-302

Repeal: R4-23-303, R4-23-304, R4-23-305

Summary:

This regular rulemaking from the Arizona Board of Pharmacy (Board) seeks to amend eight (8) rules and one (1) article and repeals three (3) rules in Title 4, Chapter 23. The Board 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. With this rulemaking, the Board is making numerous changes to modernize the rules and make them consistent with statute and agency practice; address issues that were identified in a 5YRR approved by the Council on January 4, 2023; make the rules more clear, concise, and understandable; and to comply with statute.

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

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

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

The Board states that the rules do not establish or contain a fee increase, but do contain a fee reduction.

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

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

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

The Board believes the non-substantive changes made in this rulemaking will have minimal economic impact. Reducing the fee for licensure by reciprocity will have a benefit for reciprocity applicants. Reducing the fee for a non-renewal registration as a pharmacy technician trainee will benefit pharmacy technician trainees. Providing extra time in which to respond to a notice of incompleteness will benefit applicants. Modernizing the rules and clarifying language will reduce the regulatory burden of dealing with outdated and unclear rules.

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?

According to the Board, the rules are neither intrusive nor costly. No alternative methods were considered.

6. What are the economic impacts on stakeholders?

Applicants for licensure by reciprocity will have the benefit of paying a reduced biennial licensing fee. During the last year, there were 228 applicants for licensure by reciprocity. Had the reduced fee been in effect, there would have been a $34,200 reduction in fees collected and a $3,420 reduction to the general fund. Applicants for registration as a pharmacy technician trainee will also benefit from a reduced fee. Last fiscal year, there were 2372 applicants for licensure (now registration) as a pharmacy technician trainee. Had the reduced fee been in effect, there would have been a $59,300 reduction in fees collected and a $5,930 reduction to the general fund.

All applicants for licensure will benefit from having additional time in which to respond to a notice of incompleteness regarding an application. During the last year, there were 4,978 applicants for licensure. Of these, approximately 1,000 received a notice of incompleteness. Allowing an applicant to obtain a 30-day extension to respond to a notice of incompleteness by providing notice rather than a request reduces a regulatory burden for applicants and the Board.

No longer providing a copy of Board rules to all applicants removes an unnecessary duplicative burden from the Board and ensures no one relies on a copy of Board rules that may be outdated. The current Board rules are easily available online.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing the amended rules. The Board has 25.4 FTEs and was appropriated $3,274,400 last year.

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

Under ARS § 41-1025, an agency may not submit a rule to the Council that is substantially different from the proposed rule contained in the notice of proposed rulemaking. In determining whether a final rule is substantially different from the published proposed rule, the Council must consider the extent the persons affected by the rule, the subject matter of the rule, and the impacts of the rule are different from the published proposed rule.

The Board states that the reduction in registration fees and changing the term "licensed pharmacy technician trainee" to "registered pharmacy technician trainee" is not a substantial change because (1) the persons impacted by the rule are same, regardless of whether they are considered licensed or registered; (2) pharmacy technician trainees are required to pay in both the proposed and final rule; and (3) The impact of the rule has not changed as the trainees are still required to pay a fee, the fee amount is in statute, and the fee has been reduced in the final rule to reflect the statutory change. A.R.S. § 32-1924(F) went into effect on July 1, 2023, and reduced both the registration and reciprocity fee. Therefore, in addition to the rule change, the individuals impacted would have already had to adhere to the statute change.

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

The Board received no comments regarding the rulemaking and no one attended the oral proceeding on August 8, 2023.

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

The Board indicates that they do not issue general permits but individual licenses to qualified persons pursuant to statute.

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

The Board states that there are no corresponding federal law that are applicable to these rules.

11. Conclusion

This regular rulemaking from the Arizona Board of Pharmacy (Board) seeks to amend eight (8) rules and one (1) article and repeals three (3) rules in Title 4, Chapter 23. As indicated above, the Board is making numerous changes to modernize the rules and make them consistent

with statute and agency practice: address issues that were identified in a 5YRR approved by the Council on January 4, 2023; make the rules more clear, concise, and understandable; and to comply with statute.

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

Arizona State Board of Pharmacy

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October 25, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 23. Board of Pharmacy

Dear Ms. Sornsin:

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

A. Close of record date: The rulemaking record was closed on August 9, 2023, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

   The exemption for rulemaking required under A.R.S. § 41-1039 was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated March 3, 2023. Approval to submit the rulemaking to the Council was provided by Ms. Dedolph in an e-mail dated September 21, 2023.

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a 5YRR approved by the Council on January 4, 2023.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee. It does, however, reduce two fees.

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

F. Certification regarding studies: I certify the preamble accurately discloses the Board did not review or rely on studies in its evaluation of or justification for the rules in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   3. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Kamlesh Gandhi

Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-23-101	Amend
R4-23-119	Amend
R4-23-201	Amend
R4-23-202	Amend
R4-23-203	Amend
R4-23-205	Amend
Article 3	Amend
R4-23-301	Amend
R4-23-302	Amend
R4-23-303	Repeal
R4-23-304	Repeal
R4-23-305	Repeal

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

Authorizing statute: A.R.S. § 32-1901(A)(1)

Implementing statute: A.R.S. §§ 32-1922, 32-1923, 32-1924, 32-1925, 32-1926, and 32-1933

3. The effective date for the rules:

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

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 1523, July 7, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1499, July 7, 2023

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

Name: Kamlesh Gandhi

Address: 1110 W. Washington Street, Suite 260
Phoenix, AZ 85007

Telephone: (602) 771-2740

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

The Board is making numerous, non-substantive changes to modernize the rules and make them consistent with statute and agency practice, address issues that were identified in a 5YRR approved by the Council on January 4, 2023, and make the rules more clear, concise, and understandable. The changes include:

- Deleting the distinction between a graduate and pharmacy intern (See Laws 2018, Chapter 228);
- Reducing the fee for licensure by reciprocity;
- Reducing the fee for a non-renewal registration as a pharmacy technician trainee (See Laws 2022, Chapter 362, Sec. 6);
- Clarifying there are multiple jurisprudence examinations;
- Removing an unnecessary requirement that the Board provide a copy of the Board's rules to applicants;
- Reducing regulatory burdens by providing applicants for licensure with additional time in which to respond to a notice of incompleteness and allowing them a 30-day extension with notice rather than request; and

- Deleting requirements that duplicate statute.

As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained from Zaida Dedolph, health policy advisor in the governor's office, in an e-mail dated March 3, 2023. Approval to submit the rulemaking to GRRC was provided by Zaida Dedolph in an e-mail dated September 21, 2023.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in 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:

The Board believes the non-substantive changes made in this rulemaking will have minimal economic impact. Reducing the fee for licensure by reciprocity will have a benefit for reciprocity applicants. Reducing the fee for a non-renewal registration as a pharmacy technician trainee will benefit pharmacy technician trainees. Providing extra time in which to respond to a notice of incompleteness will benefit applicants. Modernizing the rules and clarifying language will reduce the regulatory burden of dealing with outdated and unclear rules.

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

In response to Laws 2022, Chapter 362, Section 6, R4-23-205(D) was changed to reflect that pharmacy technician trainees are now registered rather than licensed and to reduce the amount charged for registration.

This change is not substantial under the standards at A.R.S. § 41-1025(B) for the following reasons:

1. Persons affected by the rule, pharmacy technician trainees, are the same in both the proposed and final rule. A pharmacy technician trainee would understand that both the proposed and final rule affect the trainee because R4-23-205(D) clearly specifies it is applicable to a pharmacy technician trainee.
2. The subject matter of both the proposed and final rule is the same. Both specify the fee a pharmacy technician trainee pays to the Board for regulation during the training period.
3. The effect of both the proposed and final rule is the same. Both make the fee required in rule consistent with the fee specified in statute. When A.R.S. § 32-1924(F) went into effect on July 1, 2023, and changed the statutory fee allowed for a pharmacy technician trainee, anyone relying on the rule would know the fee in rule had to change because the fee specified in rule can not exceed that specified in statute. Even if the Board did not make the change in R4-23-205(D), the effect would be the same because the amount specified in statute controls.

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

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on August 8, 2023.

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

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute (See A.R.S. §§ 32-1922, 32-1923, and 32-1923.01) and rule.

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

No federal law is directly applicable to the subject on any rule in this rulemaking. However, there are numerous federal laws regarding drugs, especially controlled substance drugs, with which a licensee must comply.

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

No analysis was submitted.

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

None

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

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section

ARTICLE 2. PHARMACIST LICENSURE

Section

ARTICLE 3. INTERN TRAINING; ~~AND PHARMACY~~ INTERN PRECEPTORS

Section

ARTICLE 1. ADMINISTRATION

R4-23-101. General

A. ~~4 A.A.C. 23~~ This Chapter applies to all actions and proceedings of the Board and shall be deemed ~~a~~ part of the record in any Board action or proceeding without formal introduction of, or reference to the rules. A party to a Board action is deemed to have knowledge of the rules. ~~The Board office shall provide a copy of the rules:~~

~~1. To each license applicant who submits a completed application packet; and~~

~~2. To each permit applicant during the final compliance inspection after the Board approves the permit application.~~

B. The Board, within its jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with the rules.

C. The Board, within its jurisdiction, may grant an extension of time within which to comply with any rule when it deems the extension to be in the interest of justice.

R4-23-119. Subpoenas

A. Form. A party wanting the Board to issue a subpoena shall ~~request a subpoena in writing from~~ submit a written request to the Board and ~~shall~~ include:

1. The caption and docket number of the matter;
2. A list or description of any documents sought;
3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
4. The date, time, and place to appear or to produce documents ~~pursuant~~ according to the subpoena; and
5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.

B. The Board may require a brief statement of the relevance of testimony or documents requested.

C. Service of subpoena. ~~Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the Board office a certified statement of the date and manner of service and the names of the persons served~~ The Board shall serve a subpoena in a manner allowed by law.

D. Objection to subpoena. ~~A~~ If a party~~,~~ or the person served with a subpoena ~~who~~ objects to the subpoena~~,~~ or any portion of ~~it~~ the subpoena, the party or person may file an objection with the Board~~. The objection shall be filed~~ within five days after service of the subpoena~~,~~ or at the ~~outset~~ start of the hearing if the subpoena is served fewer than five days before the hearing.

E. Quashing~~,~~ or modifying subpoenas. The Board shall quash or modify a subpoena if:

1. It is unreasonable or oppressive, or
2. The desired testimony or evidence may be obtained by an alternative method.

ARTICLE 2. PHARMACIST LICENSURE

R4-23-201. General

A. License required. Before practicing as a pharmacist in Arizona, a person shall possess a valid pharmacist license issued by the Board. ~~There is no temporary licensure.~~

B. Methods of licensure. Licensure as a pharmacist shall be ~~either~~ by:

1. ~~By practical examination,~~ Examination using ~~paper-and-pencil written testing, computer adaptive testing, or other~~ a Board-approved testing method; or
2. ~~By reciprocity~~ Reciprocity, as provided under A.R.S. § 32-1922(B).

C. ~~Practicing pharmacist holding a delinquent license. Before the~~ The Board ~~reinstates an Arizona pharmacist~~ may reinstate the license~~,~~ of a pharmacist~~, whose Arizona pharmacist license is delinquent for five or more years and~~ who is practicing pharmacy ~~outside the Board's~~ in another jurisdiction ~~with a pharmacist license issued by another jurisdiction~~ and has an Arizona license that lapsed at least five years ago if the pharmacist~~, shall~~:

1. ~~Pass~~ Passes the MPJE or other Board-approved jurisprudence examination, and
2. ~~Pay~~ Pays all ~~delinquent annual renewal~~ fees~~,~~ and penalties specified under A.R.S. § 32-1925(C).
3. ~~Pay penalty fees.~~

D. ~~Non-practicing pharmacist holding a delinquent license. Before the~~ The Board ~~reinstates an Arizona pharmacist~~ may reinstate the license~~,~~ of a pharmacist~~, whose Arizona pharmacist license is delinquent for five or more years and~~ who ~~did~~ has not ~~practice~~ practiced pharmacy within the last 12 months before seeking reinstatement and whose Arizona license lapsed at least five years ago if the pharmacist~~, shall~~:

1. ~~Complete~~ Completes the requirements in subsection (C), and

2. ~~Appear~~ Appears before the Board to furnish satisfactory proof of fitness to be licensed as a pharmacist.

E. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not ~~permit~~ allow a person to practice as a pharmacist until the pharmacy permittee or pharmacist-in-charge verifies ~~that~~ the person is currently licensed by the Board as a pharmacist.

R4-23-202. Licensure by Examination

A. Eligibility. To be eligible for licensure as a pharmacist by examination, a person shall:

1. Have a degree in pharmacy from ~~a~~ an approved school or college of pharmacy ~~approved by the Board as specified in A.R.S. § 32-1935, and whose professional degree program, at the time the person graduates, is accredited by the Accreditation Council for Pharmacy Education~~; or
2. Qualify under the requirements of A.R.S. § 32-1922(D)~~; and~~

~~3. Complete no fewer than 1500 hours of intern training as specified in R4-23-303~~.

B. Application.

1. An applicant for licensure by examination shall:
   a. Submit a completed application ~~for licensure by examination electronically or manually~~ on a form furnished by the Board, and
   b. Submit with the application form:
      i. The documents specified in the application form, and
      ii. The application fee specified in R4-23-205.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
3. An applicant for licensure by examination shall register for the NAPLEX and ~~MPJE~~ jurisprudence examination through NABP's registration process. When NABP determines the applicant is eligible to test, NABP will issue an authorization to test.
4. The Board shall deem an application for licensure by examination invalid ~~after~~ 12 months ~~from~~ after the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified under subsection (B)(1).

C. Passing grade; notification; re-examination.

1. To pass the required examinations, an applicant shall ~~obtain a score of at least 75~~ receive a passing grade on both the NAPLEX and ~~MPJE~~ jurisprudence examination.
2. The Board office shall~~:~~
   ~~a.~~ ~~Retrieve~~ retrieve an applicant's NAPLEX and ~~MPJE score~~ jurisprudence examination scores from the NABP database no later than two weeks after the applicant's examination date~~, and~~
   ~~b. Provide written notice by mail to an applicant who fails the NAPLEX or MPJE no later than seven days after the Board office retrieves the applicant's score from NABP~~.
3. An applicant who fails the NAPLEX or ~~MPJE~~ jurisprudence examination may register with the NABP to retake the examination within the 12-month period defined in subsection (B)(4). An applicant who fails the NAPLEX or ~~MPJE~~ jurisprudence examination three times shall petition the ~~Board~~ Executive Director as specified in R4-23-401 for ~~Board~~ approval before retaking the examination. If the applicant fails the NAPLEX or jurisprudence examination four times, the applicant shall petition the Board as specified in R4-23-401 for Board consideration before taking the examination for a last time.
4. For the purpose of licensure by examination, the Board office shall deem a passing score on the NAPLEX or ~~MPJE~~ jurisprudence examination invalid ~~after~~ 24 months ~~from~~ after the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination(s).

D. NAPLEX score transfer.

1. The Board office shall deem a score transfer received on the date the NABP transmits the applicant's official score transfer report to the Board office.
2. An applicant who receives a passing score on the NAPLEX taken in another jurisdiction shall, within 12 months ~~from~~ after the date the Board office receives the applicant's official NABP score transfer report ~~from the NABP~~, make application for licensure according to subsection (B). After 12 months, an applicant may reapply for licensure in this state under the provisions of subsection (B) or R4-23-203(B).
3. ~~An applicant who takes the NAPLEX in another jurisdiction and fails the examination may apply for licensure in this state under the provisions of subsection (B).~~

E. Licensure.

1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant ~~upon receipt of:~~
   ~~a. The initial licensure fee specified in R4-23-205, and~~
   ~~b. The wall license fee specified in R4-23-205~~.
2. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.

F. Time frames for licensure by examination.

1. The Board office shall complete an administrative completeness review within 60 days ~~from~~ after the date the application form is received.
   a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
   b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
   c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
2. An applicant with an incomplete application form shall submit all of the missing information within 90 business days ~~of~~ after service of the notice of incompleteness.
   ~~a.~~ If an applicant cannot submit all missing information within 90 business days ~~of~~ after service of the notice of incompleteness, the applicant may send a written ~~request for an~~ notice of a 30-day extension to the Board office postmarked or delivered no later than 90 business days ~~from~~ after service of the notice of incompleteness.
   ~~b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline.~~
   ~~c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.~~

3. If an applicant fails to submit a complete application form within the time allowed under subsection (F)(2), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to subsection (B).
4. The Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days ~~from~~ after the date on which the administrative completeness review of an application form is complete.
   ~~a. If an applicant is found to be ineligible for licensure by examination, the Board office shall issue a written notice of denial to the applicant.~~
   ~~b. If an applicant is found to be eligible to take the NAPLEX, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.~~
   ~~c. If an applicant is found to be eligible to take the MPJE, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.~~
   ~~d.~~a. The Board office shall deem ~~an applicant's eligibility to test~~ the application invalid ~~after~~ 12 months ~~from~~ after the date the application for licensure by examination is received.
   ~~e.~~b. If the Board office finds deficiencies during the substantive review of ~~an application form~~ the applicant's qualifications, the Board office shall issue a written request to the applicant for additional documentation.
   ~~f.~~c. The 120-day time frame for a substantive review ~~of eligibility to take the NAPLEX or MPJE~~ is suspended from the date of a written request for additional documentation until the date ~~that~~ all documentation is received. The applicant shall submit the additional documentation according to subsection (F)(2).
   ~~g.~~d. If the applicant and the Board office ~~mutually~~ agree in writing, the 120-day substantive review time frame may be extended once for no more than 45 days.
5. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time frames for licensure by examination.
   a. Administrative completeness review time frame: 60 days.
   b. Substantive review time frame: 120 days.
   c. Overall time frame: 180 days.

G. License renewal.

1. To renew a license, a pharmacist shall submit a completed license renewal application ~~electronically or manually~~ on a form furnished by the Board with the biennial renewal fee specified in R4-23-205.
2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacist license is suspended and the licensee shall not practice as a pharmacist. The suspended licensee shall pay a reinstatement penalty as provided in A.R.S. § 32-1925 and R4-23-205 to vacate the suspension.
3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
4. Time frames for license renewals. The Board office shall follow the time frames established in subsection (F) when processing a renewal application.

R4-23-203. Licensure by Reciprocity

A. Eligibility. A person is eligible for licensure by reciprocity ~~who:~~

~~1.~~ ~~Is~~ if the person is licensed as a pharmacist in ~~a~~ another jurisdiction ~~that provides reciprocity to Arizona licensees,~~ and qualified under A.R.S. § 32-1922(B).

~~2. Has passed the NABPLEX or NAPLEX with a score of 75 or better or was licensed by examination in another jurisdiction having essentially the same standards for licensure as this state at the time the pharmacist was licensed, and~~

~~3. Provides evidence to the Board of having completed the required secondary and professional education and training specified in R4-23-202(A).~~

B. Application.

~~1.~~ An applicant for licensure by reciprocity shall~~:~~ comply with R4-23-202(B).

~~a. Submit a completed application for licensure by reciprocity electronically or manually on a form furnished by the Board, and~~

~~b. Submit with the application form:~~

~~i. The documents specified in the application form, and~~

~~ii. The reciprocity fee specified in R4-23-205(B).~~

~~2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.~~

~~3. An applicant for licensure by reciprocity shall register for MPJE through NABP's registration process.~~

4. ~~The Board office shall deem an application for licensure by reciprocity invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures shall submit a new application form and fee specified in subsection (B)(1).~~

C. Passing grade; notification; re-examination. An applicant for licensure by reciprocity shall comply with R4-23-202(C) regarding the jurisprudence examination.

1. ~~To pass the required examination, an applicant shall obtain a score of at least 75 on the MPJE.~~
2. ~~The Board office shall:~~
   a. ~~Retrieve an applicant's MPJE score from the NABP database no later than two weeks after the applicant's examination date, and~~
   b. ~~Provide written notice by mail to an applicant who fails the MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.~~
3. ~~An applicant who fails the MPJE may register with the NABP to retake the examination within the 12-month period specified in subsection (B)(4). An applicant who fails the MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.~~
4. ~~For the purpose of licensure by reciprocity, the Board office shall deem a passing score on the MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination.~~

D. Licensure. The provisions of R4-23-202(E) apply for an applicant for licensure by reciprocity.

1. ~~The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:~~
   a. ~~The initial licensure fee specified in R4-23-205, and~~
   b. ~~The wall license fee specified in R4-23-205.~~
2. ~~A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.~~

E. Time frames for licensure by reciprocity. The Board office shall follow the time frames established ~~for licensure by examination~~ in R4-23-202(F).

F. License renewal. ~~License renewal shall be the same as~~ The procedure specified in R4-23-202(G) applies.

R4-23-205. Fees and Charges

A. The Board establishes and shall collect the full biennial fee for all initial and renewal license and permit applications listed in subsections (B) and (C).

1. ~~If a license or permit is issued from November of an odd-numbered year through October of an even-numbered year, the licensee or permittee shall renew on or before November 1 of the next odd-numbered year.~~
2. ~~If a license or permit is issued from November of an even-numbered year through October of an odd-numbered year, the licensee or permittee shall renew on or before November 1 of the next even-numbered year.~~

B. Licensure fees:

1. Pharmacist:
   a. Initial licensure: $180.
   b. Licensure renewal: $180.
2. Intern. Initial licensure: $50.
3. Pharmacy technician:
   a. Initial licensure: $72.
   b. Licensure renewal: $72.
4. Temporary license valid for 30 days:
   a. Pharmacist: $120.
   b. Intern: $50.
   c. Pharmacy technician: $50.

C. Vendor permit fees (Resident and nonresident):

1. Pharmacy: $480 biennially (Including hospital, and limited service).
2. Drug wholesaler or manufacturer:
   a. Manufacturer: $1000 biennially.
   b. Full-service drug wholesaler: $1000 biennially.
   c. Nonprescription drug wholesaler: $500 biennially.
3. Drug packager or repackager: $1000 biennially.
4. Compressed medical gas distributor: $200 biennially.
5. Durable medical equipment and compressed medical gas supplier: $100 biennially.
6. Third-party logistics provider: $1000 biennially.
7. Automated prescription-dispensing kiosk: $480 biennially.

D. Pharmacy technician trainee 36-month, non-renewable, ~~license~~ registration: ~~$50~~ $25.

~~1. If an individual obtained an initial pharmacy technician trainee license before August 9, 2017, the Board shall allow the individual to reapply once for a pharmacy technician trainee license if the individual reapplies before the initial license expires and pays a reapplication fee of $36; and~~

~~2. If a pharmacy technician trainee's initial license expires before August 9, 2017, and the pharmacy technician trainee does not reapply before August 9, 2017, the Board shall not allow the former pharmacy technician trainee to reapply.~~

E. Reciprocity fee: ~~$300~~ $150.

F. Application fee: $50.

G. Certificate fees:

1. Certificate of free sale: $200 per certificate.
2. Certificate of good manufacturing practice: $200 per certificate.
3. ~~Annual inspection fee calculated at the average hourly rate of a pharmacy inspector multiplied by the duration of the inspection measured in 10-minute increments or portion of a 10-minute increment.~~

H. ~~Other fees~~ Charges for services:

1. Wall license.
   a. Pharmacist: $20.
   b. ~~Pharmacy or graduate intern~~ Intern: $10.
   c. Pharmacy technician: $10.
   ~~d. Pharmacy technician trainee: $10.~~
2. Duplicate of any Board-issued ~~license, registration,~~ certificate~~, or permit~~: $10.
3. ~~Duplicate current renewal license: $10.~~
4. ~~4.~~3. License, permit, or certificate verification: $15.

I. Fees are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit time frames under R4-23-202 or R4-23-602.

J. Penalty. ~~Renewal applications~~ A renewal application submitted after the expiration date ~~are~~ is subject to a penalty as provided in A.R.S. §§ 32-1925 and 32-1931.

1. ~~Licensees~~ Licensee: A penalty equal to half the licensee's biennial licensure renewal fee under subsection (B) and not to exceed $350.
2. ~~Permittees~~ Permittee: A penalty equal to half the permittee's biennial permit fee under subsection (C) and not to exceed $350.

ARTICLE 3. INTERN TRAINING; ~~AND PHARMACY~~ INTERN PRECEPTORS

R4-23-301. Intern Licensure

A. Licensure as ~~a pharmacy intern or graduate~~ an intern is for the purpose of complementing ~~the~~ an individual's academic or experiential education in preparation for licensure as a pharmacist. An applicant may request a waiver of intern licensure requirements by submitting a written request as specified in R4-23-401 and appearing in person at a Board meeting.

B. The ~~prerequisites~~ prerequisite for licensure as ~~a pharmacy~~ an intern ~~are~~ is one of the following:

1. Current enrollment, in good standing, in ~~a Board-approved~~ an approved college or school of pharmacy; ~~or~~
2. Graduation from a college or school of pharmacy ~~that is not approved by the Board; and~~ along with:

~~3.~~ a. Proof ~~that~~ the applicant is certified by the Foreign Pharmacy Graduate Examination Committee (FPGEC), if applicable; or

b. Application for licensure as a pharmacist by examination or reciprocity; or

~~4.~~3. By order of the Board if the Board determines the applicant needs intern training.

C. If ~~a pharmacy~~ an intern licensee stops attending pharmacy school classes ~~before completing the pharmacy school's requirements for graduation~~ without graduating, the licensee shall immediately stop practicing as ~~a pharmacy~~ an intern and surrender the ~~pharmacy~~ intern license to the Board or the Board's designee no later than 30 days after the date of the last attended class, unless the licensee petitions the Board as specified in R4-23-401 and receives Board approval to continue working as ~~a pharmacy~~ an intern. A student re-entering a pharmacy program who wishes to continue internship training shall reapply for ~~pharmacy~~ intern licensure.

~~**D.** The prerequisites for licensure as a graduate intern are:~~

~~1. Graduation from a Board-approved college or school of pharmacy, and~~

~~2. Application for licensure as a pharmacist by examination or reciprocity, or~~

~~3. By order of the Board if the Board determines that the applicant needs intern training.~~

~~E.~~**D.** Experiential training. ~~Intern~~ The preceptor supervising an intern shall ensure the training ~~shall include~~ received by the intern includes the activities and services encompassed by the term “practice of pharmacy” as defined in A.R.S. § 32-1901.

~~F.~~**E.** Out-of-state experiential training. ~~An~~ The Board shall credit an intern ~~shall receive credit~~ for ~~intern~~ experiential training received outside this state if the Board determines ~~that~~ the ~~intern~~ experiential training requirements of the jurisdiction in which the training was received are equal to the minimum requirements for ~~intern~~ experiential training in this state. An applicant seeking credit for ~~intern~~ experiential training received outside this state shall furnish a certified copy of the training records ~~of intern training~~ from:

1. The Board of Pharmacy or the intern licensing agency of the ~~other~~ jurisdiction where the training was received; or
2. In a jurisdiction without an intern licensing agency, the director of the applicant’s ~~Board-approved~~ approved college or school of pharmacy’s experiential training program.

~~G.~~**F.** Verification of license. A pharmacy permittee or pharmacist-in-charge shall not ~~permit a person~~ allow an individual to practice as ~~a pharmacy or graduate~~ an intern until the pharmacy permittee or pharmacist-in-charge verifies ~~that~~ the ~~person~~ individual is currently licensed by the Board as ~~a pharmacy or graduate~~ an intern.

~~H.~~**G.** Intern application.

1. An applicant for licensure as ~~a pharmacy intern or graduate~~ an intern shall:
   a. Submit a completed application ~~electronically or manually~~ on a form furnished by the Board, and
   b. Submit with the application form:
      i. The documents specified in the application form, and
      ii. The initial licensure fee specified in R4-23-205~~, and~~
      ~~iii. The wall license fee specified in R4-23-205~~.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.

~~I.~~**H.** Licensure.

1. If an applicant is found to be ineligible for intern licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
2. If an applicant is found to be eligible for intern licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and ~~who~~ has been granted “open” status on the Board’s

license verification site may begin practice as ~~a pharmacy intern or graduate~~ an intern before receiving the certificate of licensure.

3. An applicant who is assigned a license number and ~~who~~ has a "pending" status on the Board's license verification site shall not practice as ~~a pharmacy intern or graduate~~ an intern until the Board office issues a certificate of licensure as specified in subsection (H)(2).
4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.

~~J.~~**I.** Time frames for intern licensure. The Board office shall follow the time frames established in R4-23-202(F).

~~K.~~**J.** License renewal.

1. ~~A pharmacy~~ An intern whose license expires before the intern completes the education or training required for licensure as a pharmacist but fewer than six years after ~~the~~ issuance of the initial ~~pharmacy~~ intern license may renew the intern license for a period equal to the difference between the expiration date of the initial intern license and six years from the issue date of the initial intern license by ~~payment of~~ paying a prorated renewal fee based on the intern initial license fee specified in R4-23-205.
2. If ~~a pharmacy~~ an intern fails to graduate from ~~a Board-approved~~ an approved college or school of pharmacy within six years from the date the Board issues the initial intern license, the intern is not eligible for relicensure as an intern unless the intern obtains Board approval as specified in A.R.S. § 32-1923(E) and R4-23-401. To remain in good standing, an intern who receives Board approval for relicensure shall pay a prorated renewal fee for the number of months of licensure approved by the Board based on the intern initial license fee specified in R4-23-205 before the license ~~expiration date~~ expires.
3. If an intern receives Board approval for relicensure and does not pay the renewal fee specified in subsection ~~(K)(2)~~(J)(2) before the license ~~expiration date~~ expires, the intern license is suspended and the suspended licensee shall not practice as an intern~~. The~~ until the suspended licensee ~~shall pay~~ pays a penalty as provided in A.R.S. § 32-1925 and R4-23-205 to vacate the suspension.

~~L.~~**K.** Notification of training.

~~1.~~ ~~A pharmacy~~ An intern who is employed as an intern outside the experiential training program of ~~a Board-approved~~ an approved college or school of pharmacy ~~or a graduate~~

~~intern~~ shall notify the Board within 10 days of starting or terminating training~~,~~ or changing training site.

2. ~~The director of a Board-approved college or school of pharmacy's experiential training program shall provide the Board an intern training report as specified in R4-23-304(B)(3).~~

L. Change of address. An intern shall notify the Board within 10 days after the intern's employment or mailing address changes.

R4-23-302. Training Site; ~~and Pharmacy~~ Intern Preceptors; Training Time

A. To receive credit for intern training hours, ~~a pharmacy or graduate~~ an intern shall train in a site that:

1. Holds a valid Arizona pharmacy permit; or
2. Is an alternative training site. For purposes of this Section, the term alternative training site is a non-pharmacy training site established and monitored by ~~a Board-approved~~ an approved college or school of pharmacy or other non-pharmacy site where ~~pharmacy related~~ pharmacy-related activities are performed and where an intern gains experience as specified in R4-23-301~~(E)~~(D).

B. ~~Pharmacy intern~~ Intern preceptor. To be ~~a pharmacy~~ an intern preceptor, a pharmacist shall:

1. Hold a current unrestricted pharmacist license;
2. Have ~~a minimum of~~ at least one year of experience as an actively practicing pharmacist ~~before acting as a pharmacy intern preceptor~~; and
3. If found guilty of violating any federal or state law relating to the practice of pharmacy, drug or device distribution, or recordkeeping or unprofessional conduct, enter into an agreement satisfactory to the Board that places restrictions on the pharmacist's license.

C. Preceptor responsibilities. ~~A pharmacy intern preceptor assumes the responsibilities of a teacher and mentor in addition to those of a pharmacist. A preceptor shall thoroughly review pharmacy policy and procedure with each intern.~~ A preceptor is responsible for the ~~pharmacy related~~ ~~pharmacy related~~ actions of an intern during the ~~specific~~ training period. A preceptor shall give an intern the opportunity for skill development and provide ~~an~~ the intern with timely and realistic feedback regarding ~~their~~ the intern's progress.

D. ~~If an intern completes more than the number of training hours specified under R4-23-202(A)(3), the pharmacist acting as the pharmacy intern preceptor shall report the total number of training hours to the other jurisdiction.~~ Training hours. An intern preceptor

shall ensure the intern receives hours of experiential training consistent with the requirements of the ACPE.

R4-23-303. ~~Training Time~~ Repealed

~~A.~~ ~~Training. The minimum hours of internship training required for licensure by examination shall be 1,500.~~

1. ~~After enrolling in a Board-approved college or school of pharmacy as prescribed in R4-23-301(B) and receiving a Board-issued pharmacy intern license, a pharmacy intern shall complete all required internship training as part of the pharmacy intern's Board-approved college or school of pharmacy experiential training program.~~
2. ~~After receiving a Board-issued pharmacy intern license, an individual who is a graduate of a college or school of pharmacy that is not approved by the Board shall complete a minimum of 1,500 hours of internship training in a training site or sites as defined in R4-23-302(A).~~
3. ~~After receiving a Board-issued graduate intern license, a graduate intern shall complete the number of internship training hours required by the Board in a training site or sites as defined in R4-23-302(A).~~

~~B.~~ ~~Start of training and limitation of credit. To receive credit as internship training, the practical experience shall take place in a pharmacy or an alternative training site as specified in R4-23-302(A) and under the supervision of a pharmacy intern preceptor, except for a non-pharmacy site either as part of a Board-approved college or school of pharmacy experiential training program or as approved by the Board or its designee. The Board shall credit no more than 500 hours internship training as a pharmacy or graduate intern in an alternative training site specified in R4-23-302(A)(2).~~

R4-23-304. ~~Reports~~ Repealed

~~A.~~ ~~Change of employment or mailing address. A pharmacy intern or graduate intern shall notify the Board within ten days of change of employment or mailing address.~~

~~B.~~ ~~Annual reports.~~

1. ~~A pharmacy intern who is a graduate of a college or school of pharmacy that is not approved by the Board or is a graduate intern shall provide the Board annual intern training reports for the duration of training. The pharmacy intern shall file an annual~~

~~intern training report on a report form provided by the Board by calendar year (January 1st through December 31st). An annual intern training report shall be received at the Board's office no later than 30 days after the end of the calendar year. Any intern training hours reported to the Board office more than 30 days after the end of the calendar year in which the training hours were performed shall not be credited toward the total intern training hours required for licensure.~~

2. ~~After graduation and before sitting for the NAPLEX or MPJE, a pharmacy intern who is a graduate of a Board-approved college or school of pharmacy shall ensure that the director of the Board-approved college or school of pharmacy's experiential training program provides the Board an intern training report that includes:~~
   a. ~~The dates and number of training hours experienced, by training site and total; and~~
   b. ~~The date signed and experiential training program director's signature verifying that the pharmacy intern successfully completed the experiential training program.~~

R4-23-305. ~~Miscellaneous Intern Training Provisions~~ Repealed

~~To prevent a loss of intern hour credit and before beginning training, an intern may ask the Board if a training site meets the requirements specified in R4-23-301(E) and R4-23-302(A).~~

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

The Board is making numerous, non-substantive changes to modernize the rules and make them consistent with statute and agency practice, address issues that were identified in a 5YRR approved by the Council on January 4, 2023, and make the rules more clear, concise, and understandable. The changes include:

- Deleting the distinction between a graduate and pharmacy intern (See Laws 2018, Chapter 228);
- Reducing the fee for licensure by reciprocity;
- Reducing the fee for a non-renewal registration as a pharmacy technician trainee (See Laws 2022, Chapter 362, Sec. 6);
- Clarifying there are multiple jurisprudence examinations;
- Removing an unnecessary requirement that the Board provide a copy of the Board's rules to applicants;
- Reducing regulatory burdens by providing applicants for licensure with additional time in which to respond to a notice of incompleteness and allowing them a 30-day extension with notice rather than request; and
- Deleting requirements that duplicate statute.

As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained from Zaida Dedolph, health policy advisor in the governor's office, in an e-mail dated March 3, 2023. Approval to submit the rulemaking to GRRC was provided by Ms. Dedolph in an e-mail dated September 21, 2023.

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

[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)).

Until the rulemaking is completed, the Board's rules will remain inconsistent with statute and agency practice and not as clear, concise, and understandable as possible.

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:

It is not good government for an agency to have rules that are inconsistent with statute and agency practice. Rules that are not clear, concise, and understandable result in regulatory burden for those that must comply with the rules.

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

When the rulemaking is completed, the Board's rules will be consistent with statute and agency practice and clear, concise, and understandable.

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

The Board believes the non-substantive changes made in this rulemaking will have minimal economic impact. Reducing the fee for licensure by reciprocity will have a benefit for reciprocity applicants. Reducing the fee for a non-renewal registration as a pharmacy technician trainee will benefit pharmacy technician trainees. Providing extra time in which to respond to a notice of incompleteness will benefit applicants. Modernizing the rules and clarifying language will reduce the regulatory burden of dealing with outdated and unclear rules.

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

Name: Kamlesh Gandhi
Address: 1110 W. Washington Street, Suite 260
Phoenix, AZ 85007
Telephone: (602) 771-2740
Fax: (602) 771-2749
E-mail: kgandhi@azpharmacy.gov
Website: www.azpharmacy.gov

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

All persons that use the rules will be directly affected by and benefit from having rules that are more clear, concise, and understandable and consistent with statute and agency practice.

Applicants for licensure and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking. Applicants for licensure by reciprocity will have the benefit of paying a reduced biennial licensing fee. During the last year, there were 228 applicants for licensure by reciprocity. Had the reduced fee been in effect, there would have been a $34,200 reduction in fees collected and a $3,420 reduction to the general fund. Applicants for registration as a pharmacy technician trainee will also benefit from a reduced fee. Last fiscal year, there were 2372 applicants for licensure (now registration) as a pharmacy technician trainee. Had the reduced fee been in effect, there would have been a $59,300 reduction in fees collected and a $5,930 reduction to the general fund.

All applicants for licensure will benefit from having additional time in which to respond to a notice of incompleteness regarding an application. During the last year, there were 4,978 applicants for licensure. Of these, approximately 1,000 received a notice of incompleteness. Allowing an applicant to obtain a 30-day extension to respond to a notice of incompleteness by providing notice rather than a request reduces a regulatory burden for applicants and the Board.

No longer providing a copy of Board rules to all applicants removes an unnecessary duplicative burden from the Board and ensures no one relies on a copy of Board rules that may be outdated. The current Board rules are easily available online.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing the amended rules. The Board has 25.4 FTEs and was appropriated $3,274,400 last year.

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

The Board is the only state agency directly affected by the rulemaking. The Board will not need a new full-time employee to implement and enforce the amended rules.

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

No political subdivisions are directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:

Some of the persons that use the rules are businesses. As indicated in item 4, they will be directly affected by and benefit from having rules that are more clear, concise, and understandable and consistent with statute and agency practice.

6. Impact on private and public employment:

The Board believes the rule amendments will have no impact on private or public employment.

7. Impact on small businesses[2]:

The economic impact of the rulemaking is minimal and primarily beneficial. Making the rules clear, concise, and understandable and consistent with statute and agency practice benefits all businesses regardless of size. Reducing fees and regulatory burdens benefits all businesses regardless of size. Because none of the rules impose an economic burden on small businesses and because the rulemaking has minimal economic impact, it is not possible to reduce the impact on small businesses.

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

Private persons and consumers are not directly affected by the rulemaking.

9. Probable effects on state revenues:

As indicated in item 4, reducing the biennial fee for a license by reciprocity and the fee for registration as a pharmacy technician trainee will have a small impact on state revenues.

10. Less intrusive or less costly alternative methods considered:

The rules are neither intrusive nor costly. No alternative methods were considered.

[2] Small business has the meaning specified in A.R.S. § 41-1001(23).

32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means directly applying a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.

2. "Advertisement" means all representations that are disseminated in any manner or by any means other than by labeling for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repeating the activities that led to the investigation may result in further board action against the licensee or permittee.

4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.

5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.

6. "Automated prescription-dispensing kiosk" means a mechanical system that is operated as an extension of a pharmacy, that maintains all transaction information within the pharmacy operating system, that is separately permitted from the pharmacy and that performs operations that either:

(a) Accept a prescription or refill order, store prepackaged or repackaged medications, label and dispense patient-specific prescriptions and provide counseling on new or refilled prescriptions.

(b) Dispense or deliver a prescription or refill that has been prepared by or on behalf of the pharmacy that oversees the automated prescription-dispensing kiosk.

7. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

8. "Certificate of composition" means a list of a product's ingredients.

9. "Certificate of free sale" means a document that authenticates a product that is generally and freely sold in domestic or international channels of trade.

10. "Color additive" means a material that either:

(a) Is any dye, pigment or other substance that is made by a process of synthesis or similar artifice or that is extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.

(b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.

11. "Compounding" means preparing, mixing, assembling, packaging or labeling a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes preparing drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and preparing drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include preparing commercially available products from bulk compounds or preparing drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.

12. "Compressed medical gas distributor" means a person that holds a current permit issued by the board to distribute compressed medical gases to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.

13. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.

14. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.

15. "Compressed medical gas supplier" means a person that holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.

16. "Controlled substance" means a drug, substance or immediate precursor that is identified, defined or listed in title 36, chapter 27, article 2 or the rules adopted pursuant to title 36, chapter 27, article 2.

17. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of the tissue by chemical action.

18. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of these, of a manufacturer, distributor or dispenser other than the person that in fact manufactured, distributed or dispensed that drug.

19. "Dangerous drug" has the same meaning prescribed in section 13-3401.

20. "Day" means a business day.

21. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.

22. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.

23. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.

24. "Device", except as used in paragraph 18 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means an instrument, apparatus or contrivance, including its components, parts and accessories, including all such items under the federal act, that is intended either:

(a) For use in diagnosing, curing, mitigating, treating or preventing disease in the human body or other animals.

(b) To affect the structure or any function of the human body or other animals.

25. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

26. "Direct supervision of a pharmacist" means that the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.

27. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including prescribing, administering, packaging, labeling or compounding as necessary to prepare for that delivery.

28. "Dispenser" means a practitioner who dispenses.

29. "Distribute" means to deliver, other than by administering or dispensing.

30. "Distributor" means a person who distributes.

31. "Drug" means:

(a) Articles that are recognized, or for which standards or specifications are prescribed, in the official compendium.

(b) Articles that are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(c) Articles other than food that are intended to affect the structure or any function of the human body or other animals.

(d) Articles that are intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.

32. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

33. "Drug or device manufacturing" means producing, preparing, propagating or processing a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and promoting and marketing the same. Drug or device manufacturing does not include compounding.

34. "Durable medical equipment" means technologically sophisticated medical equipment as prescribed by the board in rule that a patient or consumer may use in a home or residence and that may be a prescription-only device.

35. "Durable medical equipment distributor":

(a) Means a person that stores or distributes durable medical equipment other than to the patient or consumer.

(b) Includes a virtual durable medical equipment distributor as prescribed in rule by the board.

36. "Durable medical equipment supplier":

(a) Means a person that sells, leases or supplies durable medical equipment to the patient or consumer.

(b) Includes a virtual durable medical equipment supplier as prescribed in rule by the board.

37. "Economic poison" means any substance that alone, in chemical combination with or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in producing, storing or transporting raw agricultural commodities.

38. "Enteral feeding" means nourishment that is provided by means of a tube inserted into the stomach or intestine.

39. "Established name", with respect to a drug or ingredient of a drug, means any of the following:

(a) The applicable official name.

(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.

(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of the drug.

40. "Executive director" means the executive director of the board of pharmacy.

41. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.

42. "Full-service wholesale permittee":

(a) Means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

43. "Good manufacturing practice" means a system for ensuring that products are consistently produced and controlled according to quality standards and covering all aspects of design, monitoring and control of manufacturing processes and facilities to ensure that products do not pose any risk to the consumer or public.

44. "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less. If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.

45. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.

46. "Intern" means a pharmacy intern.

47. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.

48. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

49. "Jurisprudence examination" means a board-approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board-approved pharmacy law examination.

50. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.

51. "Labeling" means all labels and other written, printed or graphic matter that either:

(a) Is on any article or any of its containers or wrappers.

(b) Accompanies that article.

52. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.

53. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.

54. "Manufacture" or "manufacturer":

(a) Means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, that is devoted to manufacturing the drug.

(b) Includes a virtual manufacturer as defined in rule by the board.

55. "Marijuana" has the same meaning prescribed in section 13-3401.

56. "Medical practitioner" means any medical doctor, doctor of osteopathic medicine, dentist, podiatrist, veterinarian or other person who is licensed and authorized by law to use and prescribe drugs and devices to treat sick and injured human beings or animals or to diagnose or prevent sickness in human beings or animals in this state or any state, territory or district of the United States.

57. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.

58. "Narcotic drug" has the same meaning prescribed in section 13-3401.

59. "New drug" means either:

(a) Any drug of which the composition is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.

(b) Any drug of which the composition is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.

60. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law. Nonprescription drug does not include:

(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.

(b) A controlled substance.

(c) A drug that is required to bear a label that states "Rx only".

(d) A drug that is intended for human use by hypodermic injection.

61. "Nonprescription drug wholesale permittee":

(a) Means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

62. "Notice" means personal service or the mailing of a copy of the notice by certified mail and email addressed either to the person at the person's latest address of record in the board office or to the person and the person's attorney using the most recent information provided to the board in the board's licensing database.

63. "Nutritional supplementation" means vitamins, minerals and caloric supplementation. Nutritional supplementation does not include medication or drugs.

64. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.

65. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

66. "Package" means a receptacle that is defined or described in the United States pharmacopeia and the national formulary as adopted by the board.

67. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.

68. "Parenteral nutrition" means intravenous feeding that provides an individual with fluids and essential nutrients the individual needs while the individual is unable to receive adequate fluids or feedings by mouth or by enteral feeding.

69. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.

70. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.

71. "Pharmacist" means an individual who is currently licensed by the board to practice the profession of pharmacy in this state.

72. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

73. "Pharmacist licensure examination" means a board-approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board-approved pharmacist licensure examination.

74. "Pharmacy" means:

(a) Any place where drugs, devices, poisons or related hazardous substances are offered for sale at retail or where prescription orders are dispensed by a licensed pharmacist.

(b) Any place that displays on or in the place or that displays a sign on the place the words "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drugstore", "drugs" or "drug sundries", any combination of these words, or any words of similar meaning in any language.

(c) Any place where the characteristic symbol of pharmacy or the characteristic prescription sign "Rx" is exhibited.

(d) Any building or other structure or portion of a building or other structure that is leased, used or controlled by a permittee to conduct the business authorized by the board at the address specified on the permit issued to the permittee.

(e) A remote dispensing site pharmacy.

(f) A remote hospital-site pharmacy.

(g) A satellite pharmacy.

75. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.

76. "Pharmacy technician" means a person who is licensed pursuant to this chapter.

77. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

78. "Poison" or "hazardous substance" includes any of the following if intended and suitable for household use or use by children:

(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.

(b) A toxic substance.

(c) A highly toxic substance.

(d) A corrosive substance.

(e) An irritant.

(f) A strong sensitizer.

(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(h) A substance that is designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.

79. "Practice of pharmacy":

(a) Means furnishing the following health care services as a medical professional:

(i) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.

(ii) Compounding drugs pursuant to or in anticipation of a prescription order.

(iii) Labeling drugs and devices in compliance with state and federal requirements.

(iv) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.

(v) Providing patient counseling necessary to provide pharmaceutical care.

(vi) Properly and safely storing drugs and devices in anticipation of dispensing.

(vii) Maintaining required records of drugs and devices.

(viii) Offering or performing acts, services, operations or transactions that are necessary to conduct, operate, manage and control a pharmacy.

(ix) Providing patient care services pursuant to a collaborative practice agreement with a provider as outlined in section 32-1970.

(x) Initiating and administering immunizations or vaccines pursuant to section 32-1974.

(b) Does not include initiating a prescription order for any medication, drug or other substance used to induce or cause a medication abortion as defined in section 36-2151.

80. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

81. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and who complies with section 32-1923.

82. "Precursor chemical" means a substance that is:

(a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(b) Listed in section 13-3401, paragraph 26 or 27.

83. "Prescription" means either a prescription order or a prescription medication.

84. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

85. "Prescription-only device" includes:

(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.

(b) Any device required by the federal act to bear on its label essentially the legend "Rx only".

86. "Prescription-only drug" does not include a controlled substance but does include:

(a) Any drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.

(d) Any drug, other than a controlled substance, that is required by the federal act to bear on its label the legend "Rx only".

87. "Prescription order" means any of the following:

(a) An order to a pharmacist for drugs or devices that is issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.

(b) An order that is transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.

(c) An order that is initiated by a pharmacist pursuant to a collaborative practice agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.

(d) A diet order or an order for enteral feeding, nutritional supplementation or parenteral nutrition that is initiated by a registered dietitian or other qualified nutrition professional in a hospital pursuant to section 36-416.

88. "Professionally incompetent" means:

(a) Incompetence based on a variety of factors, including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.

(b) When considered with other indications of professional incompetence, a pharmacist or pharmacy intern who fails to obtain a passing score on a board-approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board-approved pharmacy technician licensure examination.

89. "Radioactive substance" means a substance that emits ionizing radiation.

90. "Remote dispensing site pharmacy" means a pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

91. "Remote hospital-site pharmacy" means a pharmacy located in a satellite facility that operates under the license issued by the department of health services to the hospital of which it is a satellite.

92. "Remote supervision by a pharmacist" means that a pharmacist directs and controls the actions of pharmacy technicians and pharmacy interns through the use of audio and visual technology.

93. "Revocation" or "revoke" means the official cancellation of a license, permit, registration or other approval authorized by the board for a period of two years unless otherwise specified by the board. A request or new application for reinstatement may be presented to the board for review before the conclusion of the specified revocation period upon review of the executive director.

94. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.

95. "Satellite facility" has the same meaning prescribed in section 36-422.

96. "Satellite pharmacy" means a work area located within a hospital or on a hospital campus that is not separated by other commercial property or residential property, that is under the direction of a pharmacist, that is a remote extension of a centrally licensed hospital pharmacy, that is owned by and dependent on

the centrally licensed hospital pharmacy for administrative control, staffing and drug procurement and that is not required to be separately permitted.

97. "Symbol" means the characteristic symbols that have historically identified pharmacy, including show globes and mortar and pestle, and the sign "Rx".

98. "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistics services for the following items, but that does not take ownership of the items, and that distributes those items as directed by a manufacturer, wholesaler, dispenser or durable medical equipment supplier that is permitted by the board:

(a) Narcotic drugs or other controlled substances.

(b) Dangerous drugs as defined in section 13-3401.

(c) Prescription-only drugs and devices.

(d) Nonprescription drugs and devices.

(e) Precursor chemicals.

(f) Regulated chemicals as defined in section 13-3401.

99. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.

100. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or by a member of that person's household.

32-1922. Qualifications of applicant; reciprocity; preliminary equivalency examination; honorary certificate; fee

A. An applicant for licensure as a pharmacist shall:

1. Be a graduate of a school or college of pharmacy or department of pharmacy of a university recognized by the board or the accreditation council for pharmacy education or qualify under subsection D of this section.

2. Have successfully completed, as substantiated by proper affidavits, a program of practical experience under the direct supervision of a licensed pharmacist who is approved by the board.

3. Pass the pharmacist licensure examination and jurisprudence examination approved by the board. An applicant who fails an examination three times shall petition the board for permission before retaking the examination. The board shall evaluate the petition and determine whether to require additional educational training before approving each additional retake of the examination.

4. Pay an application fee prescribed by the board of not more than $500. An applicant for reciprocal licensure shall pay the fee prescribed in section 32-1924, subsection D.

B. The board may license as a pharmacist, without a pharmacist licensure examination, a person who is licensed as a pharmacist by a pharmacist licensure examination in some other jurisdiction if that person:

1. Produces satisfactory evidence to the board of having had the required secondary and professional education and training.

2. Presents proof to the board's satisfaction that the person is licensed by a pharmacist licensure examination and that the person holds the license in good standing.

3. Presents proof to the board's satisfaction that any other license granted to the applicant by any other jurisdiction has not been suspended, revoked or otherwise restricted for any reason except nonrenewal or for failure to obtain the required continuing education credits in any jurisdiction where the applicant is currently licensed but not engaged in the practice of pharmacy.

4. Passes a board-approved jurisprudence examination.

C. Subsection B of this section applies only if the jurisdiction in which the person is licensed grants, under like conditions, reciprocal licensure as a pharmacist to a pharmacist who is licensed by examination in this state and the person holds a license in good standing issued by an active member board of the national association of boards of pharmacy.

D. If an applicant for licensure is a graduate of a pharmacy degree program at a school or college of pharmacy that was not recognized by the board at the time of the person's graduation, the applicant shall pass a preliminary equivalency examination approved by the board in order to qualify to take the examinations prescribed in subsection A of this section.

E. The preliminary equivalency examination required pursuant to subsection D of this section shall cover proficiency in English and academic areas the board deems essential to a satisfactory pharmacy curriculum.

F. An applicant who fails the preliminary equivalency examination required pursuant to subsection D of this section shall not retake the preliminary equivalency examination until the applicant files written proof with the board that the applicant has completed additional remedial academic work previously approved by the board to correct deficiencies in the applicant's education that were indicated by the results of the applicant's last preliminary equivalency examination.

G. A pharmacist who has been licensed in this state for at least fifty years shall be granted an honorary certificate of licensure by the board without the payment of the usual renewal fee, but that certificate of licensure does not confer an exemption from any other requirement of this chapter.

H. The board may require a pharmacist who has not been actively engaged in the practice of pharmacy for over one year to serve not more than four hundred hours in an internship training program approved by the board or its designee before the pharmacist may resume the active practice of pharmacy.

I. An applicant must complete the application process within twelve months after submitting the application.

32-1923. Interns and intern preceptors; qualifications; licensure; purpose of internship

A. A pharmacist who meets the qualifications established by the board to supervise the training of a pharmacy intern shall comply with the rules of the board and be known as a pharmacy intern preceptor.

B. A person shall not act as a pharmacy intern until that person is licensed by the board. An employer shall verify that a person is currently licensed as a pharmacy intern before the employer allows that person to act as a pharmacy intern.

C. The board shall establish the preliminary educational qualifications for all pharmacy interns, which may include enrollment and attendance in a school or college of pharmacy approved by the board.

D. A pharmacy intern who is currently licensed may be employed in a pharmacy or any other place approved and authorized by the board for training interns and shall receive instruction in the practice of pharmacy, including manufacturing, wholesaling, dispensing of drugs and devices, compounding and dispensing prescription orders, clinical pharmacy, providing drug information, keeping records and making reports required by state and federal laws and other experience that, in the discretion of the board, provides the intern with the necessary experience to practice the profession of pharmacy. Pharmacy interns may compound, dispense and sell drugs, devices and poisons or perform other duties of a pharmacist only in the presence and under the immediate personal supervision of a pharmacist.

E. Intern training and licensure as a pharmacy intern under this section are for the purpose of acquiring practical experience in the practice of the profession of pharmacy before becoming licensed as a pharmacist and are not for the purpose of continued licensure under the pharmacy laws. If a pharmacy intern fails to complete pharmacy education within a period of six years, the intern is not eligible for relicensure as an intern without an acceptable explanation to the board that the intern intends to be and is working toward becoming a pharmacist.

F. The board may accept the experience of a pharmacy intern acquired in another jurisdiction on proper certification by the other jurisdiction.

32-1924. Licenses; fees; rules; signatures; registration; online profiles

(L22, Ch. 362, sec. 6. Eff. 7/1/23)

A. An applicant for licensure as a pharmacist shall pay the board an initial licensure fee of not more than $500.

B. An applicant for licensure as a pharmacist, intern or pharmacy technician shall pay a fee prescribed by the board that does not exceed $50 for issuance of a wall license. On payment of a fee of not more than $50, the board may issue a replacement wall license to a licensee who requests a replacement because the original was damaged or destroyed, because of a change of name or for other good cause as prescribed by the board.

C. An applicant for licensure as an intern shall pay a fee of not more than $75. A license issued pursuant to this subsection expires five years after it is issued. The board shall adopt rules to prescribe the requirements for the renewal of a license that expires before the pharmacy intern completes the education or training required for licensure as a pharmacist.

D. An applicant for reciprocal licensure as a pharmacist shall pay a fee of not more than $500 for the application and expense of investigating the applicant's pharmaceutical standing in the jurisdiction in which the applicant is licensed.

E. All pharmacist licenses shall bear the signatures of the executive director and a majority of the members of the board.

F. An applicant to register as a pharmacy technician trainee shall submit with the application a fee prescribed by the board that does not exceed $25. A pharmacy technician trainee may apply for licensure

as a pharmacy technician within thirty-six months after registering as a pharmacy technician trainee. A pharmacy technician trainee registration may not be renewed or reissued.

G. An applicant for licensure as a pharmacy technician shall submit with the application a fee prescribed by the board that does not exceed $100.

H. A licensee or registrant shall create an online profile using the board's licensing software.

32-1925. Renewal of license of pharmacists, interns and pharmacy technicians; fees; expiration dates; penalty for failure to renew; continuing education

A. Except for interns and pharmacy technician trainees, the board shall assign all persons who are licensed under this chapter to one of two license renewal groups. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years after the last renewal date. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years after the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the license. The board shall vacate a suspension when the licensee pays all past due fees and reinstatement penalties. Reinstatement penalties shall not exceed $350. The board may waive collection of a fee or reinstatement penalty due after suspension under conditions established by a majority of the board.

B. A person shall not apply for license renewal more than sixty days before the expiration date of the license.

C. A person who is licensed as a pharmacist or a pharmacy technician and who has not renewed the license for five consecutive years shall furnish to the board satisfactory proof of fitness to be licensed as a pharmacist or a pharmacy technician. A person whose license has lapsed for two or more renewal cycles shall pay the fees for the two most recent renewal cycles and the penalties before being reinstated.

D. Biennial renewal fees for licensure shall be not more than:

1. For a pharmacist, $250.

2. For a pharmacy technician, $100.

3. For a duplicate renewal license, $25.

E. Fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of a license.

F. The board shall not renew a license for a pharmacist unless the pharmacist has complied with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937.

G. The board shall prescribe intern licensure renewal fees that do not exceed $75. The license of an intern who does not receive specific board approval to renew the intern license or who receives board approval to renew but who does not renew and pay all required fees before the license expiration date is suspended after the license expiration date. The board shall vacate a suspension if the licensee pays all past due fees

and penalties. Penalties shall not exceed $350. The board may waive collection of a fee or penalty due after suspension under conditions established by the board.

H. The board shall not renew a license for a pharmacy technician unless that person has a current board-approved license and has complied with board-approved mandatory continuing professional education requirements. If a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

32-1926. Notice of change of information required

A. Except as prescribed in subsection B of this section, a pharmacist, intern, pharmacy technician or pharmacy technician trainee, within ten days after a change in that person's employer, employer's address, home address or contact information, shall electronically update the person's online board profile or give written notice to the board office staff of the new information.

B. Pursuant to board rule, a pharmacist designated as the pharmacist in charge for a permit issued under this chapter shall give immediate notice to the board office staff of the initiation and termination of such responsibility. The pharmacist shall either electronically update the pharmacist's online board profile or give written notice to the board office staff of the new information.

32-1933. Display of license or permit

A. The holder of a permit granted under this chapter shall conspicuously display it in the location to which it applies.

B. A licensee shall maintain the licensee's current renewal license or duplicate current renewal license, if practicing in more than one location, in the practice site for inspection by the board or its designee or review by the public.

C. If a licensee practices in more than one place, the board may issue one or more duplicate current renewal licenses to the licensee on payment of a fee of not more than twenty-five dollars for each duplicate current renewal license.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 3

Amend: R3-3-101, Table 1, R3-3-201, R3-3-203, R3-3-204, R3-3-205, R3-3-206, R3-3-207, R3-3-208, R3-3-210, R3-3-211, R3-3-212, R3-3-301, R3-3-302, R3-3-303, R3-3-305, R3-3-306, R3-3-307, R3-3-401, R3-3-402, R3-3-403, R3-3-404, R3-3-502, R3-3-503, R3-3-505, R3-3-506, R3-3-701, R3-3-702, R3-3-703, R3-3-704, R3-3-801, R3-3-802, R3-3-803, R3-3-804, R3-3-901, R3-3-902, R3-3-903, R3-3-904, R3-3-905, R3-3-910, R3-3-913, R3-3-1001, R3-3-1003, R3-3-1004, R3-3-1006, R3-3-1007, R3-3-1008, R3-3-1009, R3-3-1010, R3-3-1011

New Section: R3-3-200

Repeal: R3-3-202, R3-3-209, Appendix A, R3-3-1002

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 3, 2024

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

FROM: Council Staff

DATE: December 15, 2023

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

Amend: R3-3-101, Table 1, R3-3-201, R3-3-203, R3-3-204, R3-3-205, R3-3-206, R3-3-207, R3-3-208, R3-3-210, R3-3-211, R3-3-212, R3-3-301, R3-3-302, R3-3-303, R3-3-305, R3-3-306, R3-3-307, R3-3-401, R3-3-402, R3-3-403, R3-3-404, R3-3-502, R3-3-503, R3-3-505, R3-3-506, R3-3-701, R3-3-702, R3-3-703, R3-3-704, R3-3-801, R3-3-802, R3-3-803, R3-3-804, R3-3-901, R3-3-902, R3-3-903, R3-3-904, R3-3-905, R3-3-910, R3-3-913, R3-3-1001, R3-3-1003, R3-3-1004, R3-3-1006, R3-3-1007, R3-3-1008, R3-3-1009, R3-3-1010, R3-3-1011

New Section: R3-3-200

Repeal: R3-3-202, R3-3-209, Appendix A, R3-3-1002

Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend fifty (50) rules, repeal four (4) rules, and add one (1) new rule in Title 3, Chapter 3, Articles 1-5 and 7-10 related to the Environmental Services Division (Division). Specifically, the Department indicates it is proposed amendments to rules in Articles 1 through 5 to ensure the

health and safety of pesticide workers, handlers, and the public; and to comply with federal regulatory requirements to maintain certifying primacy in a federal program. The Department also indicates the proposed amendments in these Articles are intended to align with current practices and clarifies areas identified in the Division's Five-Year Review Report to reduce any undue regulatory burden while maintaining the statutory intent. Furthermore, the Department indicates proposed amendments throughout the Chapter will align with current practices, update outdated references, and provide additional provisions to coincide with modern technology.

The Department indicates the proposed amendments to Articles 7 through 9 are intended to make technical changes, update outdated references, and overall reduce the regulatory burden by making the rules clearer and more concise. Finally, the Department indicates proposed amendments to Article 10 are intended to align with federal regulation for pesticide use, health and safety issues for workers, and increase consumer protection. A detailed list of all the proposed amendments is found in Section 6 of the Department's Notice of Final Rulemaking Preamble for the Council's reference.

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 fee. The Department indicates that the proposed new section R3-3-200 prescribes the permit and licensing fees previously listed in rules R3-3-201, R3-3-203, R3-3-204, R3-3-207, R3-3-208, but does not increase those fees.

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:

The Department anticipates the rulemaking will result in an overall benefit to the regulated community and the consumer. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking could result in additional costs for the regulated community, but those costs are primarily associated to those that commit a violation of the rules of this Chapter.

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 there is no less intrusive or costly alternative method of achieving the purpose of the rulemaking. The Department will not incur any additional costs associated with the rulemaking since these programs currently exist and the intent is only to clarify and improve those processes. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

6. What are the economic impacts on stakeholders?

The persons directly affected by the rulemaking in Articles 1 through 5 are pest control advisors, pesticide applicators, and pesticide dealers. The proposed rulemaking will not impose any additional costs. The benefits of the rulemaking will outweigh the costs of those directly affected since the rulemaking will clarify the rules and make them consistent with federal requirements.

The persons directly affected by the rulemaking in Articles 7 through 9 are pesticide, fertilizer, and commercial feed manufacturers and dealers. The proposed rulemaking will not impose any additional costs. The benefits to the regulated parties will include clearer and more concise rule language to reduce confusion and will align with current national standards for consistency.

The persons directly affected by the rulemaking in Article 10 are employers of pesticide workers, handlers, and trainers. The proposed rulemaking will not impose any additional costs. The benefits of the rulemaking include clearer and more concise rule language to reduce confusion and will clarify by making the rules consistent with current federal regulations.

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:

- The definition of "Responsible individual" in rule R3-3-101 was modified by including language that indicated a "Responsible individual" is competent in safe pesticide handling, and that responsible individual is made aware by the pesticide seller they were designated as a responsible individual.
- Updated R3-3-101 to include the version date and statement, "does not include any later amendments of editions" for the incorporated reference to 40 CFR §§ 137.1 *et seq*.
- Updated R3-3-208(D)(1) to correct amended date for the incorporated reference to January 4, 2017.
- Under rule R3-3-302, the use of pesticide use report form "Form 1080" is also made available by the Department, and the use of the Department's internet portal to submit a

pesticide Form 1080 are also approved methods. The information must also be in sequential order as indicated under subsection (A)(1) through (25) so that the information can be captured effectively

- Updated R3-3-302(D)(1) to include "Date and start and end time of each application" for more accurate reporting.
- Updated rule R3-3-307(A) and (B) to cite the correct federal references from 14 CFR Part H to 14 CFR §§ 21.171 *et seq*.; and 14 CFR §§ 48.1 *et seq*. was corrected to 14 CFR § 48.1.
- Rule R3-3-701 was included in the final rulemaking only to alphabetize the definition terms.
- Updated rule R3-3-703(C) to correct the incorporated reference to the proper designation.
- Updated R3-3-1003(D) to renumber sections to conform with the strike of subsection (D)(2).
- Updated rule R3-3-1004, to insert the Section symbol "§" as needed.
- Updated rule R3-3-1007(C)(3), to correct the term “this Section” to state the correct reference of R3-3-1003.
- Updated rule R3-3-1010(A)(2) to correct usage of the word "not" to “or” in the language, "The additional daily penalty shall neither be less than the original penalty for the cited violation not exceed $1,000 per day per violation."

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. <u>Does the agency adequately address the comments on the proposed rules and any supplemental proposals?</u>

The Department indicates it received input from stakeholders regarding two areas of the proposed rulemaking: 1) The definition of "Responsible individual" in rule R3-3-101 was not clear and concise about what qualifies for the designation and that an individual should be informed as such by a pesticide seller and 2) in rule R3-3-302, it was not clear about what would be accepted as pesticide use report form (Form 1080). The Department indicates it drafted modifications to the language in rules R3-3-101 and R3-3-302, as outlined above, that were found satisfactory to the stakeholder parties involved.

The Department also indicates it received letters of support from the Arizona Farm Bureau, the Arizona Nursery Association, and the Arizona Crop Protection Association, indicating support for the rule modifications. The Department held an oral proceeding, open to the public, on July 5, 2023 but did not receive any additional comments or suggestions.

Council staff believes the Department has adequately responded to public comments related to this rulemaking. A copy of the public comments are also included in the final materials for the Council’s reference.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(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 the licenses, permits and certifications issued under A.R.S. §§ 3-272, 3-351, 3-363, 3-3125, 3-2609 and Title 3, Chapter 3, Articles 2 through 4 and 7 through 9 do not qualify as general permits under A.R.S. § 41-1037 since qualifying information and documentation, qualifying conditions, or education and training requirements must be satisfied prior to the issuance of a license, permit or certification.

Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

The Department indicates the following federal laws apply to the subject of rules R3-3-120, 210, 212, 301, 302, 306, 401, 402, 505 and 703: 7 U.S.C. §§ 136 et seq. (Federal Insecticide, Fungicide and Rodenticide Act). The Department indicates these rules are not more stringent to federal law.

The Department also indicates Federal law 49 U.S.C. § 40101 applies to the subject of rules R3-3-204, 205, 206, and 307 as they relate to federal laws for air commerce and safety. The Department indicates these rules are not more stringent to federal law.

11. Conclusion

This regular rulemaking from the Department seeks to amend fifty (50) rules, repeal four (4) rules, and add one (1) new rule in Title 3, Chapter 3, Articles 1-5 and 7-10 related to the Environmental Services Division (Division). Specifically, the Department indicates it is proposed amendments to rules in Articles 1 through 5 to ensure the health and safety of pesticide workers, handlers, and the public; and to comply with federal regulatory requirements to maintain certifying primacy in a federal program. The Department also indicates the proposed amendments in these Articles are intended to align with current practices and clarifies areas identified in the Division's Five-Year Review Report to reduce any undue regulatory burden

while maintaining the statutory intent. Furthermore, the Department indicates proposed amendments throughout the Chapter will align with current practices, update outdated references, and provide additional provisions to coincide with modern technology.

The Department indicates the proposed amendments to Articles 7 through 9 are intended to make technical changes, update outdated references, and overall reduce the regulatory burden by making the rules clearer and more concise. Finally, the Department indicates proposed amendments to Article 10 are intended to align with federal regulation for pesticide use, health and safety issues for workers, and increase consumer protection.

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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November 6, 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. 3, Articles 1-5 and 7-10

Dear Ms. Sornsin:

The Arizona Department of Agriculture 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 Arizona Department of Agriculture's (Department) final rulemaking packet for A.A.C. Title 3, Chapter 3, Articles 1 through 5 and 7 through 10.

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 received comments from stakeholders regarding clarification for the definition of "Responsible Individual" in rule R3-3-101 and clarification what is an acceptable "Form 1080" in rule R3-3-302. The Department also received three letters of support of the rulemaking from the Arizona Farm Bureau, the Arizona Nursery Association and the Arizona Crop Protection Association. This rulemaking activity is partially related to a five-year review report that was approved on February 5, 2019 for Articles 1-5 and November 6, 2018 for Articles 7-10. The rulemaking does not establish any new fees. However, the new Section R3-3-200 prescribes the permit and licensing fees previously listed in rules R3-3-201, 203, 204, 207 and 208, but does not increase those fees. The rulemaking does not contain any other fee increases in any other Sections of the rulemaking. 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 transcript of the oral proceeding.
5. A copy of the materials for the incorporated references in the rulemaking.

6. A copy of the Authorizing statutes
7. 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 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

1.	Article, Part, or Section Affected	Rulemaking Action
	R3-3-101	Amend
	Table 1	Amend
	R3-3-200	New Section
	R3-3-201	Amend
	R3-3-202	Repeal
	R3-3-203	Amend
	R3-3-204	Amend
	R3-3-205	Amend
	R3-3-206	Amend
	R3-3-207	Amend
	R3-3-208	Amend
	R3-3-209	Repeal
	R3-3-210	Amend
	R3-3-211	Amend
	R3-3-212	Amend
	Appendix A	Repeal
	R3-3-301	Amend
	R3-3-302	Amend
	R3-3-303	Amend
	R3-3-305	Amend
	R3-3-306	Amend
	R3-3-307	Amend
	R3-3-401	Amend
	R3-3-402	Amend
	R3-3-403	Amend
	R3-3-404	Amend
	R3-3-502	Amend
	R3-3-503	Amend
	R3-3-505	Amend
	R3-3-506	Amend
	R3-3-701	Amend
	R3-3-702	Amend
	R3-3-703	Amend
	R3-3-704	Amend
	R3-3-801	Amend
	R3-3-802	Amend
	R3-3-803	Amend
	R3-3-804	Amend
	R3-3-901	Amend
	R3-3-902	Amend
	R3-3-903	Amend
	R3-3-904	Amend

R3-3-905	Amend
R3-3-910	Amend
R3-3-913	Amend
R3-3-1001	Amend
R3-3-1002	Repeal
R3-3-1003	Amend
R3-3-1004	Amend
R3-3-1006	Amend
R3-3-1007	Amend
R3-3-1008	Amend
R3-3-1009	Amend
R3-3-1010	Amend
R3-3-1011	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. §§ 3-264, 3-343, 3-363, 3-2603, 3-3105, 3-3106, and 3-3108

3. The effective date of the rule:

60-days following the filing with the Arizona Secretary of State's Office.

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Docket Opening, Notice of Rulemaking: Vol. 28, Issue 32 A.A.R. Pg. 2025, August 12, 2022

Docket Opening, Notice of Rulemaking: Vol. 29, Issue 15 A.A.R. Pg. 875, April 14, 2023

Notice of Proposed Rulemaking: Vol. 29, Issue 22 A.A.R. Pg. 1221. June 2, 2023

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

Name: Brian McGrew

Address: 1802 W. Jackson St., #78
Phoenix, AZ 85007

Telephone: (602) 542-3228

Fax: (602) 542-1004

E-mail: bmcgrew@azda.gov

Web site: https://agriculture.az.gov/

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

On July 20, 2022, the Department received an exemption from the rulemaking moratorium established by Executive Order 2022-01 under criteria (1)(c) and (e) to revise the rules under Title 3, Chapter 3, and Articles 1 through 5 and 10, to ensure the health and safety of pesticide workers, handlers, and the public; and to comply with federal regulatory requirements to maintain certifying primacy in a federal program. On March 23, 2023 the Department also received approval from the Governor's Office, Policy Advisor, in compliance with A.R.S. § 41-1039(A)(2) to reduce and ameliorate a regulatory burden, while achieving the same regulatory objective as indicated in the Environmental Services Division's five-year rule

review for Title 3, Chapter 3, Articles 1 through 5 and 7 through 10, which would include updating outdated incorporated references, updating outdated rules to be consistent with current practices and clarifying language to reduce confusion and misinterpretation. Pursuant to A.R.S. § 41-1039(B), on ????, 2023, The Department received written authorization from the Governor's Office, Policy Advisor, to proceed with the final rulemaking process.

The explanation of changes are as follows:

R3-3-101: Proposed changes will update antiquated federal references, include new definitions to align with current practices, federal regulations and provide clarification for other amended areas of the Chapter.

Table 1: Proposed changes for the licensing time-frames will update the authority references for clarity and will remove any outdated licenses that are no longer provided by the Department or that are covered under other certification types. Changes will also add the licensing time-frames for a "Drone Pilot License".

R3-3-200: With the repeal of three rules in this rulemaking (R3-3-202, 209, and 1002) as required under A.R.S. § 41-1039(C), the addition of this new section will consolidate the general licensing application and renewal provisions; list licensing fees; describe the education and Continuing Education Units ("CEU") requirements; and prescribe the general exam requirements that are consistent throughout the Chapter that were previously listed in each respective licensing or certification rule (R3-3-201, 203, 204, 205, 206, 207, and 208). It will also pull in the license and fee exemption provisions from rule R3-3-209.

R3-3-201: Proposed changes will make technical corrections and include provisions for complying with the lawful presence requirements under A.R.S. § 41-1080.

R3-3-202: This rule will be repealed, and federal core testing standards will be incorporated by reference in other parts of the Chapter.

R3-3-203: Proposed changes will align with federal regulations under 40 CFR Part 170, make technical changes, and remove antiquated provisions.

R3-3-204: Proposed rule changes will update federal references. It will clarify provisions for complying with the lawful presence requirements under A.R.S. § 41-1080. Changes will also prescribe the requirements for obtaining a drone pilot license for the application of a pesticide using pilotless aircraft that is register with the FAA.

R3-3-205: Proposed rule changes will make technical corrections to the rule, update federal references, and clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080.

R3-3-206: Proposed rule changes will update provisions to comply with the addition of drone equipment and make other technical changes.

R3-3-207: Proposed changes will clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080, make technical changes, and provide clarification on obtaining CEUs, and on the renewal application process, and on the fees that are required by the Department within the specified time-period.

R3-3-208: Proposed rule changes update federal references, include provisions to comply with federal regulations under 40 CFR Part 171, make technical corrections, clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080, and remove irrelevant sub-sections. Another change to this rule includes guidelines on the Department's requirements to obtain reciprocal certifications.

R3-3-209: This rule will be repealed. The updated license and fee exemption language is incorporated into the new R3-2-200 rule.

R3-3-210: Proposed changes to this rule make technical corrections and incorporate federal requirements for the suspension or revocation of a license, permit, or certification.

R3-3-211: Proposed changes to this rule include clarification language for CEU subject approval, update a rule reference, and make technical corrections.

R3-3-212: Proposed changes to this rule ensure compliance with federal regulations regarding experimental use permits for pesticide use.

Appendix A: This appendix will be repealed and federal testing categories for certification are incorporated by reference in other sections of the Article.

R3-3-301: Proposed changes to this rule will make technical changes and prescribe restrictions for altered or repackaged pesticides. Proposed changes also include the requirements for the supervision of noncertified pesticide applicators.

R3-3-302: Proposed changes include technical changes and incorporate recordkeeping requirements for non-certified applicators to comply with federal regulations under 40 CFR § 171.201.

R3-3-303: Proposed rule changes remove many of the provisions that are initially prescribed in rule R3-3-212 and incorporate them by reference. Proposed changes also simplify the reporting process for an experimental use pesticide.
R3-3-305: Proposed changes align with federal requirements for pesticide sales including the requirement to have a valid certification and the requirement that restricted use pesticides shall only be sold to a properly licensed person.
R3-3-306: Proposed changes make technical corrections and align with federal regulations.
R3-3-307: Proposed changes update the federal regulation that is incorporated by reference, 14 CFR §§ 21.171 *et seq.* and 14 CFR § 48.1 include provisions for drone operations.
R3-3-401: Proposed changes make technical corrections and update terms.
R3-3-402: Proposed changes make technical corrections to align with the rulemaking.
R3-3-403: Proposed changes update the emergency reporting reference with ADEQ.
R3-3-404: Proposed changes make technical corrections to align with references to ADEQ's groundwater protection list.
R3-3-502 and 503: Proposed changes make technical corrections to align with the rulemaking.
R3-3-505: Proposed changes add provisions that relate to the classification of unlisted violations to align with federal requirements, including penalties for violations that could harm the economy, environment, or human or animal health. The proposed rulemaking also prescribes provisions for the Director to deny, suspend or revoke an applicator certification for specific violations.
R3-3-506: Proposed changes make technical corrections to align with the rulemaking.
R3-3-701: Proposed changes alphabetize the definition terms.
R3-3-702: Proposed changes clarify what is needed to register a pesticide with the Arizona Department of Environmental Quality and will eliminate the requirement of providing two pesticide labels for registration. Under the proposed rule, only one label need be provided for registration. The proposed changes also remove an outdated fee requirement.
R3-3-703: Proposed changes reduce the timeframe to register an expired pesticide from 3 years to 2 years and clarify that the term "Act" refers to the Federal Insecticide, Fungicide, and Rodenticide ACT (FIFRA).
R3-3-704: Proposed changes eliminate the requirement of providing two labels for a label revision. Under the proposed rule, only one label need be provided for a label revision. Proposed changes also incorporate the table of allowed deviations into the rule as subsection "C".
R3-3-801: Proposed changes update the reference to the "Official Publication" for fertilizers.
R3-3-802: Proposed changes eliminate the requirement of including a facsimile number. Instead, under the proposed rule, an email address will be required. The proposed changes also make technical changes to align with the rulemaking, and remove an outdated fee requirement.
R3-3-803: Proposed changes update an incorporated reference, clarify inspection fee provisions, and remove an outdated fee requirement.
R3-3-804: Proposed changes update an incorporated reference, clarify inspection fee provisions, and remove an outdated fee requirement.
R3-3-901: Proposed changes update the reference on how to obtain a copy of the "Official Publication" and include a definition for the term "pneumatic probe sampler".
R3-3-902: Proposed changes eliminate the requirement of including a facsimile number. Instead, under the proposed rule, an email address will be required. The proposed changes also update incorporated references.
R3-3-903: Proposed changes to the rule clarify that a commercial feed license number is required to pass the inspection fee on to the purchaser.
R3-3-904: Proposed changes to the rule update where a milk and milk product "Color Requirement" card can be obtained to correlate with the recent move of the Department's office location. The proposed changes also clarify requirements for milk and milk products that are used as commercial feed.
R3-3-905: Proposed changes to the rule add a requirement to remove expired feed from sale and a requirement to label whole cottonseed and commercial feed that has not been tested for aflatoxin contamination.
R3-3-910: Proposed changes to the rule update incorporated references and their location.
R3-3-913: Proposed changes to the rule update incorporated references and their location, and replace equipment product names "Shop-vac" and "Probe-a-vac" with generalized product terms.
R3-3-1001: Proposed changes remove a number of unnecessary terms and align with the proposed changes throughout the Article. Included is the incorporated reference for the definition of the Worker Protection Standard in 40 CFR §§ 170.1 *et seq*.

R3-3-1002: This rule is repealed and incorporated by reference in other sections of the Article.

R3-3-1003: Proposed changes to this rule ensure compliance with federal regulations under the Worker Protection Standard under 40 CFR §§ 170.1 *et seq.*, including trainer requirements and record keeping provisions.

R3-3-1004: Proposed changes make a technical correction to refer to the Worker Protection Standard in 40 CFR §§ 170.120 and 122, as applicable.

R3-3-1006: Proposed changes include a requirement that a decision to declare an agricultural emergency based on written evidence.

R3-3-1007: Proposed changes reformat the information in tables and makes technical corrections. They also remove a provision on assessing a penalty based on inability to negotiate a settlement and change an incorrect reference.

R3-3-1008: Proposed changes reformat the information in tables and makes technical corrections.

R3-3-1009: Proposed changes prescribe the provisions for violations that require abatement to correct the violation.

R3-3-1010: Proposed changes conform with current practices, by prescribing grounds to reduce or eliminate a penalty in order to comply with federal regulations under 40 CFR part 170.

R3-3-1011: Proposed changes make technical corrections to align with the rulemaking and comply with federal regulations under 40 CFR § 170.305 and 40 CFR §§ 170.1*et seq.*

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

No study was conducted.

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

The rulemaking does not diminish any previous authority of a political subdivision of this state.

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

The Department's intent in proposing the amendments to Articles 1 through 5, listed in Section 5 of this notice, is to ensure the health and safety of pesticide workers, handlers, and the public; and to comply with federal regulatory requirements to maintain certifying primacy in a federal program. It is also intended to align with current practices and clarifies areas identified in the Division's five-year rule review to reduce any undue regulatory burden while maintaining the statutory intent. Proposed amendments throughout the Chapter will align with current practices, update out dated references, and provide additional provisions to coincide with modern technology. Other changes to Articles 7 through 9 are intended to make technical changes, update outdated references, and overall reduce the regulatory burden by making the rules clearer and more concise. Changes to Article 10 are intended to align with federal regulations for pesticide use health and safety issues for workers and increase consumer protection. The Department anticipates the rulemaking will result in an overall benefit to the regulated community and the consumer. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking could result in additional costs for the regulated community, but those costs are primarily associated to those that commit a violation of the rules of this Chapter. The Department has determined there is no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will not incur any additional costs associated with the rulemaking since these programs currently exist and the intent is to only clarify and improve those processes. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

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

Based on comments received from stakeholders on June 7, 2023, the definition of "Responsible individual" in rule R3-3-101 was modified by including language that indicated a "Responsible individual" is competent in safe pesticide handling, and that responsible individual is made aware by the pesticide seller they were designated as a responsible individual. Additionally, under rule R3-3-302, the use of pesticide use report form "Form 1080" is also made available by the Department, and the use of the Department's internet portal to submit a pesticide Form 1080 are also approved methods. The information must also be in sequential order as indicated under subsection (A)(1) through (25) so that the information can be captured effectively. An additional change in R3-3-101 to update the citation for the incorporated reference for 40 CFR §§ 137.1 *et seq.* to include the version date and statement, " does not include any later amendments of editions". The correct amended date for the incorporated reference in rule 208(D)(1) was updated to January 4, 2017. A change to R3-3-302(D)(1) was identified by Department staff to include "Date and start and end time of each application" for more

accurate reporting. Rule R3-3-307(A) and (B) were updated to cite the correct federal references from 14 CFR Part H to 14 CFR §§ 21.171 *et seq.*; and 14 CFR §§ 48.1 *et seq.* was corrected to 14 CFR § 48.1. Rule R3-3-701 was included in the final rulemaking only to alphabetize the definition terms. In rule 703(C), the incorporated reference was corrected to the proper designation. In rule R3-3-1003(D), the subsections were re-numbered to conform with the strike of subsection (D)(2). In rule R3-3-1004, the insertion of the Section symbol "§" was updated as needed. In rule R3-3-1007(C)(3), the term "this Section" was corrected to state the correct reference of R3-3-1003. In rule R3-3-1010(A)(2) the word "not" in the language, "The additional daily penalty shall neither be less than the original penalty for the cited violation **not** exceed $1,000 per day per violation." was corrected to say "or". 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:

The Department received input from stakeholders on June 7, 2023 to advise the Department on two specific areas of the proposed rulemaking. 1) The definition of "Responsible individual" in rule R3-3-101 was not clear and concise about what qualifies for the designation and that an individual should be informed as such by a pesticide seller. 2) In rule R3-3-302, it was not clear about what would be accepted as pesticide use report form (Form 1080). The Department drafted modifications to the language in rules R3-3-101 and 302 that was found satisfactory to the stakeholder parties involved. Those changes are summarized in Section 11, above.

The Department received letters of support from the Arizona Farm Bureau, the Arizona Nursery Association, and the Arizona Crop Protection Association, indicating support for the rule modifications. The Department held an oral proceeding, open to the public, on July 5, 2023 but did not receive any additional comments or suggestions.

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

No other matters are prescribed to the Department.

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 licenses, permits and certifications issued under A.R.S. §§ 3-272, 3-351, 3-363, 3-3125, 3-2609 and Articles 2 through 4 and 7 through 9 of 3 A.A.C. 3 do not qualify as a general permit under A.R.S. § 41-1037 since qualifying information and documentation, qualifying conditions, or education and training requirements must be satisfied prior to the issuance of a license, permit or certification.

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 7 U.S.C. §§ 136 *et seq.* (Federal Insecticide, Fungicide and Rodenticide Act), applies to the subject of the rules R3-3-120, 210, 212, 301, 302, 306, 401, 402, 505 and 703. These rules are not more stringent to federal law. Federal law 49 U.S.C. § 40101, while not referenced in the rules, applies to the subject of the rules R3-3-204, 205, 206, and 307 as they relate to federal laws for air commerce and safety. These rules are not more stringent to federal law.

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

No analysis was conducted.

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

The Federal regulation 40 CFR § 171.303 is incorporated in rule 101 as it relates to the EPA's pesticide certification plan for state agencies. Federal laws under 7 U.S.C. §§ 136 *et seq.* (the Federal Insecticide, Fungicide and Rodenticide Act, or FIFRA) are incorporated in rule 101. The term "FIFRA" is also referenced in rules 120, 210, 212, 301, 302, 306, 401, 402, 505 and 703. The federal regulation 40 CFR § 170.110(c)(3) is incorporated by reference into rule 101 as it relates to the federal definition of a "handler". The federal regulation 40 CFR § 172.3(c)(1) or (2) is incorporated into rule 101 as it relates to a small-scale test for pesticide research. The federal regulations under 40 CFR §§ 170.1 *et seq.* are incorporated in to rules 101 and 1001 to reference the Worker Protection Standard. The Worker Protection Standard or WPS is also referenced in rules 1003, 1004, and 1008. The federal regulations under 14 CFR §§ 137.1 *et seq.* are incorporated by reference as they relate to agricultural aircraft and aircraft pilots in rules 204.

The federal regulations under 14 CFR §§ 107.1 *et seq.* are incorporated by reference as they relate to agricultural drones and drone pilots in rule 204. The federal regulation under 40 CFR § 171.101 and § 171.103 is incorporated by reference in rule 208 as it relates to commercial and golf applicator licenses. The federal regulation under 40 CFR § 171.105 is incorporated into rule 208 as it relates to private applicator licenses. Federal regulation 40 CFR § 172.3 is incorporated by reference as it relates to experimental use permits issued under rule 212. The federal regulation 40 CFR § 171.201 is incorporated by reference under rule 301 and 302 in relation to requirements for the direct supervision of a non-certified applicator. The federal regulations under 14 CFR §§ 21.171 *et seq.* and 14 CFR § 48.1 are incorporated by reference in relation to aircraft, drones, and pilots in rule 307. The federal regulations under 40 CFR §§ 156.3 *et seq.* and §§ 157.20 *et seq.* are incorporated by reference under rule 703 in relation to prohibited acts for the packaging of pesticides. The resource *"Official Publication - AAPFCO"* is incorporated by reference in rule 801 and 804 as they relate to fertilizer compliance. The resource *"Official Publication (2023)"* is incorporated by reference under rules 901, 905, and 910 as they relate to commercial feed compliance. In rule 901, the U.S. Patent for the "Pneumatic Probe Sampler" is referenced as "U.S. Patent, US3580084A, May 25, 1971, Expired". The federal regulations 21 CFR §§ 73.1 *et seq.* and 74.101 *et seq.* are incorporated by reference in rule 904 in relation to coloring in commercial feed. The publication, *"Official Method 965.16 of Official Methods of Analysis of the AOAC International, 22nd Edition (2023)"* is incorporated by reference in rule 913 as it relates to the sampling of commercial feed. The federal regulations listed 40 CFR § 170.305 and 40 CFR §§ 170.1 *et seq.* are incorporated by reference in rule 1001 as it relates to the general provisions of agricultural safety and the Worker Protection Standard (WPS). Sections 170.401 and 170.501 of the WPS are referenced in rule 1003. Sections 170.120 and 170.122 of the WPS are reference in rule 1004. All incorporated materials in this rulemaking are on file with the Department and do not include later amendments or editions as indicated in each reference within the rulemaking.

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 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

Section

ARTICLE 3. PESTICIDE USE, SALES, AND EQUIPMENT

ARTICLE 4. RECORDKEEPING AND REPORTING

ARTICLE 5. NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS

ARTICLE 7. PESTICIDE

ARTICLE 8. FERTILIZER MATERIALS

ARTICLE 9. COMMERCIAL FEED

ARTICLE 10. AGRICULTURAL SAFETY

ARTICLE 1 GENERAL PROVISIONS

R3-3-101. Definitions

In addition to the definitions in A.R.S. §§ 3-341 and 3-361, the following terms apply to ~~Articles 1 through 5 of~~ this Chapter:

"Acute toxicity" means adverse physiological effects that result from a single dose or single exposure to a chemical; or any poisonous effect produced by a single dose or single exposure to a chemical within a short period of time, usually less than 96 hours.

"ADEQ" means the Arizona Department of Environmental Quality

"Adulterate" means to change a pesticide so that:

Its strength or purity falls below the standard of quality stated on the labeling under which it is sold,

Any substance has been substituted wholly or in part for the pesticide, or

Any constituent of the pesticide has been wholly or in part abstracted.

"Agricultural aircraft pilot" or "AAP" means any individual ~~licensed by the Department~~ who pilots an agricultural aircraft to apply a pesticide.

"Agricultural commodity" means any plant, animal, plant product, or animal product produced for commercial or research purposes.

"Agricultural establishment" means any farm, ranch, forest, nursery, or greenhouse.

"Agricultural purpose" means use of a pesticide on an agricultural commodity. It excludes the sale or use of pesticides, in properly labeled packages or containers, for either ~~of the following:~~

~~Home use, or~~

~~Use in swimming pools or spas.~~ home use, or use in swimming pools or spas.

"Agricultural use pesticide" means a pesticide product bearing a label requiring compliance with the Worker Protection Standard, and as prescribed by the agricultural use requirements on the label.

"Aircraft" means any mechanism used in ~~flight, excluding a remote-controlled mechanism.~~flight.

~~*"ALJ" means an individual or the Director who sits as an administrative law judge, who conducts administrative hearings in a contested case or an appealable agency action, and who makes decisions regarding the contested case or appealable agency action.* A.R.S. § 41-1092(1)~~ "ALJ" means, pursuant to A.R.S. § 41-1092, an individual or the Director who sits as an administrative law judge, who conducts administrative hearings in a contested case or an appealable agency action, and who makes decisions regarding the contested case or appealable agency action.

"Animal" means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish and shellfish. A.R.S. § 3-341(3)

"Application site" means the specific location, crop, object, ~~or~~ field, or other area to which a pesticide is or is intended to be applied.

"Applicator" means any individual who applies, or causes to have applied, any pesticide on an agricultural establishment or golf course.

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

"Authorized activities" means, for compliance with A.R.S. § 3-365(D), any organized activities scheduled at a school or child care facility that use the school or child care facility or the school or child care grounds and for which the sponsors or organizers of the activity have received the written approval of a responsible administrative official of the school or child care facility.

"Buffer zone" means an area of land that allows pesticide deposition and residues to decline to a level that poses a reasonable certainty of no harm to a defined area.

"Bulk release" means the release of any pesticide or mixture of pesticides that poses a potential risk to property, human health, or the environment in volumes greater than those prescribed by the pesticide label for the application site. A pesticide dripping from a spray nozzle or minor splashing during mixing is not a bulk release.

"Certification plan" means an EPA authorized plan under 40 CFR § 171.303 (82 FR 1042, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171/subpart-D/section-171.303) for the certification of pesticide applicators to comply with the provisions of FIFRA. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

"Certified applicator" means any individual who is certified by the Department to use or supervise the use of any restricted use pesticide ~~or to use any pesticide on a golf course~~ as a private, golf or commercial applicator.

"CEU" means continuing education unit.

"Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor and is licensed as a child care facility by the Arizona Department of Health Services. A.R.S. § 36-881(3). Child care facilities are commonly known as day care centers.

"Commercial applicator" or "PUC" means a certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of a restricted use pesticide for any purpose or on any property other than for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator's employer; or

Another person, if the application is performed without compensation, other than trading of personal services between producers of agricultural commodities.

"Contamination" means a concentration of pesticide sufficient to violate state or federal water, soil, food, feed, or air contamination standards, except if legally applied.

"Continued pesticide application" means the continuance of an interrupted application of the same pesticide to the same application site within the same section, township, and range within the same reporting period.

"Custom application equipment" means aircraft, drones, remote-controlled equipment, and ground equipment used for pesticide application by a custom applicator.

"Custom applicator" or "CAL" means any person, except a person regulated by the ~~OPM~~ PMD, who applies pesticides for hire, by drone, or by aircraft.

"Defoliation" means killing or artificially accelerating the drying of plant tissue with or without causing abscission.

"Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than a human being and a bacterium, virus, or other microorganism on or in a living human being or other living animal. Device does not include firearms, mechanical traps, or equipment used for the application of pesticides if the application equipment is sold separately.

"Diluent" means any substance added to a pesticide before application to reduce the concentration of the active ingredient in the mixture.

"Direct release" means to apply a pesticide outside the boundaries of an application site, at the time of application, while the valve controlling the normal flow of pesticide from the application device is in the open position and the application device is not within the confines of the application site. Direct release does not mean the drift or discharge of a pesticide caused by a mechanical malfunction of the application device that is beyond the control of the operator. Direct release does not mean a release caused by accident, or done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release.

"Disposal" means discarding a pesticide or pesticide container that results in the deposit, dumping, burning, or placing of the container or unused pesticide on land or into the air or water.

"Drift" means the physical movement of pesticide through the air at the time of a pesticide application from the application site to any area outside the boundaries of the application site. Drift does not include movement of a pesticide or associated degradation compounds to any area outside the boundaries of an application site if the movement is caused by erosion, run off, migration, volatility, or windblown soil particles that occur after application, unless specifically addressed on the pesticide label with respect to drift control requirements.

"Drone" means a remote-controlled pilotless aircraft or small flying device used to apply pesticides.

"Drone Pilot License" or "DPL" means any individual who pilots a drone to apply a pesticide.

"EPA" means the United States Environmental Protection Agency.

"Experimental use permit" means a permit issued by the EPA, or the Department pursuant to A.R.S. § 3-350.01, to a person for the purpose of experimentation, which includes the accumulation of information necessary for the registration of a pesticide.

"Exposure" means the inhalation or ingestion of a pesticide, or eye or skin contact with a pesticide.

~~"Family member" means spouse, child, sibling, parent, grandparent, grandchild, stepparent, or stepchild.~~

"FAA" means the Federal Aviation Administration

~~"FFDCA" means the Federal Food, Drug and Cosmetic Act, as amended.~~

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, ~~as amended,~~ 7 U.S.C. §§ 136 et seq. (as amended P.L. 117–328, December 29, 2022, https://www.govinfo.gov/content/pkg/COMPS-10326/uslm/COMPS-10326.xml). This material is incorporated by reference throughout the Chapter, is on file with the Department and includes no later amendments or editions.

"Fumigant" means a substance or mixture of substances that produces gas vapor or smoke intended to control a pest in stored agricultural commodities or to control burrowing rodents.

"Golf applicator" ~~means a certified applicator who uses a pesticide for the maintenance of a golf course that is owned or controlled by the applicator or the applicator's employer.~~ or "PUG" means an applicator who uses or supervises the use of a restricted use pesticide for the maintenance of the ornamental and turf areas of the golf course that is owned or controlled by the applicator or the applicator's employer.

"Handler" means any person, including a self-employed person:

1. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who is:
   a. Mixing, loading, transferring, or applying pesticides.
   b. Disposing of pesticides or pesticide containers.
   c. Handling opened containers of pesticides.
   d. Acting as a flagger.
   e. Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.
   f. Assisting with the application of pesticides.
   g. Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established under 40 CFR § 170.110(c)(3) of the Worker Protection Standard (August 21, 1992, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170/subpart-B/section-170.110) The incorporated reference is on file with the Department and does not include any later amendments or editions, or in the labeling has been met:
      i. To operate ventilation equipment.
      ii. To adjust or remove coverings used in fumigation.
      iii. To monitor air levels.
   h. Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.
   i. Performing tasks as a crop advisor:
      i. During any pesticide application.
      ii. Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established under 40 CFR § 170.110(c)(3) of the Worker Protection Standard (August 21, 1992,

https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170/subpart-B/section-170.110), or in the labeling has been met. The incorporated reference is on file with the Department and does not include any later amendments or editions.

iii. During any restricted-entry interval.

2. The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

"Health care institution" means any institution that provides medical services, nursing services, health screening services, and other health-related services, and is licensed by the Arizona Department of Health Services.

"Highly toxic pesticide" means a pesticide with an acute oral LD_{50} of 50 milligrams per kilogram of body weight or less, dermal LD_{50} of 200 milligrams per kilogram of body weight or less, or inhalation LD_{50} of 0.2 milligrams per liter of air or less, and the label bears the signal words "danger" and "poison" and shows a skull and crossbones.

"Immediate family" includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

"Individual" means a human being.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. A.R.S. § 3-341(14)

"Integrated Pest Management" or "IPM" means a sustainable approach to managing pests that uses any combination of biological, chemical, cultural, genetic, manual, or mechanical tools or techniques in a way that minimizes health, environmental, and economic risks.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if there is any, of the pesticide or device. A.R.S. § 3-341(15)

"Labeling" means all labels and other written, printed or graphic matter:

Upon the pesticide or device or any of its containers or wrappers.

Accompanying the pesticide or device at any time.

To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, non-misleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of the state or other states authorized by law to conduct research in the field of pesticides. A.R.S. § 3-341(16).

"LD_{50}" ~~means a single dose of pesticide that will kill at least 50 percent of laboratory test animals as determined by an EPA- approved procedure.~~ means a statistically derived estimate of a single dose of pesticide that can be expected to cause death in 50 percent of laboratory test animals as determined by an EPA approved procedure. The LD_{50} value is expressed in terms of weight of test substance per unit weight of the test animal (mg/kg)

"Livestock" means clovenhoofed animals, horses, mules, or asses.

~~"OPM" means the Office of Pest Management.~~

"PCA" or "agricultural pest control advisor" means any individual ~~licensed by the Department~~ who, as a requirement of, or incidental to, the individual's employment or occupation:

Offers a written recommendation to a regulated grower or to any public or private agency concerning the control of any agricultural pest,

Claims to be an authority or general advisor on any agricultural pest or pest condition, or

Claims to be an authority or general advisor to a regulated grower on any agricultural pest.

"Person" means any individual, partnership, association, corporation or organized group of persons whether incorporated or not. A.R.S. § 3-341(19)

"Pest" means:

Any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria or other pathogenic organisms.

Any other form of terrestrial or aquatic plant or animal life, except virus, bacteria or other microorganism on or in living humans or other living animals, which the director declares to be a pest for the purpose of enforcement of this Article. A.R.S. § 3-341(20)(b)

"Pesticide" means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment. A.R.S. § 3-361(6)

"Pesticide container" means any container with an interior surface that is in direct contact with a pesticide.

"Pesticide Grower Permit" or "PGP" means a permit issued by the Department that allows a qualifying person to act as a regulated grower.

"Pesticide use" means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers. A.R.S. § 3-361(7)

"PMD" means the Pest Management Division of the Arizona Department of Agriculture.

"Private applicator" or "PUP" means a certified applicator who uses or supervises the use of a restricted use pesticide for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator's employer; or

Another person, if the pesticide is applied without compensation, other than trading of personal services between producers of agricultural commodities.

"Property boundary" means the legal boundary of the land on which a child care facility, health care institution, residence, or school sits, unless another boundary is established by a written agreement with the owner of the child care facility, health care institution, residence, or school. Under a written agreement, the parties shall not establish a boundary that is less than ten feet from the child care facility, health care institution, residence, or school.

"Ready-to-use" means a registered pesticide, in the manufacturer's original container, that does not require dilution by the end user.

"Regulated grower" means a person who acquires or purchases pesticides or contracts for the application of pesticides to agricultural commodities, onto an agricultural establishment, or onto a golf course as a part of the person's normal course

of employment or activity as an owner, lessee, sublessee, sharecropper, or manager of the land to which the pesticide is applied.

"Reporting period" means no later than the Thursday following the calendar week in which an application is completed.

"Residence" means a dwelling place where one or more individuals are living.

"Responsible individual" means an individual at a seller's location who ~~has passed the core examination prescribed in R3-3-202 and is designated by the seller under R3-3-203.~~ is a certified applicator or is licensed as a PCA in Arizona by the Department, that has demonstrated competency in safe pesticide handling, and is aware they are designated by the seller under R3-3-203.

"Restricted use pesticide" means a pesticide classified as such by the EPA. A.R.S. § 3-361(8).

"School" means a public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve. A.R.S. § 15-101(19). School includes a private institution with membership in the North Central Association of Colleges and Schools serving students in kindergarten programs or any combination of grades one through twelve.

"Seller" means any person selling or offering for sale a restricted use pesticide or other type of pesticide intended to be used for an agricultural purpose.

~~"Service container" means a container used to temporarily hold, store, or transport a pesticide concentrate or a registered, ready-to-use pesticide other than the original labeled container, measuring device, or application device.~~

"Service container" means a container filled with a pesticide by an applicator and is transported to an application site where the pesticide will be applied. A service container is not intended to be used as a container for the sale or distribution of a pesticide, and is not intended for the long-term storage of a pesticide, except for cases of an emergency where the integrity of the original packaging of a pesticide is compromised that would lead to a bulk release of a pesticide.

"Small scale test" means a test using a pesticide on land or water acreage as described at 40 CFR § 172.3(c)(1) or (2) (59 FR 45611, Sept. 1, 1994, as amended at 71 FR 35546, June 21, 2006; 73 FR 75599, Dec. 12, 2008, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-172/subpart-A/section-172.3). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

"Spot application" means a treatment in an area other than a greenhouse or nursery operation that is restricted to an area of ~~a field that is less than the entire field~~ an application site that is less than the entire application site.

"Tag" means a custom application equipment license issued by the Department to a custom applicator licensee.

"Triple rinse" means to flush out a container at least three times, each time using a volume of water, or other diluent as specified on the label, equal to a minimum of 10 percent of the container's capacity or a procedure allowed by the label that produces equivalent or better results.

"Unreasonable adverse effect" means any unreasonable risk to a human being or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or a human dietary risk from residues that result from a use of a pesticide in or on any food as documented by the Department through its investigation.

"Weed" means any plant which grows where not wanted. A.R.S. § 3-341(24)

"Worker Protection Standard" or "WPS" means the regulations as prescribed in 40 CFR §§ 170.1 *et seq.*, excluding 40 CFR §§ 170.401(c)(4) and 170.501(c)(4) (as amended October 30, 2020, https://www.ecfr.gov/current/title-40/chapter-

I/subchapter-E/part-170). This material is incorporated by reference, on file with the Department and does not include any later amendments of editions.

Table 1.Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
~~Regulated~~ Pesticide Grower Permit (PGP)	A.R.S. § 3-363 A.A.C. R3-3-201	14	14	56	14	70
Pesticide Seller Permit (PSP)	A.R.S. § 3-363 A.A.C. R3-3-203	14	14	56	14	70
Agricultural Aircraft Pilot License (AAP)	A.R.S. § 3-363 A.A.C. R3-3-204	14	14	56	14	70
Drone Pilot License (DPL)	A.R.S. § 3-363 A.A.C. R3-3-204	14	14	56	14	70
Custom Applicator License (CAL)	A.R.S. § 3-363 A.A.C. R3-3-205	14	14	63	14	77
Application Equipment Tag	A.R.S. § 3-363 A.A.C. R3-3-206	14	14	56	14	70
Agricultural Pest Control Advisor (PCA) License	A.R.S. § 3-363 A.A.C. R3-3-207	14	14	63	14	77
Commercial Applicator Certification (PUC)	A.R.S. § 3-363 A.A.C. R3-3-208	14	14	63	14	77
Private Applicator Certification (PUP)	A.R.S. § 3-363	14	14	63	14	77

	A.A.C. R3-3-208					
~~Private Fumigation Certification~~	~~A.R.S. § 3-363~~	~~14~~	~~14~~	~~63~~	~~14~~	~~77~~
Golf Applicator Certification (PUG)	A.R.S. § 3-363 A.A.C. R3-3-208	14	14	63	14	77
Experimental Use Permit	A.R.S. § 3-350.01 A.A.C. R3-3-212	14	14	28	14	42
Pesticide Registration	A.R.S. § 3-351 A.A.C. R3-3-702	14	14	91	14	105
License to Manufacture or Distribute Commercial Feed	A.R.S. § 3-2609 A.A.C. R3-3-902	14	14	42	14	56
Commercial Fertilizer License Specialty Fertilizer Registration	A.R.S. § 3-272 A.A.C. R3-3-802	14 14	14 14	42 56	14 14	56 70
Agricultural Safety Trainer Certification	A.R.S. § 3-3125 A.A.C. R3-3-1003	28	14	28	14	56
ARIZONA NATIVE PLANTS						
Notice of Intent Confirmation Notice of Intent	A.R.S. § 3-904 A.A.C. R3-3-1102	14	14	14	14	28
• Salvage Assessed Native Plant Permits	A.R.S. § 3-906 A.A.C. R3-3-1104	14 14	14 14	14 14	14 14	28 28

• Salvage Restricted Native Plant Permits • Scientific Permits		14	14	14	14	28
~~Movement Permits~~ Non-commercial salvage	A.R.S. § 3-906	14	14	14	14	28
Annual Permits for Harvest-Restricted Native Plants	A.R.S. § 3-907 A.A.C. R3-3-1104	14	14	14	14	28

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

R3-3-200. General; Applications; Renewals; Fees; Examinations; Exemptions

A. An applicant for certification, license or permit shall submit the appropriate completed application to the Department accompanied by the appropriate fee prescribed in the table following, for each year or portion of the year during which the certification, license or permit is valid.

License	Administrative Rule	Fee
Pesticide Grower Permit (PGP)	R3-3-201	$20 per year
Pesticide Seller Permit (PSP)	R3-3-203	$100 per year
Agriculture Aircraft Pilot License (AAP)	R3-3-204	$50 per year
Drone Pilot License (DPL)	R3-3-204	$50 per year
Custom Applicator License (CAL)	R3-3-208(E)	$100 per year
Agriculture Pest Control Advisor (PCA)	R3-4-207	$50 per year
Certified Applicator (PUP, PUC & PUG)	R3-3-208	$50 per year

B. Applicants for a PGP, PSP, AAP, DPL, CAL, PCA or Certified Applicator are not transferable, and expire on December 31.

C. Certifications, Licenses, or Permits are:

1. Valid for the year issued for new Certified Applicator or PCA applicants, except for those issued between October 1 and December 31 which are valid until December 31 of the next calendar year;
2. Valid for one or two years, for all other applicants depending on the renewal period selected by the applicant; and
3. Renewed for all categories of certification for the same renewal period.

D. Education and CEU Requirements.

1. Prior to submitting a new application for a PCA license, applicants shall complete the educational requirements pursuant to R3-3-207.
2. Prior to submitting a renewal application for a PCA license or certified applicator, applicants shall complete any CEU requirements pertinent to the category(s) in which renewal is being applied for.

3. It is the applicant's responsibility to take CEUs pertinent to the category(s) for which the applicant is seeking to renew certification.
4. The Department may screen renewal applications to ensure the CEU courses taken by the applicant are pertinent to the category(s) for which the applicant is seeking to renew licensure.

E. Examinations. In addition to the specific requirements found in R3-3-203 through R3-3-208, the following general provisions apply to this Article:

1. The Department shall administer examinations required under this Article by appointment at every Environmental Services office.
2. An applicant shall demonstrate knowledge and understanding by scoring at least 75 percent on a written examination for each examination taken under this Article.
3. An individual who fails an examination may retake it no more than two times in a six-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.
4. The Director may deny a certification or license after an opportunity for an administrative hearing is given, for any individual who is found cheating during the examination process and shall be prohibited from re-taking any examination required under this Article for no less than one year.
5. The Director may revoke a certification or license after an opportunity for an administrative hearing is given, for an individual who is found cheating on an examination and shall be prohibited from re-taking any examination required under this Article for no less than one year.
6. Cheating includes one or more of the following:
    a, Computer or mobile device usage to search for answers to exam questions or to copy exam questions;
    b. Use of copied exam answers in any form; or
    c. Any other means in which the answers to the exam questions are obtained without using the knowledge of the exam taker.

F. Renewal; expired license or certification.

1. An applicant may renew an expired license without retaking the written examinations under R3-3-207 provided the applicant:
    a. Within the licensing period, complies with the CEU requirements in R3-3-207;
    b. Submits a completed application within 11 months after the expiration date of the license;
    c. Does not provide any pest control-related service from the date the license expired until the date the renewal is effective;
    d. Pays the license fee plus a $10 late fee for each month the certification has been expired, with the late fee not exceeding $110 (11 months); and
    e. Obtains the required CEU's while the license is active.
2. An applicant may renew an expired certification without retaking the written examinations under R3-3-208 provided the applicant:
    a. Has satisfied the CEU requirements in R3-3-208(E)(3), within the current certification period;
    b. Submits a completed renewal application within 11 months after the expiration date;

c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective;

d. Pays the renewal fee plus a $10 late fee for each month, with the penalty not to exceed $110 (11 months); and

e. Obtains the required CEU's while the certification is current.

3. Applicants with expired certifications greater than 11 months shall complete the requirements for initial certification, including retaking and passing the applicable written examinations prescribed in this Section.4. Notwithstanding R3-3-200 (F)(1) or (2), in addition to any penalties or fines imposed for committing a violation pursuant to A.A.C. R3-3-502 (C)(1) or (G)(4), for operating with an expired license or certification, the applicant shall take any written examinations required to renew a PCA license or Certified Applicator.

G. License and Fee Exemptions

1. A person who applies pesticides in buildings or for structural pest control purposes is not required to apply for or possess any license or certification from the Department under this Article.
2. A person who sells, offers for sale, delivers, or offers for delivery a general use pesticide, to be used for private, noncommercial use in or around the home or a person who sells general use pesticides for swimming pool or spa maintenance is not required to apply for or possess a seller's permit from the Department.
3. A state, federal, tribal, or other governmental employee, who makes pest control recommendations or applies or supervises the use of restricted use pesticides while engaged in the performance of official duties shall meet the requirements of this Article, but is not required to pay a fee for any agricultural license, certification, or permit under this Article when used solely for work related purposes.
4. A person who only furnishes information concerning label requirements governing a registered pesticide is not required to apply for or possess a PCA license from the Department.

R3-3-201. ~~Regulated~~ Pesticide Grower Permit~~; Fee~~ (PGP)

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A regulated grower shall not order, purchase, take delivery of, use, or recommend the use of any pesticide for an agricultural purpose or golf course without a valid ~~regulated~~ pesticide grower permit (PGP), issued by the Department.

B. A person applying for a ~~regulated grower permit~~ PGP, initial or renewal, shall provide the following information on a form obtained from the Department:

1. ~~Name, signature, and social security or employer's identification number of the applicant;~~ Name and signature of the applicant;
2. Date of the permit application;
3. Name, address, e-mail address, if applicable, and daytime telephone number of the company or ~~farm~~ agricultural establishment where the applicant may be reached;
4. Permit renewal period; ~~and~~
5. Sections, townships, ranges, and acres of the land where pesticides may be ~~applied.~~ applied;
6. The names and certification numbers of certified private or golf applicators, or commercial applicators acting as private applicators, who are employed by the PGP; and
7. For individual applicants, information and documentation concerning lawful presence required under ARS § 41-1080, if not on file.

~~C. The applicant shall submit the completed application to the Department accompanied by a $20 fee for each year or portion of the year during which the permit is valid.~~

~~D. A regulated grower permit is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.~~

R3-3-202. ~~Core Examination~~ Repealed

~~A. In addition to other requirements prescribed by this Article, an individual seeking any of the following shall obtain a score of at least 75 percent on a written core examination administered by the Department:~~

~~1. Designation as a responsible individual;~~

~~2. An initial license as:~~

~~a. An agricultural aircraft pilot;~~

~~b. A custom applicator;~~

~~c. An agricultural pest control advisor; or~~

~~3. An initial certification as:~~

~~a. A private applicator;~~

~~b. A commercial applicator; or~~

~~c. A golf applicator.~~

~~B. The Department shall administer examinations by appointment at every Environmental Services Division office. The Department shall ensure that the examination tests the knowledge and understanding of the following subjects that are described in more detail at Appendix A, subsections (A) and (C):~~

~~1. Pesticide use, safety, and toxicity~~

~~2. Pesticide labels and labeling;~~

~~3. Pesticide terminology;~~

~~4. Common causes of accidents;~~

~~5. Necessity for protective equipment;~~

~~6. Poisoning symptoms;~~

~~7. Practical first aid; and;~~

~~8. Statutes and rules relating to the sale, application, and use of pesticides;~~

~~C. An individual who fails the examination may retake the examination no more than three times in a 12 -month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~

R3-3-203. Pesticide Seller Permit (PSP); ~~Fee;~~ Responsible Individual

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A person shall not act as a pesticide seller without a valid ~~seller permit~~ Pesticide Seller Permit (PSP), issued by the Department.

B. A seller shall obtain a ~~seller permit~~ PSP for each physical location where the seller sells or offers for sale any restricted use pesticide or ~~pesticide for an agricultural purpose within the state.~~ agricultural use pesticide.

C. A person applying for a ~~seller permit~~ PSP, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the responsible individual, and certification or license ~~number, if applicable;~~ number;

2. Date of the permit application;
3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the location selling a restricted use pesticide or a pesticide for an agricultural purpose;
4. Permit renewal period;
5. Name, e-mail address, and daytime telephone number of the Arizona contact for each out-of-state seller, if applicable;
6. Address where records required to be maintained under R3-3-401 will be kept;
7. Whether the applicant has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application; and
8. ~~If applicable, the number of the license or certificate of the responsible individual, and~~ The current seller permit number, if applicable.

D. ~~The applicant shall submit the completed application to the Department accompanied by a $100 fee for each year or portion of the year during which the permit is valid.~~ The Department shall not renew a seller permit unless the seller is in compliance with the provisions established in subsection (E), if applicable.

E. ~~A seller permit is not transferable, expires on December 31, and is valid for one or two years, depending on the permit renewal period selected by the applicant. The Department shall not renew a seller permit unless the seller is in compliance with the provisions established in subsection (F), if applicable.~~

~~F.~~E. A seller shall designate a different responsible individual for each physical location in this state that sells or offers for sale any restricted use ~~pesticide.~~ pesticide or agricultural use pesticide. If a responsible individual terminates employment at an assigned location, the seller shall designate another responsible individual within 30 calendar days and notify the Department of the replacement.

1. ~~If a responsible individual terminates employment at an assigned location, the seller shall designate another responsible individual within 30 calendar days and notify the Department of the replacement.~~
2. ~~For a responsible individual who is not a commercial applicator or a PCA:~~
   a. ~~The core examination expires December 31, unless the initial examination is passed in the last quarter of a calendar year, in which case the expiration is December 31 of the following year; and~~
   b. ~~The responsible individual shall retake and pass the core examination every year, unless the responsible individual completes three CEUs annually before the renewal date.~~

R3-3-204. Agricultural Aircraft Pilot License~~; Examination; Fee; Renewal~~ (AAP); Drone Pilot License (DPL)

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. An individual shall not act as an agricultural aircraft pilot or drone pilot without:

1. A valid agricultural aircraft pilot license (AAP) for aircraft pilots, or drone pilot license (DPL) for drone, issued under this Section, and
2. ~~A~~ If application work will be done for hire or exchange of services, a valid commercial applicator certification issued under R3-3-208.

B. The Department shall not issue or renew ~~an agricultural aircraft pilot license~~ an AAP or DPL, and an existing ~~agricultural aircraft pilot license~~ AAP or DPL is invalid unless the applicant or license ~~holder~~ holder:

1. has a valid commercial pilot's certificate issued by the ~~Federal Aviation Administration and a valid commercial applicator certification.~~ FAA as prescribed under 14 CFR §§ 137.1 *et seq.* (amended March 5, 2018,

https://www.ecfr.gov/current/title-14/chapter-I/subchapter-G/part-137). This material is incorporated by reference, is on file with the Department and does not include any later amendments or editions; or

2. has a valid drone pilot's certificate for a DPL that has been issued by the FAA under 14 CFR §§ 107.1 *et seq.* (amended January 15, 2021, https://www.ecfr.gov/current/title-14/chapter-I/subchapter-F/part-107/subpart-A) This material is incorporated by reference, is on file with the Department and does not include any later amendments or editions.

C. An individual applying for an ~~agricultural aircraft pilot license~~ AAP or DPL, initial or renewal, shall provide the following information on a form obtained from the Department:

1. ~~Name, social security number,~~ Name and signature of the applicant;
2. Date of application;
3. Address, e-mail address, ~~if applicable,~~ and daytime telephone number of the applicant;
4. License renewal period;
5. Name, physical address, mailing address, e-mail address, ~~if applicable,~~ and daytime telephone number of the applicant's employer, if applicable;
6. ~~Copy~~ As applicable, a current copy of the ~~applicant's commercial pilot certificate issued by the Federal Aviation Administration, if not previously filed with the Department;~~ applicant's:
   a. commercial pilot certificate issued by the FAA for an AAP applicant, if not previously filed with the Department; or
   b. drone pilot's certificate issued by the FAA for a DPL applicant, if not previously filed with the Department.
7. Applicant's commercial applicator certification number; ~~and~~
8. Whether the applicant has had a similar certification or license revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application and the nature of the ~~violation.~~ violation; and
9. Information and documentation indicating that the individual's presence in the United States is authorized under federal law pursuant to ARS § 41-1080, if not on file.

~~**D.** The applicant shall submit the completed application to the Department, accompanied by a $50 fee for each year or portion of the year during which the license is valid.~~

~~**E.** An agricultural aircraft pilot license is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.~~

~~**F.** Examinations.~~

~~1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:~~

~~a. Safe flight and application procedures, including steps to be taken before starting a pesticide application, such as survey of the area to be treated, and considering the possible hazards to public health;~~

~~b. Calibration of aerial application equipment; and~~

~~c. Operation and application in the vicinity of schools, child care facilities, health care institutions, and residences.~~

~~2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~

~~G.~~ ~~Renewal; expired license.~~

1. ~~An applicant may renew an expired license without retaking the written examinations in subsection (F) under the following conditions:~~
   a. ~~The applicant submits the completed application and fee within 30 days after the expiration date, and~~
   b. ~~The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.~~
2. ~~All other applicants for renewal shall retake the written examinations prescribed in subsection (F).~~

R3-3-205. Custom Applicator License~~; Examination; Fee; Renewal~~ (CAL)

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A person shall not act as a custom applicator without a valid ~~custom applicator license~~ CAL issued by the Department.

B. A person applying for a ~~custom applicator license~~ CAL, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;
2. Date of the license application;
3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business ~~under subsection (C)~~;
4. ~~Tax identification number of the business;~~
5. ~~4.~~ License renewal period;
6. ~~5.~~ Whether the application is for ground or air custom application, or both;
7. ~~6.~~ Names and current certification numbers of the commercial applicators employed by the business~~, as prescribed in subsection (C)(1)~~;
8. ~~7.~~ Evidence of insurance coverage, showing the name of the insurance carrier, policy number, policy term, policy limits, and any applicable exclusions; ~~and~~
9. ~~8.~~ Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the ~~violation.~~ violation;
10. The name and contact information for a contact person at the business if different than the applicant; and
11. For individual applicants, information and documentation indicating that the individual's presence in the United States is authorized under federal law pursuant to ARS § 41-1080, if not on file.

C. The Department shall not issue or renew a ~~custom applicator license~~ CAL and an existing ~~custom applicator license~~ CAL is invalid unless the applicant or license holder:

1. Is a commercial applicator or employs at least one individual who is certified as a commercial applicator under R3-3-208; and
2. Maintains or the business that employs the applicator or license holder maintains public liability, drift, and property damage insurance coverage with an aggregate amount of at least $300,000 during the licensing period. The applicant or license holder shall provide evidence of insurance coverage to the Department upon initial application, for each renewal, or upon request of the Department; ~~and~~
3. ~~Files with the Department a copy of the commercial applicator's valid Federal Aviation Administration commercial agricultural aircraft operator's certificate, if using aircraft. If not already on file with the Department, an applicant or~~

~~license holder shall submit a copy of the certificate with the completed application form.~~

D. A ~~custom applicator license~~ CAL holder may:

1. Temporarily relinquish a ~~custom applicator license~~ CAL if the custom applicator:
   a. Advises the Department of termination of the insurance prescribed in subsection (C)(2), and the effective date of termination; and
   b. Ceases to act as a custom applicator on the termination date.
2. Reinstate the ~~custom applicator license~~ CAL within the same licensing time period, without again paying the fee as prescribed in subsection (E), if the custom applicator:
   a. Purchases insurance as prescribed in subsection (C)(2), and
   b. Notifies the Department of the effective date of the insurance.

~~**E.** The applicant shall submit the completed application to the Department, accompanied by a $100 fee for each year, or portion of the year during which the license is valid.~~

~~**F.** A custom applicator license is not transferable, expires on December 31, and is valid for one or two years, depending on the renewal period selected by the applicant.~~

~~**G.** Examinations.~~

~~1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:~~
   ~~a. Calibration of application equipment;~~
   ~~b. Aerial application procedures, if applicable; and~~
   ~~c. Ground application procedures, if applicable.~~
~~2. An individual who fails the examination may retake it no more than three times in a 12 month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~

~~**H.** Renewal; expired license.~~

~~1. An applicant may renew an expired license without retaking the written examinations in subsection (G) under the following conditions:~~
   ~~a. The applicant submits the completed application and fee within 30 days after the expiration date, and~~
   ~~b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.~~
~~2. All other applicants for renewal shall retake the written examinations prescribed in subsection (G).~~

R3-3-206. Custom Application Equipment Tag; Fee

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A custom applicator shall not use custom application equipment unless the equipment has a valid tag. The custom applicator licensee shall place and maintain a valid tag so that it is prominently displayed on the pesticide application equipment.

B. A person applying for a tag shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;
2. Date of the application;

3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;
4. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business, if applicable; ~~and~~
5. Manufacturer, make, model and serial number, and if an aircraft or drone, the ~~aircraft~~ FAA registration number ("N" number for aircraft, or drone with an operating weight of over 55 lbs. total, including payload; or "FA" number for drone with an operating weight up to 55 lbs. total, including payload) of the application ~~equipment.~~ equipment; and
6. The name and contact information for a contact person at the business if different than the applicant,

C. The Department shall not issue or renew a tag and an existing tag is invalid if the custom applicator license is invalid.

D. An applicant shall submit the completed application to the Department, accompanied by a $25 fee for each piece of equipment, for each year or portion of the year during which the tag is valid.

E. A tag expires on December 31, and is valid for the same time period as the custom applicator license.

F. A custom applicator licensee shall not transfer a tag except as follows:

1. If ~~a licensed piece of~~ equipment with a valid tag, is destroyed, rendered unusable, or transferred out of the state, the custom applicator licensee may transfer the tag to another piece of equipment.
2. If ~~a licensed piece of~~ equipment with a valid tag, is leased, sold, or traded, the custom applicator licensee shall transfer the tag with the equipment to the lessee or new owner.
3. Before transferring a tag, the custom applicator licensee shall notify the Department that the equipment with the valid tag is being transferred and identify the person to whom the equipment with the valid tag is being transferred or identify the piece of equipment to which the tag is being transferred, or the tag is invalid.

R3-3-207. Agricultural Pest Control Advisor (PCA) License; ~~Examination; Fee; Renewal;~~ Exemption

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. An individual shall not act as a PCA without a valid PCA license issued by the Department. To advise in any of the categories listed in subsection (I), a PCA shall pass the specific examination associated with the category.

B. An individual, without a valid PCA license, applying for a PCA license shall provide the following information on a form obtained from the Department:

1. The applicant's name, address, e-mail address, daytime telephone number, social security number, and signature;
2. Date of the application;
3. ~~License renewal period;~~
4.3. Name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer, if applicable;
5.4. Examinations that the applicant has passed by category; ~~and~~
6.5. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation resulting in the revocation, suspension, or ~~denial.~~ denial; and
6. Information and documentation indicating that the individual's presence in the United States is authorized under federal law pursuant to ARS § 41-1080, if not on file.

C. An individual applying for a PCA license, except an individual who holds or has held a PCA license in this state within the previous five years shall meet one of the following five sets of qualifications:

1. College degree.

a. Possess a bachelor's degree (B.A. or B.S.), master's degree or doctorate degree in any subject; and

b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D).

2. Master's degree in a biological science.

a. Possess a master's degree in a biological science;

b. Have 12 months of work experience related to a core area listed in subsection (D); and

c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.

3. Doctorate degree in a biological science.

a. Possess a doctorate degree in a biological science; and either

b. Meet the qualifications in subsection (C)(2)(b) and (C)(2)(c); or

c. Have a letter of recommendation from the faculty member that supervised the dissertation or the division head of the discipline.

4. Other education with unlicensed experience.

a. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D);

b. Have 24 months of work experience related to a core area listed in subsection (D); and

c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.

5. Other education with licensed experience.

a. Be currently licensed as a pest control advisor (PCA) or equivalent in another state; and

b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D), except that each year of verifiable licensed experience under subsection (C)(5)(a) within the previous 5 years qualifies for two semester hours up to 10 hours. The semester hours based on licensed experience do not reduce the minimum hours required from each individual core area.

c. The applicant shall provide proof of the equivalency of a license from another state.

D. The 42 semester hours (63 quarter units) of college-level curricula specified in subsection (C) shall come from the core areas shown in the following table, with at least the minimum indicated hours (or units) coming from each individual core area. A single course shall not count toward the minimum hours of more than one core area. At least one course from the pest management systems and methods core area shall emphasize integrated pest management principles. Each course completed must be awarded credit with a minimum passing grade of a "C" or a 2.0 GPA, or a passing score if taken on a pass or fail basis.

Core Area	**Examples of Subjects**	**Sem. Hours**	**Qtr. Units**
Physical, biological, and earth sciences, and mathematics	Inorganic chemistry; organic chemistry; biochemistry; plant biology or botany; general ecology; biology; genetics; plant physiology; zoology; post-algebra mathematics	12	18

Crop health	Soils and irrigation; vegetation management or weed science; plant pathology; entomology; plant nutrition or fertility; nematology; vertebrate management	6	9
Pest management systems and methods	Applied courses in entomology, plant pathology, vegetation management or weed science, and other pest management disciplines; pesticides or use of pesticides; pest control equipment systems; alternative cropping systems; sustainable or organic agricultural systems; biological control	3	4.5
Production systems	Horticulture; viticulture; forestry; agronomy; crop, vegetable, fruit or animal sciences; other production systems (e.g., wildlife production, cattle production)	3	4.5

E. Alternative curricula credits.

1. A current crop advisor certificate issued by the American Society of Agronomy qualifies for three semester hours in one of the following core areas: physical, biological and earth sciences and mathematics; crop health; or production systems.
2. Non-traditional courses such as a senior project, an internship, cooperative work experience, independent study, a dissertation or a thesis qualify for three semester hours in one of the core areas of crop health, pest management systems and methods, or production systems, as applicable.
3. For applicants with a bachelor's, master's, or doctorate degree, at least one year of full-time related work experience qualifies for three semester hours in one of the core areas of pest management systems and methods or production systems, as applicable.

F. In addition to the information required by subsection (B), an applicant shall submit to the Department:

1. An official transcript verifying the courses completed and the degrees granted to the ~~applicant~~ applicant;

2. Documentation verifying alternative curricula relied on under subsection (E). Documentation of subsection (E)(2) and (E)(3) shall include a letter certifying completion and describing the activity from the institution, a faculty member or ~~supervisor.~~ supervisor; and

3. If applicable, the letter required for licensure under subsection (C).

~~4. A $50 fee.~~

~~**G.** A PCA license is not transferable, expires on December 31, and is:~~

~~1. Issued for up to one year as an initial license;~~

~~2. Renewed every one or two years, depending on the renewal period selected by the applicant; and~~

~~3. Renewed for all categories of license under subsection (I) for the same renewal period.~~

~~**H.**~~**G.** Renewal.

~~1. The continuing education requirement in subsection (H)(5) is not applicable to an individual who passes the examination prescribed in subsection (I) and who applies for a PCA license between October 1 and December 31 of the test year.~~

~~2. Upon renewal, a PCA license is valid for one or two years, depending on the renewal period selected by the applicant, provided the applicant meets the criteria prescribed under subsection (H).~~

~~3. An applicant shall submit the completed application, accompanied by a $50 fee for each licensing year or portion of the year during which the license is valid.~~

~~4. Renewal, expired license.~~

~~a. An applicant may renew an expired license without retaking the written examinations under subsection (I) provided the applicant:~~

~~i. Complies with the CEU requirements in subsection (H)(5),~~

~~ii. Submits a completed application and fee within 30 days after the expiration date, and~~

~~iii. Does not provide any pest control-related service from the date the license expired until the date the renewal is effective.~~

~~b. All other applicants for renewal shall retake the applicable written examinations prescribed in subsection (I).~~

~~5.~~1. The Department shall not renew a PCA license unless, before the expiration of the current license, the licensee completes 15 CEUs for each year of the renewal period or passes any applicable examination prescribed in subsection (I). The licensee shall complete CEU credit during the calendar years the current license is in effect. CEUs earned that are in excess of the requirements do not carry forward for use with future renewals.

~~6.~~2. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.

3. For license renewal, the license may only be renewed if the required CEUs are obtained and the renewal application and fees are received by the Department within the specified time period.

~~**I.**~~**H.** Examinations.

1. ~~The Department shall administer examinations by appointment at every Environmental Services Division office.~~ In addition to the core examination ~~required in R3-3-202,~~ as prescribed in R3-3-208(D), an applicant shall demonstrate knowledge and understanding of integrated pest management in any of the following categories ~~by scoring at least 75 percent on a written examination~~:

a. Weed control,

b. Invertebrate control,

c. Nematode control,

d. Plant pathogen control,

e. Vertebrate pest control,

f. Plant growth regulators, or

g. Defoliation.

~~2. An individual who fails the examination may retake it no more than two times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~

~~J.~~**I.** Exemption. An individual operating in an official capacity for a college or university, providing recommendations in a not-for-profit capacity, or merely furnishing information concerning general and labeling usage of a registered pesticide is not considered an authority or general advisor for the purposes of this Chapter.

R3-3-208. Applicator Certification (PUP, PUG, PUC); Categories; Competency; Examination; ~~Fee;~~ Renewal

In addition to the provisions found under R3-3-200, the following applies to this Section.

A. An individual shall not act as a private ~~applicator~~ (PUP), golf ~~applicator~~ (PUG), or commercial (PUC) applicator unless the individual is 18 years of age and certified by the Department.

B. An individual shall take and pass both the core exam and the appropriate category exam, or exams, they are seeking to show competency to become a certified applicator.

~~B.~~**C.** Application. An individual applying for either ~~commercial, golf, or private~~ PUP, PUG, or PUC applicator certification shall pay the applicable fee as prescribed in R3-3-200(A) and submit a completed application to the Department containing the following information on a form obtained from the Department:

1. The applicant's name, address, e-mail address if applicable, daytime telephone number, Social Security number, date of birth, and signature;
2. Date of the application;
3. ~~Name,~~ If applicable, name, physical address, mailing address, e-mail address, ~~if applicable,~~ and daytime telephone number of the applicant's employer~~, if applicable~~;
4. Whether the application is for a ~~commercial, golf, or private~~ PUP, PUG, or PUC applicator certification;

~~5. If applicable, an indication the applicant seeks private applicator fumigation certification;~~

~~6. If applicable, an indication the applicant seeks golf applicator aquatic certification;~~

~~7. For commercial certification, the categories in which the applicant seeks to be certified;~~

~~8. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and~~

~~9. Certification renewal period.~~

5. Which category or categories the individual seeks certification;
6. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and
7. Information and documentation indicating that the individual's presence in the United States is authorized under federal law pursuant to ARS § 41-1080, if not on file.

~~C. Private applicator fumigation certification.~~

1. ~~Fumigation certification requires certification as a private applicator, a golf applicator, or a commercial applicator.~~
2. ~~Fumigation certification allows a private applicator or a commercial applicator acting as a private applicator to use, apply, or supervise the use or application of a fumigant to an on-farm raw agricultural commodity or on-farm burrowing rodent problem.~~
3. ~~Fumigation certification allows a golf applicator to use and apply a fumigant to a golf course burrowing rodent problem.~~

D. ~~Golf applicator aquatic certification allows a golf applicator to use or apply an aquatic pesticide to a body of water on a golf course to control an aquatic pest problem.~~

E. ~~Golf restricted use pesticide certification allows a golf applicator to use or apply restricted use pesticides to an ornamental and turf area of a golf course.~~

~~F.~~D. Examinations and Competency Standards. ~~The Department shall administer examinations by appointment at every Environmental Services Division office. An applicant shall achieve a passing score of 75 percent in the applicable subject area in order to receive initial certification.~~

~~1. Commercial applicator certification (PUC). In addition to the core examination required by R3-3-202, an applicant shall demonstrate knowledge and understanding of the subjects listed in Appendix A, subsection (B) for each commercial certification category sought.~~

~~2. Commercial certification categories. An individual may apply for commercial applicator certification in any of the following categories:~~

~~a. Agricultural pest control;~~

~~b. Forest pest control;~~

~~c. Seed-treatment;~~

~~d. Aquatic pest control;~~

~~e. Right-of-way pest control;~~

~~f. Public health pest control;~~

~~g. Regulatory pest control: M-44 or rodent, if a government employee; or~~

~~h. Demonstration and research pest control~~

~~3. Private applicator (PUP) and golf applicator (PUG) certification. An applicant shall demonstrate knowledge and understanding of the core examination subjects listed in R3-3-202.~~

~~4.Fumigation certification. An applicant seeking private applicator fumigation certification shall also pass a separate fumigation examination.~~

~~5.Aquatic certification. An applicant seeking aquatic certification shall also pass a separate aquatics examination.~~

~~6. An individual who fails an examination may retake it no more than three times in a 12-month period, and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~

1. The Department shall ensure that the core examination tests the knowledge and understanding of 40 CFR § 171.103 for a PUC or PUG applicator license, or 40 CFR § 171.105 for a PUP applicator license (As amended January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171) This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.
2. Exam Categories and Competency Standards:

a. For commercial applicators:

i. The exam categories shall be as prescribed in 40 CFR § 171.101(a) through (e), and (i) through (o) (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

ii. Notwithstanding subsection (D)(5)(a)(i), the exam categories as prescribed in 40 CFR § 171.101(a)(2), (k), (l), and (m) shall not be mandatory for certification until January 1, 2026 (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

iii. Notwithstanding 40 CFR § 171.103(e), the competency standards shall be as prescribed in 40 CFR § 171.103(a)(2), (b), (c), (d)(1) through (5) and (9) through (15) (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

iv. Notwithstanding subsection (D)(5)(a)(iii), the competency standards prescribed in 40 CFR § 171.103(d)(1)(ii), and (11) through (13) shall not be mandatory for certification until January 1, 2026, (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

b. For private applicators:

i. The categories shall be as prescribed in 40 CFR § 171.105(a)(11) and (b) through (e), (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171) This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

ii. Notwithstanding subsection (D)(5)(b)(i), the competency standards prescribed in 40 CFR § 171.105(b) through (d) shall not be mandatory for certification until January 1, 2026, 39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

c. For golf applicators:

i. The categories shall be as prescribed in 40 CFR § 171.101(c), (e), and (n), (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171) This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions; and

ii The competency standards shall be prescribed in 40 CFR § 171.103(c) and (d)(3), (5), and (14), (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-

40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

3. Certifications issued or renewed under this Article prior to February 6, 2023 are not required to comply with the examination and competency standards until the individual is renewing a private, golf, or commercial applicator certification. This provision shall expire on December 31, 2026.

~~G. Fee.~~

~~1. An applicant for private or commercial certification shall pay a $50 fee per year of certification.~~

~~2. An applicant for golf certification shall pay a $100 fee per year of certification.~~

~~H. Applicator certification is not transferable, expires on December 31, and is:~~

~~1. Issued for the remainder of the calendar year as an initial certification;~~

~~2. Renewed for one or two years, depending on the renewal period selected by the applicant; and~~

~~3. Renewed for all categories of certification for the same renewal period.~~

~~I.~~**E.** Renewal; CEU requirements.

1. An applicant for renewal of an applicator certification shall select a one or two-year renewal period.

2. An applicant shall submit the completed application accompanied by the applicable fee for a one-year renewal or double the fee for a two-year renewal.

3. CEU requirements.

a. The Department shall not renew a private applicator or golf applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs pertinent to the category(s) for which the applicant is seeking to renew licensure for each year of the renewal period.

b. The Department shall not renew a commercial applicator certification unless, prior to expiration of the current certification, the applicator completes six CEUs pertinent to the category(s) for which the applicant is seeking to renew for each year of the renewal period.

~~c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's private, golf, or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.~~

~~d. The Department shall not renew an aquatic certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's golf applicator certification under this subsection and completes three additional CEUs per year of the renewal period. The three additional CEUs per year may also be used to simultaneously satisfy the three additional CEUs per year requirement in subsection (H)(3)(c).~~

~~c.~~c. ~~An applicator shall complete CEU credit while the current certification period is in effect~~ All CEU credit requirements shall be completed during the certification period, prior to renewal. CEU credits earned in excess of the requirements do not carry forward for use in subsequent renewals.

~~f.~~d. To obtain credit, ~~the applicant shall provide~~ the Department shall be provided with documentation of completion of the CEU course.

~~g. The CEU requirements are not applicable to an individual renewing an initial certification issued between October 1 and December 31.~~

4. Examination exception. An applicator who fails to complete the CEUs required for renewal may renew a certification, prior to expiration, for one year by submitting the completed application accompanied by the applicable fee and retaking and passing the applicable certification examination prescribed in this Section.

J. Renewal; expired certification.

1. An applicant may renew an expired certification without retaking the written examinations provided the applicant:
   a. Has satisfied the CEU requirements,
   b. Submits a completed application and fee within 30 days after the expiration date, and
   c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective.
2. All other applicants for renewal shall complete the requirements for initial certification, including retaking and passing the written examinations prescribed in this Section.

F. Reciprocal Certification

1. The Director may waive the examination requirements in whole or in part for an individual who is certified as an applicator by another State, Federal, or Tribal agency under an approved EPA certification plan.
   a. A applicant must apply for Arizona reciprocal certification.
      i. The applicant shall provide the information as prescribed in R3-4-208(B).
      ii. The applicant shall submit the Department required form to their state, federal, or tribal agency for verification of certification.
      iii. Upon verification of the competency standards for each category of certification requested, the Department may issue a like category applicator license.
      iv. The Department shall terminate an applicator's certification upon notification that the applicator's original certification has been terminated in the originating state, for any reason.
      v. The applicant may request a hearing if the Department denies an application for a reciprocal certification based on the competencies approved by another state, federal, or tribal agency.
2. Anyone certified through reciprocal certification must notify the Department of termination of the originating-state's certification. Failure to notify the Department within three business days after the effective date of termination may result in revocation of the Arizona certification, and the applicant may not reapply for Arizona certification for a twelve-month period.

R3-3-209. ~~License and Fee Exemptions~~Repealed

A. A person who applies pesticides in buildings or for structural pest control purposes is not required to apply for or possess any license or certification from the Department.

B. A person who sells, offers for sale, delivers, or offers for delivery a general use pesticide, to be used for private, noncommercial use in or around the home or a person who sells general use pesticides for swimming pool or spa maintenance is not required to apply for or possess a seller's permit from the Department.

C. A state, federal, or other governmental employee, who makes pest control recommendations or applies or supervises the use of restricted use pesticides while engaged in the performance of official duties shall meet the requirements of this Article, but is not required to pay a fee for either a PCA license or a commercial applicator certification.

~~**D.** A person who only furnishes information concerning label requirements governing a registered pesticide is not required to apply for or possess a PCA license from the Department.~~

R3-3-210. Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification

A. The Director ~~has the authority to~~ may deny, or after an opportunity for an administrative hearing, suspend or revoke a license, permit, or certification of any person who:

1. Fails to demonstrate sufficient reliability, expertise, integrity, and competence in engaging in pesticide ~~use;~~ use, which is considered misuse and is a violation of state laws or regulations relevant to the State certification plan;
2. Submits an inaccurate application for a license, permit, or certification; ~~or~~
3. Has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of ~~application.~~ application;
4. Fails to pay fines, penalties and fees;
5. Falsifies records required to be maintained by the certified applicator;
6. Is convicted of a criminal charge under Section 14(b) of FIFRA;
7. Is ordered to pay a civil penalty under Section 14(a) of FIFRA; or
8. Commits a violation of any of the following: A.R.S. §§ Title 3, Chapter 2, Articles 5 and 6 and Chapter 17 or A.A.C. Title 3, Chapter 3, Articles 1-5 and 10 which are relevant to the State certification plan.

B. Upon notice of a denial, the applicant may request, in writing, that the Director provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10 to appeal the denial of the license, permit, or certification.

R3-3-211. CEU Course Approval; Subject Approval

A. CEU course approval.

1. A person who wishes to have the Department determine whether a course qualifies for CEU credit shall submit the following information to the Department:
   a. Name, address, e-mail address, if applicable, and telephone number of the course's sponsor;
   b. Signature of the sponsor or the sponsor's representative;
   c. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
   d. Brief description of the information covered within each subject;
   e. Brief biography of the presenter, demonstrating the presenter's qualifications;
   f. Fees charged for attending the course;
   g. Date and location of each session; and
   h. Whether the course is open to the public.
2. A person who requires prior notification of the number of CEUs that can be earned by completing an approved course before it is held shall submit the information required in subsection (A)(1) to the Department at least 14 business days before the course is held.
3. The Department may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the Department modifies the number of CEUs earned, the Department shall send a letter of modification to the course organizer, who shall be requested to inform all individuals who attended the course.

B. Subject approval. The Department shall provide enough information so that the applicator can determine if the CEUs are pertinent to the categories in which they are seeking renewal. The Department shall grant one hour of CEU credit for every 50 minutes of actual instruction in an approved program relating to agricultural pest control or any of the following subjects:

1. Those listed in ~~R3-3-208(F)(1);~~ R3-4-208(D);
2. ~~IPM,~~ IPM; or
3. Any other pesticide or pesticide use subject approved by the Associate Director.

R3-3-212. Experimental Use Permit

~~**A.** Small-scale pesticide testing. For a person exempted by Section 5 of FIFRA or 40 CFR 172.3 from the requirement of a federal experimental use permit the following apply:~~

~~1. The person shall, in addition to meeting the requirements in R3-3-303, provide to the Associate Director a statement of purpose and an affidavit verifying that the pesticide will be applied to an application site that does not exceed the total area described in 40 CFR 172.3(c); and~~

~~2. If testing on the grounds of a college or university agricultural center or campus, or company-owned research facility, the testing is exempt from subsection (A)(1) and the reporting requirements in R3-3-303.~~

~~**B.** A person engaged in a small scale test, except a person exempt under subsection (A)(2), shall comply with the requirements prescribed in R3-3-302, if applicable.~~

A. Definitions

1. "For the purpose of experimentation" means for research or testing purposes, including research or testing performed in order to accumulate information necessary to register under Section 3 of FIFRA and the regulations thereunder a pesticide not currently registered or a registered pesticide for a use not previously approved in the registration of the pesticide.
2. "Research agency" means any organization engaged in research pertaining to the use of pesticides, including for the purpose of experimentation.
3 "Structural pest management application" means a pesticide application covered by A.R.S. §§ 3-3601 *et seq*.

B. A research agency or educational institution may use a pesticide that is not federally registered or use a federally registered pesticide for a use not previously approved in the registration of the pesticide for the purpose of experimentation:

1. Under a valid experimental use permit issued by the Department, or
2. If the testing will only occur on the grounds of a college or university agricultural center or campus or a research agency owned research facility, then a permit is not required.

C. An applicant for an experimental use permit shall provide the following information to the Department:

1. A copy of the EPA-approved experimental use permit issued pursuant to Section 5 of FIFRA or, for applicants exempt from the requirement of a federal experimental use permit under 40 CFR § 172.3 (59 FR 45611, Sept. 1, 1994, as amended at 71 FR 35546, June 21, 2006; 73 FR 75599, Dec. 12, 2008, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-172/subpart-A/section-172.3). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions,
2. A statement of which federal exemption applies and an affidavit certifying that the experimental use will be in compliance with the applicable exemption;

3. A statement of the purpose for which the experimental use permit will be used;

4. Name, address, e-mail address, and daytime telephone number of the person supervising the experimental use application;

5. Name, address, e-mail address, and daytime telephone number of the PGP and PCA, or the qualifying party if it is a structural pest management application, that are involved in the application of the experimental use pesticide;

6. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest management application;

7. The crop and acreage to be treated, the amount (quantity, weight, volume or other appropriate unit of measure) of the agricultural commodity to be treated, or the number of structures if it is a structural pest management application;

8. Total amount of active ingredient to be applied in this state;

9. Application rate of formulation per acre or other appropriate measure for a structural pest management application;

10. Method of application;

11. Name, address, e-mail address, and telephone number of the applicator applying the pesticide;

12. Time period during which the application will be made; and

13. Any special experimental use permit conditions imposed by the EPA, if applicable.

Appendix A.~~ - Testing Categories~~ Repealed

~~TESTING CATEGORIES~~

~~A. Commercial Applicator Certification, 40 CFR 171.4(b)(i)-(viii).~~

~~1. Label & labeling comprehension.~~

~~a. The general format and terminology of pesticide labels and labeling;~~

~~b. The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;~~

~~c. Classification of the product, general or restricted; and~~

~~d. Necessity for use consistent with the label.~~

~~2. Safety. Factors including:~~

~~a. Pesticide toxicity and hazard to man and common exposure routes;~~

~~b. Common types and causes of pesticide accidents;~~

~~c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;~~

~~d. Need for and use of protective clothing and equipment;~~

~~e. Symptoms of pesticide poisoning;~~

~~f. First aid and other procedures to be followed in case of a pesticide accident; and~~

~~g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.~~

~~3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:~~

~~a. Weather and other climatic conditions;~~

~~b. Types of terrain, soil or other substrate;~~

c. Presence of fish, wildlife and other non-target organisms; and

d. Drainage patterns.

4. Pests. Factors such as:

a. Common features of pest organisms and characteristics of damage needed for pest recognition;

b. Recognition of relevant pests; and

c. Pest development and biology as it may be relevant to problem identification and control.

5. Pesticides. Factors such as:

a. Types of pesticides;

b. Types of formulations;

c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

d. Hazards and residues associated with use;

e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

f. Dilution procedures.

6. Equipment. Factors including:

a. Types of equipment and advantages and limitations of each type; and

b. Uses, maintenance and calibration.

7. Application techniques. Factors including:

a. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

c. Prevention of drift and pesticide loss into the environment.

8. Laws and regulations. Applicable State and Federal laws and regulations.

B. Commercial Certification Categories, 40 CFR 171.4(c)(1) through (6) and (8) through (10).

1. Agricultural pest control.

a. Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

2. Forest pest control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in this state and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical

knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

3. Seed-treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.
4. Aquatic pest control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.
5. Right-of-way pest control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.
6. Public health pest control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.
7. Regulatory pest control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.
8. Demonstration and research pest control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problems situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration

~~situation is required. Further, they shall demonstrate an understanding of a pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in (G)(1). In addition, they shall meet the specific standards required for subsections (c)(1) through (7) of this subsection as may be applicable to their particular activity.~~

~~C.~~ ~~Private Certification, 40 CFR 171.5(a)(1) through (5).~~

1. ~~Recognize common pests to be controlled and damage caused by them.~~
2. ~~Read and understand the label and labeling information, including the common name of pesticides the applicator applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.~~
3. ~~Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.~~
4. ~~Recognize local environmental situations that must be considered during application to avoid contamination.~~
5. ~~Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.~~

ARTICLE 3. PESTICIDE USE, SALES, AND EQUIPMENT

R3-3-301. General

A. A person shall not use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with the pesticide labeling except that:

1. A pesticide may be applied at a dosage, concentration, or frequency less than that specified on the pesticide labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.
2. A pesticide may be applied against any target pest not specified on the labeling if the application is to an application site specified on the pesticide labeling, unless the labeling specifically prohibits use against the pest.
3. A pesticide may be applied by any method of application not prohibited by the pesticide labeling unless the labeling specifically states that the pesticide may be applied only by the methods specified on the labeling.
4. A pesticide may be mixed with a fertilizer if the labeling does not prohibit the mixture.
5. A pesticide may be used in any manner that is consistent with Sections 5, 18, or 24 of FIFRA.

B. A person shall not use, apply, or store or instruct another to use, apply, or store a pesticide unless the pesticide is:

1. Registered with the Department and the EPA, ~~or~~
2. Previously registered with the Department and the EPA and cancelled or suspended by the EPA with a current end-use provision in ~~effect.~~ effect, or
3. Registered with the Department for FIFRA 25(b) products.

C. Subsection (B) does not apply to a:

1. Pesticide registrant that temporarily stores pesticides produced for shipment out of the state;
2. Person who ~~has applied for registration or exemption in this state~~ uses a pesticide in Arizona under an Arizona issued experimental use permit; or

3. Person who ~~is acting under an experimental use permit~~ is using a pesticide for experimental purposes on the grounds of a college or university agricultural center or campus, or a company-owned research facility.

D. A person shall not sell, offer for sale, barter or otherwise supply any pesticide:

1. That has been altered, diluted, or mixed;
2. That has been repackaged at an establishment not registered with the EPA; or
3. Is not registered with the Department pursuant to Article 7 of this Chapter.

~~**D.**~~**E.** A person shall not allow drift that causes any unreasonable adverse effect.

~~**E.**~~**F.** A person shall not cause the direct release of a pesticide and an individual shall not instruct an applicator in a manner to cause the direct release of a pesticide causing any unreasonable adverse effect.

~~**F.**~~**G.** Regulated grower responsibility.

1. After a pesticide is applied to ~~a field~~ an application site on an agricultural establishment, the regulated grower shall not harvest a crop from the ~~field~~ application site, or permit livestock to graze ~~in the field~~ the application site in violation of any provision of the pesticide labeling.
2. Before a pesticide application, a regulated grower shall ensure that all individuals and livestock subject to the regulated grower's control are outside the application site.

~~**G.**~~**H.** Emergency pest control measures. A person acting under a government-sponsored emergency program, shall not apply, cause, or authorize another to apply or cause a pesticide to come into contact with an individual, animal, or property outside the boundaries of the application site.

~~**H.**~~**I.** If possible when applying pesticides by aircraft or drone, a pilot shall fly crosswind, unless an obstacle does not permit it, and shall begin the application at the downwind side of the ~~field~~ application site so that the pesticide is dispersed on the return swathe.

~~**I.**~~**J.** A person shall not apply a highly toxic pesticide, other than a pesticide registered by the EPA for ~~ultra low~~ ultra-low volume application, in a volume that is less than one gallon per acre in the final spray form. The content of that gallon shall be at least 50 percent water.

~~**J.**~~**K.** A buffer zone may receive direct application or drift of pesticides as permitted by law.

L. Requirements for Direct Supervision of Noncertified Applicators by Certified Applicators.

Supervision of noncertified applicators shall be as prescribed in 40 CFR § 171.201(39 FR 36449, Oct. 9, 1974, as amended by FR 1040, January 4, 2018, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171/subpart-C/section-171.201). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

R3-3-302. Form 1080; Requirement for Written Recommendation

A. Effective January 1, 2026 all Form 1080s must be on a form approved by the Department, made available by the Department, or electronically submitted through the Department's Form 1080 internet portal. A PCA or regulated grower shall provide the following ~~information, as applicable, in writing on a Form 1080, sign the form, and provide a copy to the custom applicator before each pesticide application that is to be made by a custom applicator:~~ information in sequential order as indicated in subsections (A)(1) through (25):

1. Name and permit number of the seller;
2. Date the recommendation is written;

3. Name and permit number of the ~~regulated grower~~ PGP upon whose application site the pesticide will be applied;
4. County where the application site is located;
5. Pest conditions present;
6. Whether the application site is within a pesticide management area under ~~R3-3-304~~ R3-3-304;
7. Anticipated date of harvest;
8. Restricted entry interval;
9. Label days to harvest;
10. Date recommended for the pesticide application;
11. Specific application site being treated;
12. Township, range, and section of the application site;
13. Number of acres or application sites in each section being treated;
14. Additional field description, if any;
15. Brand name and EPA registration number of the pesticide to be applied or number of the pesticide regulated under Section 18 of FIFRA to be applied;
16. Rate and unit of measure per acre or dilution per 100 gallons;
17. Total quantity of pesticide concentrate to be applied;
18. Total acres to be treated and total volume per acre or total number of application sites to be treated;
19. Whether the application includes an active ingredient that appears on the ~~Arizona Department of Environmental Quality~~ ADEQ groundwater protection list and is soil-applied as defined in A.A.C. ~~R18-6-101~~ R18-6-301;
20. Whether a supplemental label is required;
21. Method of pesticide application;
22. Label restrictions or special instructions, if any;
23. Name of the custom applicator making the application;
24. Anticipated pesticide delivery location; and
25. Signature of the regulated grower or PCA and credential number of the ~~regulated grower~~ PGP or PCA making the recommendation.

B. A custom applicator shall not apply a pesticide unless the custom applicator has received a signed copy of the recommendation from the PCA or the regulated grower on the Form 1080 before the application. The custom applicator shall apply the pesticide according to the recommendation on the Form 1080 unless the recommendation conflicts with the pesticide label or labeling, in which case the custom applicator shall note these deviations on the Form 1080 and apply the pesticide according to the pesticide label or labeling, or as provided in R3-3-301(A).

C. Before the application of a pesticide recommended by a PCA, the PCA shall notify the regulated grower, or the regulated grower's representative, of the scheduled application date. If the application date or time changes from that scheduled with the regulated grower, the custom applicator shall notify the regulated grower of the revised date and time of the application.

D. After completing the application, the custom applicator shall sign the pesticide application report portion of Form 1080 to verify that the pesticide was applied according to the recommendation and provide the following information in writing on the form:

1. Date and start and end time of each application;
2. Date and time of the first and last spot application and a general description of the location, if applicable;
3. Wind direction and velocity;
4. Tag number, if applicable;
5. Name and credential number of the grower or custom applicator business;
6. Signature and credential number of the applicator; or name of the application equipment operator, and if a restricted use pesticide is applied, the signature and credential number of the certified applicator; and
7. Any deviation from the recommendation.

E. Reporting shall be as prescribed in R3-3-404.

F. Non-certified applicator records. When supervising a non-certified private, golf, or commercial applicator of a restricted use pesticide, records shall be kept as required in 40 CFR § 171.201(e) (39 FR 36449, Oct. 9, 1974 as amended by 82 FR 1040, January 4, 2018, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171/subpart-C/section-171.201). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

R3-3-303. Experimental Use

~~**A.** A person supervising application of a pesticide under a federal experimental use permit shall provide the Department with the following information in writing at least five days before application of the experimental use pesticide:~~

~~1. A copy of the EPA-approved experimental use permit, as required by Section 5 of FIFRA;~~

~~2. Name, address, e-mail address, if applicable, and daytime telephone number of the supervising technical individual for the experimental use;~~

~~3. Application site to be treated, the location of the application site, the quantity of the commodity or the area of land to be treated, and the number of structures, if any;~~

~~4. Total amount of active ingredient to be applied in this state;~~

~~5. Rate of formulation applied per unit of measure;~~

~~6. Method of application;~~

~~7. Time period during which the application will be made; and~~

~~8. Any special experimental use permit condition as determined by the Department or by the EPA.~~

~~**B.** If any information provided under subsection (A) changes, the person supervising the pesticide application under a federal experimental use permit shall notify the Department at least 24 hours before the application of the experimental use pesticide. If the notification of change is given verbally, the person supervising the pesticide application under a federal experimental use permit shall provide the Department with written confirmation within 15 days after the date of the change.~~

~~**C.**~~**A.** At least 24 hours before the application, ~~the supervising technical individual~~ the person supervising the application shall provide the Department with the following information:

~~1. Name, address, e-mail address, if applicable, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest control application, that are involved in the application of the experimental use pesticide;~~

~~2. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest control application as defined in A.R.S. § 32-2301(20);~~

~~3. Name, address, e-mail address, if applicable, and telephone number of the applicator applying the pesticide; and~~

~~4. Date and time of the intended application.~~

1. Exact date, time and location of the intended application by calling and leaving a message on the pesticide hotline answering machine, 1-800-423-8876; and

2. Any changes to the experimental permit information that was provided pursuant to R3-3-212.

~~D.~~**B.** An applicator shall not apply an experimental use pesticide in a manner other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

C. An applicator involved in an experimental use pesticide application shall comply with R3-3-302 as applicable.

R3-3-305. Pesticide Sales

A. A seller shall ~~not~~ only sell, offer for sale, deliver, or offer for delivery any restricted use pesticide ~~or pesticide for an agricultural purpose without determining that the pesticide will be used by~~ to a person who:

1. Has a valid private, golf or commercial applicator certification ~~or regulated grower permit~~ issued by the Department ~~or OPM for use of the pesticide, or~~ for the use of a restricted use pesticide in the appropriate category;

2. Works under the direct supervision of a person who has a valid private, golf or commercial applicator certification ~~or regulated grower permit~~ issued by the Department ~~or OPM for the use of the pesticide.~~ for the use of a restricted use pesticide in the appropriate category; or

3. Has a valid certification from California, Nevada, Utah, Colorado, New Mexico or from an Arizona Indian tribe that allows the person to use a restricted use pesticide.

B. If a pesticide is sold for an agricultural purpose, in Arizona, the seller shall only sell, offer for sale, deliver, or offer for delivery any pesticide for an agricultural purpose after determining that the pesticide will be used by a person who has a PGP issued by the Department.

~~B.~~**C.** If a pesticide is sold for an agricultural purpose, the seller shall write the permit numbers of the seller and ~~regulated grower~~ PGP on each sale and delivery ticket or invoice, and on each pesticide container or carton. If a pallet is delivered to an individual purchaser, the seller may write the seller and ~~regulated grower~~ PGP numbers on the outside of the shrink-wrapped pallet.

~~C.~~**D.** A seller shall register with the Department the name and address of each salesperson and PCA employed for the purpose of selling pesticides in this state.

R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons

A. A person shall not sell, offer for sale, deliver, or offer for delivery a restricted use pesticide to ~~a~~ another person other than a certified applicator without having first obtained written documentation from a certified applicator or a noncertified recipient that the material is to be applied by or under the supervision of a certified applicator.

B. The seller shall obtain one of the following types of written documentation to satisfy the requirement in subsection (A):

1. A photocopy or fax of the certificate issued to the certified applicator who will be applying or supervising application of the restricted use pesticide and:

a. A statement signed by the certified applicator, authorizing and identifying the noncertified individual to purchase or receive the restricted use pesticide for the certified applicator; or

b. A copy of a signed contract or agreement, authorizing and identifying the noncertified person to receive the restricted use pesticide for the certified applicator; or

2. A form on file with the seller that contains the following information:

a. Name of any individual authorized to receive the restricted use pesticides for the certified applicator;

b. Relationship of an authorized individual to the certified applicator (partner, employee, co-worker, or ~~family member~~ immediate family);

c. List of the restricted use pesticides an authorized individual is allowed to receive, specifying the trade name and:

~~i. Trade name; and~~

~~ii.~~i. EPA registration number; ~~or~~

~~iii.~~ii. State special local need registration number issued by the Department; or

~~iv.~~iii. Emergency exemption number, issued by the EPA under Section 18 of FIFRA, if ~~applicable;~~ applicable.

d. Signature of the authorized individual and the date signed; and

e. Certified applicator's full name, signature, work address, work phone number, certification number, and certification categories ~~(private fumigation or commercial and one or more of the following: agricultural pest, seed-treatment, right-of-way, forestry, aquatic, regulatory, or public health)~~.

C. A seller shall request proof of identification from any noncertified individual accepting restricted use pesticides on behalf of a certified applicator if the individual is unknown to the seller.

D. A noncertified individual who receives a restricted use pesticide on behalf of a certified applicator shall sign all sale documents for restricted use pesticides.

E. If, at the time of the sale of the restricted use pesticide, the noncertified individual receiving the pesticide satisfies the requirements of subsection (B) by presenting a signed statement, contract, or agreement, the seller shall maintain on file a copy of the signed statement, contract, or agreement.

F. The seller shall retain records of all sales or deliveries made and maintain the documents required by this Section for at least two years from the date of sale.

R3-3-307. Aircraft and Drones; ~~and~~ Agricultural Aircraft and Drone Pilots

A. A person shall not operate an aircraft to apply pesticides in this state unless the aircraft has a valid tag issued under R3-3-206 and a valid Federal Aviation Administration airworthiness certificate ~~and a valid tag issued under R3-3-206~~ issued pursuant to 14 CFR §§ 21.171 *et seq.* (29 FR 14569, October 24, 1964, as amended by 74 FR 53384, Oct. 16, 2009, https://www.ecfr.gov/current/title-14/chapter-I/subchapter-C/part-21/subpart-H. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.).

B. A person shall not operate a drone to apply a pesticide in this state unless the drone has a valid tag issued under R3-3-206 and a valid registration issued pursuant to 14 CFR § 48.1 (80 FR 78645, Dec. 16, 2015, as amended by Doc. No. FAA–2018–1084, 84 FR 3673, Feb. 13, 2019, https://www.ecfr.gov/current/title-14/chapter-I/subchapter-C/part-48. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.).

~~**B.**~~**C.** A custom applicator shall not permit an individual who does not hold a valid agricultural aircraft pilot license and a valid commercial applicator certification to apply pesticides by aircraft.

D. A custom applicator shall not permit an individual who does not hold a valid agricultural drone pilot license and a valid commercial applicator certification to apply pesticides by drone.

ARTICLE 4. RECORDKEEPING AND REPORTING

R3-3-401. Pesticide Seller Records

A. A seller of any restricted use pesticide, ~~device,~~ or any ~~pesticide sold for an agricultural purpose~~ agricultural use pesticide shall maintain all records showing the receipt, sale, delivery, or other disposition of the pesticide or device sold for at least two years from the date of sale. If a seller intends to change the location of the records, the seller shall file a signed statement with the Department before the move stating the new address.

B. When any ~~pesticide for agricultural purposes~~ agricultural use pesticide, or a restricted use pesticide ~~regulated by the OPM,~~ is sold, delivered, or otherwise disposed of, a seller shall maintain the following records and information:

1. Bill of lading or other similar record of the receipt of the pesticide at the selling establishment;
2. Seller's dated sales receipt, delivery receipt, or invoice of the transaction, delivery, or other disposition of the pesticide;
3. Name and address of the purchaser;
4. ~~Regulated grower permit~~PGP number, or the ~~OPM~~ PMD license number of the purchaser, if applicable;
5. State special local need registration number issued under Section 24 of FIFRA, if applicable;
6. Emergency exemption permit number granted by the EPA under Section 18 of FIFRA, if applicable;
7. Experimental use permit number, if applicable;
8. Pesticide brand name and the EPA registration number; and
9. Quantity of the pesticide sold to the purchaser.

C. In addition to the information required in subsection (B), when a restricted use pesticide is sold, delivered, or otherwise disposed of for use by a certified applicator, a seller shall maintain records that contain the following information:

1. Name and address of the residence or principal place of business of each person to whom the restricted use pesticide is sold, delivered, or otherwise disposed of, and any records required under R3-3-306;
2. Certified applicator's name, address, certification number, and the expiration date of the applicator's certification; and
3. Categories in which the applicator is certified, if applicable.

R3-3-402. Private and Golf Applicator Records; Restricted Use Pesticide

A. Following an application to ~~a field on an agricultural establishment~~ an application site of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator shall complete an application record on a form approved by the Department, ~~that~~ which includes the following:

1. Name of the private applicator and the applicator's certification number; as required,
2. Name and permit number of the seller;
3. Name of the pesticide applied and its EPA registration number;
4. Date and time of application;
5. Name of regulated grower;
6. Method of application;
7. Crop name or site and the number of acres treated with the pesticide;
8. Rate per acre of the active ingredient or formulation of the pesticide;

9. Total volume of pesticide used per acre; and
10. County, ~~range,~~ township, range, and section of the field that received the application.

B. Following an application to a non-field of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator or golf applicator shall complete an application record on a form approved by the Department, that includes the following:

1. The information requested under subsection (A)(1) through (A)(6);
2. Item treated;
3. Rate per item treated;
4. Total volume used in the application; and
5. Application site location by county, ~~range,~~ township, range and section, or by physical address.

C. A private applicator and golf applicator shall retain records required by this Section for at least two years from the date of the private application.

R3-3-403. Bulk Release Report

A. An applicator shall notify the Department at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the applicator shall immediately ~~report the release to the Arizona Department of Public Safety Duty Office~~ call 911, then report the incident to the ADEQ's Environmental Emergency Response Unit by calling (602) 390-7894, within 24 Hours.

B. Within 30 days after a bulk release, the applicator shall provide a written report to the Department listing all details of the release, including:

1. Location and cause of the release;
2. Disposition of the pesticide released;
3. Measures taken to contain the bulk release;
4. Name and EPA registration number of the pesticide released;
5. Name, e-mail address, if applicable, and telephone number of the applicator's contact person;
6. Date and time of the release;
7. Specific environment into which the release occurred;
8. Known human exposure to the pesticide, if observed; and
9. Estimated amount of pesticide or pesticide mixture released.

R3-3-404. Form 1080; Reports to the Department

A. A custom applicator shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302.

B. A regulated grower shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302, for application of a pesticide containing an active ingredient that appears on the ~~Arizona Department of Environmental Quality~~ ADEQ groundwater protection list, and is soil-applied, as defined in A.A.C. ~~R18-6-101~~ R18-6-301.

C. A custom applicator or regulated grower may report continued pesticide applications and spot applications within the same reporting period on a single Form 1080.

D. A custom applicator or a regulated grower shall submit the Form 1080 to the Department during the reporting period.

E. A PCA or custom applicator shall retain a copy of each Form 1080 for at least two years from the date of the application.

ARTICLE 5. NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS

R3-3-502. Nonserious Violations

A. General violations. The following is a nonexclusive list of acts that are nonserious violations if the violation has a direct or immediate relationship to safety, health, or property damage, but does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health, or property damage risk in which case the violation is de minimis. A person shall not:

1. Improperly store, dump, or leave unattended any pesticide, pesticide container or part of a pesticide container, or service container.
2. Make a false statement or misrepresentation in an application for a permit, license, or certification, or a permit, license, or certification renewal.
3. Falsify any records or reports required to be made under Articles 2 through 4 of this Chapter.
4. Operate an aircraft, drone, or ground equipment in a faulty, careless, or negligent manner during the application of a pesticide.
5. Apply or instruct another to apply a pesticide so that it comes into contact with:
   a. An individual;
   b. An animal; or
   c. Property, other than the application site being treated.
6. Use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with its pesticide label or labeling except as provided by R3-3-301(A).
7. ~~Use,~~ Unless being used under an approved EUP or being used on research facility, use, sell, apply, store, or instruct another to use, sell, apply, or store a pesticide:
   a. That is not registered with the Department and the EPA, or
   b. Outside the EPA authorized end-use provision if previously registered with the Department and the EPA and cancelled or suspended by the EPA.
8. Fail to provide accurate or approved labeling when registering a pesticide.
9. Using a restricted use pesticide without proper certification, or under the direct supervision of a properly certified applicator, when allowed.

B. Seller violations. A seller shall not:

1. Sell pesticides without a valid seller's permit issued by the ~~Department,~~ Department pursuant to R3-3-203;
2. Provide a restricted use pesticide to a regulated grower or applicator who does not have a valid ~~permit,~~ applicator certification;
3. Fail to maintain records required under Articles 2 through 4 of this ~~Chapter,~~ Chapter;
4. Fail to maintain complete sales records of restricted use pesticides required under Articles 3 and 4 of this ~~Chapter,~~ Chapter;
5. Adulterate a ~~pesticide,~~ pesticide;
6. Make false or misleading claims about a pesticide to any ~~person,~~ person;
7. Modify a label or labeling without proper ~~authorization, or~~ authorization;

8. Provide a pesticide to ~~an unauthorized person.~~ a person not authorized pursuant to R3-3-306; or
9. Provide an agricultural use pesticide to a person who does not have a valid PGP.

C. PCA violations. A PCA shall not:

1. Act as a PCA without a valid agricultural pest control advisor license issued by the Department pursuant to R3-3-207,
2. Make a false or fraudulent statement in any written recommendation about the use of a pesticide,
3. Make a recommendation regarding the use of a pesticide in a specific category in which the individual is not licensed, or
4. Make a written recommendation for the use of a pesticide in a manner inconsistent with its pesticide label or the exceptions as provided in R3-3-301(A).

D. Agricultural aircraft pilot and drone pilot violations. A pilot or drone pilot shall not apply a pesticide by aircraft or drone without a valid agricultural aircraft pilot license or drone pilot license, as applicable, issued by the Department pursuant to A.A.C. R3-3-204.

E. Custom applicator violations. A custom applicator shall not:

1. Allow application equipment to be operated in a careless or reckless manner during the application of a pesticide,
2. Make a custom application without a valid custom applicator's license issued by the Department pursuant to R3-3-205,
3. Make a custom application of a restricted use pesticide without supervision by a person with a valid commercial applicator certification issued by the Department pursuant to R3-3-208,
4. Allow an aircraft or drone to be operated during the application of a pesticide by an individual who does not have a valid agricultural aircraft pilot license (APL) or drone pilot license (DPL), as applicable, issued by the Department pursuant to R3-3-204, or
5. Apply a pesticide without a written Form 1080 as prescribed in R3-3-302(A).

F. Regulated grower violations. A regulated grower shall not:

1. Purchase, apply, or use ~~a~~ an agricultural use pesticide without a valid ~~regulated grower's permit~~ Pesticide Grower Permit (PSP) issued by the Department pursuant to R3-3-201;
2. ~~Apply~~ Purchase, store, or apply a restricted use pesticide without being a ~~commercial applicator, private applicator, or restricted use pesticide certified golf applicator~~ certified applicator in the appropriate category;
3. ~~Apply any~~ Purchase, store, or apply any restricted use pesticide on a golf course without being a golf applicator; or
4. Allow a pesticide application on a golf course without having the proper protective equipment required by the label available to the applicator.

G. Certified applicator violations. A certified applicator shall not:

1. Allow the unsupervised application of a restricted use pesticide,
2. Fail to maintain complete records required under Articles 2 through 4 of this Chapter, or
3. Use a restricted use pesticide without a valid commercial applicator, private applicator, or golf applicator restricted use pesticide certification issued by the Department pursuant to R3-3-208.
4. Use a restricted use pesticide without restricted use pesticide certification in the proper category.

H. Exemptions. The following incidents are not pesticide use violations under this Section:

1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;

2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

R3-3-503. De ~~minimis~~ Minimis Violations

A. Seller violations. It is a de minimis violation if a seller:
1. Fails to record seller and ~~regulated grower permit~~ PGP numbers on containers, cartons, and delivery tickets;
2. Fails to register the seller's ~~representatives~~ responsible individual; or
3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.

B. PCA violations. It is a de minimis violation if a PCA:
1. Fails to put recommendations in writing as prescribed at R3-3-302(A),
2. Fails to provide complete information required on written recommendations under R3-3-302, ~~or~~
3. Fails to maintain complete records as required under Articles 2 through 4 of this ~~Chapter.~~ Chapter, or
4. Fails to obtain CEU credits pertinent to the categories license renewal is sought.

C. Custom applicator violations. It is a de minimis violation if a custom applicator:
1. Fails to maintain complete records required under Articles 2 through 4 of this Chapter, or
2. Fails to file reports as required under Articles 3 and 4 of this Chapter.

D. Regulated grower violations. It is a de minimis violation if a regulated grower:
1. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter; or
2. Fails to file reports as required under Article 4 of this Chapter including whether the application includes a pesticide containing an active ingredient that appears on the ~~Arizona Department of Environmental Quality~~ ADEQ groundwater protection list, and is soil-applied, as defined in A.A.C. ~~R18-6-101~~R18-6-301.

E. Certified applicator violations. ~~A certified applicator shall not fail to file reports as required under Articles 3 and 4 of this Chapter.~~ A certified applicator shall not:
1. Fail to file reports as required under Articles 3 and 4 of this Chapter; or
2. Fail to obtain CEU credits pertinent to the categories that certification renewal is sought.

F. A third de minimis violation ~~of the same or similar type from among those listed in subsections (A) through (E)~~ in a three-year period is a nonserious violation.

G. Exemptions. The following incidents are not a violation under this Section:
1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

R3-3-505. Unlisted Violations

A. The Department shall classify a violation of Articles 2 through 4 of this Chapter or of A.R.S. Title 3, Chapter 2, Article 6 that is not listed in R3-3-501, R3-3-502, or R3-3-503 as a serious, nonserious, or de minimis violation depending upon the specific factual circumstances surrounding the violation.

B. A third de minimis violation of the same or similar type in a three-year period is a nonserious violation.

C. Pursuant to A.R.S. § 3-370, in addition to the civil penalties prescribed by the section, a person who knowingly or willfully commits a violation of this Article may be charged as follows:

1. For any nonserious violation of this Article that results in the harm to the environment or economy that results in the loss of $10,000 or less may be found guilty of a class 1 misdemeanor; or
2. For any serious violation of this Article that results in the harm to human or animal health, the environment, or the economy of $10,000 or more may be found guilty of a class 6 felony.

D. In addition, the Director may deny, suspend or revoke am applicator certification for one or more of the following violations:

1. Misuse of a pesticide;
2. Falsifying records as required under Article 4 of this Chapter;
3. A criminal conviction under section 14(b) of FIFRA;
4. A final order imposing a civil penalty under section 14(a) of FIFRA; or
5. A violation of State laws or regulation relevant to the State certification plan.

R3-3-506. Penalty and Fine Point System

A. The ALJ shall assess points, as applicable, against a violator for the violation of each pesticide rule or statute, or the Associate Director shall assess points, as applicable, for the violation of each pesticide rule or statute upon entering into a negotiated settlement as a result of an informal settlement conference under A.R.S. § 41-1092.06, in accordance with the following point system. From each of subsections (A)(1) through (6), one choice shall be selected, unless otherwise appropriate, based upon supporting evidence in the record of the proceeding before the ALJ or Associate Director. Points shall be totaled for the violation of each pesticide rule or statute.

1. Health effects.

~~a. No evidence of human exposure to pesticides and no evidence of the substantial probability of human exposure to pesticides.~~ ~~0~~

~~b. Substantial probability of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant.~~ ~~5-10~~

~~c. Evidence of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant.~~ ~~11-20~~

~~d. Human exposure to pesticides that required treatment by a physician,~~ ~~21-30~~

	~~nurse, paramedic, or physician's assistant, but which did not result in pesticide poisoning.~~	
	~~e. Human exposure to pesticides that required either hospitalization for less than 12 hours or treatment as an outpatient for five consecutive days or less by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning.~~	~~31-45~~
	~~f. Human exposure to pesticides that required either hospitalization for 12 hours or longer, or treatment as an outpatient for more than five consecutive days by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning.~~	~~46-100~~
	~~g. Human exposure to pesticides resulting in death from pesticide poisoning (serious violation unless otherwise documented in the investigative record).~~	~~101-180~~
a.	No evidence of human exposure to pesticides and no evidence of the substantial probability of human exposure to pesticides.	0
b.	Substantial probability of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant.	5-10
c.	Evidence of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant.	11-20
d.	Human exposure to pesticides that required treatment by a	21-30

	physician, nurse, paramedic, or physician's assistant, but which did not result in pesticide poisoning.	
e.	Human exposure to pesticides that required either hospitalization for less than 12 hours or treatment as an outpatient for five consecutive days or less by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning.	31-45
f.	Human exposure to pesticides that required either hospitalization for 12 hours or longer, or treatment as an outpatient for more than five consecutive days by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning.	46-100
g.	Human exposure to pesticides resulting in death from pesticide poisoning (serious violation unless otherwise documented in the investigative record).	101-180

2. Environmental consequences and property damage.

(Select one or more as evidence indicates.)

~~a. No evidence of substantial probability of environmental or property damage.~~	~~0~~
~~b. Substantial probability of water contamination.~~	~~5-10~~
~~c. Evidence of water source contamination.~~	~~11-20~~
~~d. Substantial probability of soil contamination causing economic damage.~~	~~5-10~~

~~e.~~	~~Evidence of soil contamination causing economic damage.~~	~~11-20~~
~~f.~~	~~Substantial probability of nontarget bird kills.~~	~~5-10~~
~~g.~~	~~Evidence of nontarget bird kills.~~	~~11-20~~
~~h.~~	~~Substantial probability of nontarget fish kills.~~	~~5-10~~
~~i.~~	~~Evidence of nontarget fish kills.~~	~~11-20~~
~~j.~~	~~Nontarget kills involving game or furbearing animals as defined by A.R.S. § 17-101(B).~~	~~10-20~~
~~k.~~	~~Any property damage (nonserious violation only under A.R.S. § 3-361(4)).~~	~~10-20~~
~~l.~~	~~Air contamination causing official evacuation by federal, state, or local authorities.~~	~~10-20~~
~~m.~~	~~Killing one or more threatened or endangered species.~~	~~15-20~~
~~n.~~	~~Killing one or more domestic animals.~~	~~15-20~~

a.	No evidence of substantial probability of environmental or property damage.	0
b.	Substantial probability of water contamination.	5-10
c.	Evidence of water source contamination.	11-20
d.	Substantial probability of soil contamination causing economic damage.	5-10
e.	Evidence of soil contamination causing economic damage.	11-20
f.	Substantial probability of nontarget bird kills.	5-10
g.	Evidence of nontarget bird kills.	11-20
h.	Substantial probability of nontarget fish kills.	5-10

i.	Evidence of nontarget fish kills.	11-20
j.	Nontarget kills involving game or furbearing animals as defined by A.R.S. § 17-101(B).	10-20
k.	Any property damage (nonserious violation only under A.R.S. § 3-361(4)).	10-20
l.	Air contamination causing official evacuation by federal, state, or local authorities.	10-20
m.	Killing one or more threatened or endangered species.	15-20
n.	Killing one or more domestic animals.	15-20

3. Culpability

~~a.~~	~~Knowing.Knew or reasonably should have known by reasonable diligence of the prohibitions or restrictions that are the basis of the misconduct cited~~	~~5-10~~
~~b.~~	~~Willfully. Actual knowledge of the prohibitions or restrictions but engages in misconduct.~~	~~20-50~~

a.	Knowing. Knew or reasonably should have known of the safety, health or property damage risk.	5-10
b.	Willfully. Actual knowledge or belief that the conduct would violate the law but engages in misconduct.	20-50

4. Prior violations or citations. Violations or citations within three years from the date the violation was committed. (Select one or more as evidence indicates.)

Prior violation history	Current violation Non-serious	Current violation Serious
None	0	0

One or more De minimis	5	0
One Nonserious	10	5
One Nonserious, same or substantially similar to current violation	20	10
Two Nonserious	30	15
Two Nonserious, same or substantially similar to current violation	40	20
Three Nonserious	60	30
Three Nonserious, same or substantially similar to current violation	70	35
Additional Nonserious: same or substantially similar to current violation, points per each additional violation beyond three	10	5
One Serious	20	10
One Serious, same or substantially similar to current violation	40	20
Two Serious	60	30
Two Serious, same or substantially similar to current violation	80	40
Three Serious	120	60
Three Serious, same or substantially similar to current violation	140	70

Additional Serious: same or substantially similar to current violation, points per violation	20	10

5. The length of time a violation has been allowed to continue by the violator after notification by the Department.

~~a. Less than one day. 0~~

~~b. One day but less than one week. 1-10~~

~~c. One week but less than one month. 11-20~~

~~d. One month but less than two months. 21-30~~

~~e. Two months or more. 31-40~~

a.	Less than one day.	0
b.	One day but less than one week.	1-10
c.	One week but less than one month.	11-20
d.	One month but less than two months.	21-30
e.	Two months or more.	31-40

6. Wrongfulness of conduct

~~a. Conduct resulting in a violation that does not cause any immediate damage to public health, safety, or property. 4-5~~

~~b. Conduct resulting in a violation that the evidence establishes may have a substantial probability of an immediate effect upon public health, safety, or property. 6-8~~

~~c. Conduct resulting in a violation that the evidence establishes had an immediate effect upon public health, safety, or property, but does not fall within subsection (6)(c). 9-10~~

~~d. Conduct causing the substantial probability of serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property.~~ ~~20-35~~

~~e. Conduct resulting in serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property.~~ ~~36-50~~

a.	Conduct resulting in a violation that does not cause any immediate damage to public health, safety, or property.	4-5
b.	Conduct resulting in a violation that the evidence establishes may have a substantial probability of an immediate effect upon public health, safety, or property.	6-8
c.	Conduct resulting in a violation that the evidence establishes had an immediate effect upon public health, safety, or property, but does not fall within subsection (6)(e).	9-10
d.	Conduct causing the substantial probability of serious physical	20-35

	injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property.	
e.	Conduct resulting in serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property.	36-50

B. The ALJ or Associate Director, after determining points pursuant to subsection (A) shall assess a fine or penalty, or fine and penalty, for each violation in accordance with the following schedules:

1. Nonserious violation as defined under A.R.S. § 3-361.
   a. 53 points or less. A fine of $50 to $150; a penalty of one to three months' probation, with a condition of violating probation being one to three hours of continuing education.
   b. 54 to 107 points. A fine of $151 to $300; a penalty of four to six months' probation with a condition of violating probation being one to 10 days' suspension.
   c. 108 points or more. A fine of $301 to $500; a penalty of seven to 12 months' probation with a condition of violating probation being 15 to 30 days' suspension or revocation for a period of up to one year.
2. Serious violation as defined under A.R.S. § 3-361.
   a. 46 points or less. A fine of $1,000 to $2,000; a penalty of one to three months' probation with a condition of violating probation being five to 10 days' suspension for a nonserious violation or 15 to 30 days' suspension for a serious violation.
   b. 47 to 93 points. A fine of $2,001 to $5,000; a penalty of four to six months' probation with a condition of violating probation being 15 to 30 days' suspension for a nonserious violation and 31 to 90 days' suspension for a serious violation.
   c. 94 points or more. A fine of $5,001 to $10,000; a penalty of probation for seven to 12 months with a condition of violating probation being two to four months' suspension for a nonserious violation and four to 12 months' suspension for a serious violation, or revocation for the remainder of the license year and an additional period of one to three years.
3. The first de minimis violation is not considered a violation of probation.

ARTICLE 7. PESTICIDE

R3-3-701. Definitions

In addition to the definitions in A.R.S. § 3-341, the following terms apply to this Article:

~~1.~~ "Discontinuation" means when the registrant is no longer distributing a pesticide into Arizona.

~~2. "Pest" means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots, and plant parts.~~

~~3.~~ "Official sample" means any sample of pesticide taken by the Associate Director, or the Associate Director's agent, and designated as official.

"Pest" means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots, and plant parts.

R3-3-702. Pesticide Registration; Fee

A. Registration. Any person registering a pesticide shall comply with the ADEQ pre-registration requirements pursuant to A.A.C. R18-6-102, prior to submitting a pesticide registration pursuant to this Article, and provide the following documents and information on a form provided by the Department with a nonrefundable $100 fee for each pesticide, for each year of the registration:

1. The name, address, telephone number, and signature of the applicant;
2. The name and address of the company appearing on the label;
3. The ~~Social Security number or~~ tax identification number or Social Security number of an individual applying;
4. The date of the application;
5. The brand and name of the pesticide being registered;
6. The EPA registration number of the pesticide if applicable;
7. The analytical methods for any analyses of residues for the active ingredients of the pesticide, ~~if~~ when requested by the Department;
8. The toxicological and safety data, ~~if~~ when requested by the Department;
9. The name and telephone number of the person providing the analytical methods, and toxicological and safety data;
10. ~~Two~~One pesticide ~~labels~~ label for any pesticide not previously registered;
11. The material safety data sheet for each pesticide; and
12. The license time-period option.

B. A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for one or two years.

C. If an applicant elects a two-year pesticide registration, any additional pesticide registered during that two-year registration shall have the same registration end-date as any other pesticide currently registered by that applicant with the Department.

~~**D.** Notwithstanding subsection (A), during fiscal year 2020, a person registering a pesticide or renewing a pesticide registration shall pay a $100 fee for each pesticide for each year of registration.~~

R3-3-703. General Provisions

A. Discontinued pesticides. In addition to the requirements for discontinued pesticides established in A.R.S. § 3-351(K), any person holding a pesticide found in the channels of trade following the ~~three-year~~ two-year discontinuation period shall be responsible to register or dispose of the pesticide.

B. Sampling.

1. The Associate Director, or the Associate Director's agent, may sample, inspect, and analyze any pesticide distributed within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws pertaining to this Article, or if a complaint has been filed with the Department.
2. The analytical results of pesticide formulations as listed on a label shall comply with the allowed deviations listed in R3-3-704(B).
3. The results of an official analyses of any pesticide not in compliance with the allowed deviations listed in R3-3-704(B) shall be sent to the Associate Director, to the registrant, or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of the noncompliant pesticide sample.

C. Prohibited acts. No person shall purchase a pesticide to repackage the pesticide for distribution and sale without relabeling the repackaged container and complying with the provisions of ~~the Act~~ FIFRA and 40 CFR §§ 156.3 *et seq.* (amended December 12, 2008, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-156) and 40 CFR §§ 157.20 *et seq.* (amended December 12, 2008, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-157). This material is incorporated by reference, is on file with the Department and includes no later amendments or additions.

R3-3-704. Labels

A. Within two weeks of a pesticide label revision, a registrant shall provide the Department with ~~two pesticide labels that have~~ one pesticide label that has been revised since the pesticide was originally registered.

B. The Associate Director may request a copy of a pesticide label if the label on file is older than three years.

~~**ALLOWED DEVIATIONS OF ANALYTICAL RESULTS FROM LABEL CLAIMS FOR ACTIVE INGREDIENTS IN PESTICIDE FORMULATIONS**~~ **C.** Table of allowed deviations of analytical results from label claims for active ingredients in pesticide formulas is as follows:

Claim %	HCV[1] %	HSD[2]	Allowed Deviations for "uniform"[3] samples		Allowed Deviations for "non-uniform"[4] samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06

1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47
10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24
90.0	2.03	1.83	84.51	100.97	82.68	104.63

(1) HCV(%) = Horwitz Coefficients of Variation = $2^{(1 - 0.5 \log (\text{claim } \%/100))}$

(2) HSD = Horwitz Standard Deviation = (Claim %) HCV %)/100

(3) “Uniform” samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.

(4) “Non-uniform” samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the “non-uniform” guidelines may be used for allowed deviations. ~~States~~ The Department may use judgment in placing a sample into the “uniform” or “non-uniform” category.

ARTICLE 8. FERTILIZER MATERIALS

R3-3-801. Definitions

In addition to terms and definitions in the Official Publication, which is incorporated by reference, on file with the ~~Secretary of State~~ Department, and does not include any later amendments or editions, and the definitions in A.R.S. § 3-262, the following term applies to this Article:

“Official Publication” means the ~~Official Publication~~ *"Official Publication - AAPFCO"* of the Association of American Plant Food Control Officials, ~~amended 1999. Copies may be purchased from NC Dept. of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607-6468.~~ No. 76, 2023. A copy is available for inspection at the Department

located at 1110 West Washington Street, Suite 450, Phoenix, AZ 85007, or online subscription may be purchased online at aapfco.org/publications.html

R3-3-802. Licensure; Specialty Fertilizer Registration; Fees

A. Commercial fertilizer license. Any person applying for a commercial fertilizer license, under A.R.S. § 3-272, to manufacture or distribute commercial fertilizer, shall provide the following information on the license application provided by the Department with a nonrefundable fee of $125 for each year of the license:

~~1. The following information on the license application provided by the Department:~~

~~2.~~1. The name, title, and signature of the applicant;

~~3.~~2. The date of the application;

~~4.~~3. The distributor or manufacturer name, mailing address, telephone, and ~~facsimile number~~ email address;

~~5.~~4. The ~~Social Security number or~~ tax identification number or Social Security number of an individual applying;

~~6.~~5. The physical location, telephone, and ~~facsimile number~~ email address of the distributor or manufacturer, if different than subsection ~~(A)(4)~~(A)(3);

~~7.~~6. The name, address, telephone, and ~~facsimile number~~ email address of the distributor or manufacturer where inspection fees are paid, if different than subsection ~~(A)(4)~~(A)(3); and

~~8.~~7. The license time-period option.

B. A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

C. Specialty fertilizer registration.

1. Any manufacturer or distributor whose name appears on a specialty fertilizer label shall provide the following information to the Department with a nonrefundable fee of $50 per brand and grade of specialty fertilizer for each year of the registration:
   a. The name, address, telephone number, email address and signature of the applicant;
   b. The name and address of the company on the label;
   c. The date of the application;
   d. The grade, brand, and name of the specialty fertilizer;
   e. The current specialty fertilizer label; and
   f. The registration time-period option.
2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
3. If an applicant elects a two-year specialty fertilizer registration, any additional fertilizer registered during that two-year registration shall have the same registration end-date as other fertilizer currently registered by that applicant with the Department.

~~**D.** During fiscal year 2011, notwithstanding subsection (C)(1), the nonrefundable fee per brand and grade of specialty fertilizer is $40.~~

R3-3-803. Tonnage Reports; Inspection Fee

A. Quarterly tonnage reports and inspection fee.

1. The inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial fertilizer distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial fertilizer without a license as required under A.R.S. §~~3-2009~~ 3-272 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
    a. If the inspection fee is being passed on to the purchaser:
        i. The assigned number and name of the currently licensed company;
        ii. The commercial fertilizer by code or grade;
        iii. The amount of commercial fertilizer in whole tons;
        iv. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
        v. The date of the report.
    b. If the licensee pays tonnage fees for the distribution of a commercial fertilizer:
        i. The grade;
        ii. The amount of commercial fertilizer distribution by county;
        iii. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
        iv. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
        v. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
        vi. The date of the report.

B. Estimated tonnage report. A licensee may estimate the annual fertilizer material tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.

1. The licensee shall submit the estimated annual commercial fertilizer tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
    a. The estimated tonnage of commercial fertilizer to be distributed;
    b. The grade;
    c. The amount of distribution by county;
    d. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
    e. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
    f. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    g. The date of the report.

2. The licensee shall ~~pay at least $8 per year~~ submit the inspection fee pursuant to subsection (A)(1), which shall be for the amount declared in subsection (B)(1)(a), but not less than $8 per year. The fee must be included with the annual tonnage report submitted to the Department no later than July 31 of each year. Adjustments for overestimates or underestimates for a licensee with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
4. Overestimation of tonnage.
    a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
    b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

~~C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is $0.10 per ton. The tonnage must be rounded to the nearest whole ton.~~

R3-3-804. General Provisions

A. Labeling.

1. The grade numbers for primary nutrients that accompany the brand name of a commercial fertilizer shall be listed on the label in the following order: total nitrogen, available phosphate, and soluble potash. Other guaranteed nutrient values shall not be included with the grade numbers unless:
    a. The guaranteed nutrient value follows the grade number;
    b. The guaranteed nutrient value is immediately preceded with the name of the claimed nutrient to which it refers in the guaranteed analysis; and
    c. The name printed on the label is as prominent as the numbers.
2. The materials from which claimed nutrients are derived shall be listed on the label.
3. No grade is required for fertilizer materials that claim no primary plant nutrient (i.e., 0-0-0).
4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of elements.
5. The label shall include the brand name of a fertilizer. Misleading or confusing numerals shall not be used in the brand name on the label.
6. Fertilizer material not defined in the Official Publication may be used as fertilizer material if a definition or other method of analysis and agronomic data for fertilizer material is approved by the Associate Director.

B. Claims and misleading statements.

1. Any nutrient claimed as a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. An ingredient shall not be claimed as a nutrient unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.
2. Scientific data supporting the claim of improved efficacy or increased productivity shall be made available for inspection to the Associate Director upon request.

3. If the name of a fertilizer material is used as part of a fertilizer brand name, such as blood, bone or fish, the guaranteed nutrients shall be derived from or supplied entirely by the named fertilizer material.
4. Fertilizer material subject to this Article and applicable laws shall not bear false or misleading statements.

C. Deficiencies.

1. The value of a nutrient deficiency in a fertilizer material shall take into account total value of all nutrients at the guaranteed level and the price of the fertilizer material at the time of sale.
2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.

D. All investigational allowances shall be conducted as prescribed in the Official Publication~~, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions~~.

E. Leased fertilizer material storage containers shall be clearly labeled with the following:

1. Grade numbers;
2. Brand name, if applicable; and
3. The statement, "Leased by (Name and address of lessor) to (Name and address of lessee)."

~~**C.** During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is $0.10 per ton. The tonnage must be rounded to the nearest whole ton.~~

ARTICLE 9. COMMERCIAL FEED

R3-3-901. Definitions

In addition to ~~the feed ingredient definitions and feed terms in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not contain any later amendments or editions, and~~ the definitions in A.R.S. § 3-2601, the following terms apply to this Article:

~~1.~~ *"Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611.* A.R.S. §~~3-2601(2)~~ 3-2601(3)

~~2.~~ "Lot" means any distinct, describable, and measurable quantity that contains no more than 100 tons.

~~3. "Official Publication" means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999. Copies may be purchased from the Assistant Secretary/Treasurer, P.O. Box 478, Oxford, IN 47971.~~ "Official Publication" means the publication *"Official Publication"* (2023), that contains the latest approved documents of the Association of American Feed Control Officials. This material is incorporated by reference, is on file with the Department and includes no later amendments or additions. A copy is available for inspection at the Department located at 1110 West Washington Street, Suite 450, Phoenix, AZ 85007, or online subscription may be purchased online at https://www.aafco.org/Publications.

"Pneumatic probe sampler" means a device for taking samples of grain and other particulate material from the bottom of a bin comprises two concentric tubes spaced sufficiently apart to permit passage of the material when entrained in a stream of air. The outer longer tube has a serrated edge to enable it to penetrate dense sections, while the inner, shorter tube is provided with helical vanes. Air, blown down the outer tube is caused to swirl in a vortex by the helical vanes, thereby

entraining material lodged near the bottom of the outer tube. The air, together with entrained material, passes up the inner tube and is conducted to a cyclone separator to recover the sample. (U.S. Patent, US3580084A, May 25, 1971, Expired)

R3-3-902. Licensure; Fee; Ammoniation

A. Any person applying for a commercial feed license~~, under A.R.S. § 3-2609,~~ to manufacture or distribute commercial feed shall provide the following information and a nonrefundable fee of $10 for each year of the license:

1. A copy of the label of each commercial feed product intended for distribution within the state or not already filed by the applicant with the Department; and
2. The following information on the license application provided by the Department:
   a. The name, title, and signature of the applicant;
   b. The distributor or manufacturer name, mailing address, telephone, and~~ facsimile number~~ email address;
   c. The ~~social security number or~~ tax identification number or Social Security number of an individual applying;
   d. The date of the application;
   e. The physical location, telephone, and~~ facsimile number~~ email address of the distributor or manufacturer, if different than subsection (A)(2)(b);
   f. The name, address, telephone, and~~ facsimile number~~ email address of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(2)(b); and
   g. The license time-period option.

B. A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

C. Ammoniation. Any person who ammoniates feed or feed material for distribution or sale shall obtain a commercial feed license and is responsible for all testing, labeling, or other requirements pertaining to commercial feed, unless the feed is ammoniated on the premises of the person using the ammoniated feed.

R3-3-903. Tonnage Reports; Inspection Fee

A. Quarterly tonnage report and inspection fee.

1. The inspection fee for all commercial feed sold or distributed in Arizona is 20¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued, but shall report the tonnage on the following quarterly tonnage report.~~ Any commercial feed distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report.~~ Any person who distributed commercial feed without a license as required under A.R.S. § 3-2609 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
   a. If the inspection fee is being passed on to the purchaser:
      i. The~~ assigned number~~ commercial feed license number issued pursuant to this Article and name of the currently licensed company;

ii. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;

iii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

iv. The date of the report.

b. If the licensee pays a tonnage fee for the distribution of a commercial feed:

i. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;

ii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

iii. The date of the report.

B. Estimated tonnage report. A licensee may estimate the annual commercial feed tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.

1. The licensee shall submit the estimated annual commercial feed tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
   a. The estimated tonnage of commercial feed to be distributed;
   b. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
   c. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
   d. The date of the report.
2. The licensee shall ~~pay at least $8 per year~~ submit the inspection fee pursuant to subsection (A)(1), which shall be for the amount declared in subsection (B)(1)(a), but not less than $8 per year. The fee must be included with the annual tonnage report submitted to the Department no later than July 31 of each year. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
4. Overestimation of tonnage.
   a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
   b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed

A. A person shall not sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed unless the milk or milk product:

1. Meets Grade A milk standards as specified in A.A.C. R3-2-802;
2. Is produced as prescribed in A.A.C. R3-2-805; or

3. Is decharacterized with food coloring ~~approved by the Federal Food, Drug, and Cosmetic Act~~ approved under the Federal Food, Drug, and Cosmetic Act, pursuant to 21 CFR §§ 73.1 *et seq.* (amended November 10, 2022, https://www.ecfr.gov/current/title-21/chapter-I/subchapter-A/part-73) and 21 CFR §§ 74.101 *et seq.* (amended April 5, 1993, https://www.ecfr.gov/current/title-21/chapter-I/subchapter-A/part-74/subpart-A). This material is incorporated by reference, is on file with the Department and does not include any later amendments or editions, and the decharacterization:
    a. Does not affect nutritive value; and
    b. Matches the color on the Color Requirement ~~card, incorporated by reference and on file with the Office of the Secretary of State.~~ card. Any person decharacterizing milk and milk products may obtain a Color Requirement card from the ~~Environmental Services Division Office,~~ Arizona Department of Agriculture, ~~1688 West Adams , Phoenix, Arizona 85007~~ at 1010 W. Washington Street, Phoenix, Arizona 85007, or by requesting by mail at 1802 West Jackson Street, #78, Phoenix Arizona 85007.

B. Labeling. All milk or milk product commercial feed labels shall be approved by the Associate Director before use.
1. The principal display panel of a decharacterized milk or milk product commercial feed container shall prominently state "WARNING - NOT FOR HUMAN CONSUMPTION" in capital letters. The letters shall be at least 1/4 inch on containers of 8 oz. or less and at least 1/2 inch on all other containers.
2. The container label shall also bear the statement "This product has not been pasteurized and may contain harmful bacteria" in letters at least 1/8 inch in height.

C. Milk or milk products intended for commercial feed shall not be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it meets Grade A standards or is decharacterized and ~~clearly identified "Not for Human Consumption."~~ properly labeled as required in subsection (B).

R3-3-905. Labeling; Precautionary Statements

A. Ingredient statement.
1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name.
2. All labels for commercial feed and customer-formula feed containing cottonseed or a cottonseed product shall separately list the ingredients in the ingredient statement in addition to any collective term listed.

B. Labeling and expression of guarantees.
1. All labeling and expression of guarantees shall comply with the commercial feed-labeling guide, medicated commercial feed labeling, and expression of guarantees requirements prescribed in the Official ~~Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.~~ Publication.
2. All feed with an expired "use by" or "expiration" date shall be removed from consumer access, and are not permitted for sale.
~~2~~3. The label shall include the brand or product name, and shall indicate the intended use of the feed. The label shall not contain any false or misleading statements.
~~3~~4. Directions for use and precautionary statements.

a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall clearly state its safe and effective use. The directions shall not require special knowledge of the purpose and use of the feed.

b. Directions for use and precautionary statements shall be provided for feed containing non-protein nitrogen as specified in R3-3-906.

c. All whole cottonseed or commercial feed, and customer-formula feed delivered to the consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and shall contain the following:

i. "This feed contains 20 or less ppb aflatoxin and may be fed to any animal;" or

ii. "WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption."

iii. "DANGER: This feed has not been tested for aflatoxin and shall not be used as a feed until tested and found compliant with all state laws."

d. A distributor of whole cottonseed or cottonseed product intended for further processing, planting seed, or for any other purpose approved by the Director, shall document in writing to the Department that:

i. The lot of whole cottonseed or cottonseed product will not be used as commercial feed until the lot is tested and compliant with all state laws; and

ii. The documentation prescribed in subsection (B)(3)(c) is not required.

e. The distributor shall maintain the documentation for one year.

f. The lot of whole cottonseed or cottonseed product shall be labeled as follows: "WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state laws."

R3-3-910. Drug and Feed Additives

A. Drug and feed additive approval.

1. Before a label is approved by the Associate Director for commercial feed containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions if the material is not recognized as a commercial feed.
2. If a complaint has been filed with the Department, the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions.

B. Evidence of safety and efficacy of a commercial feed may be:

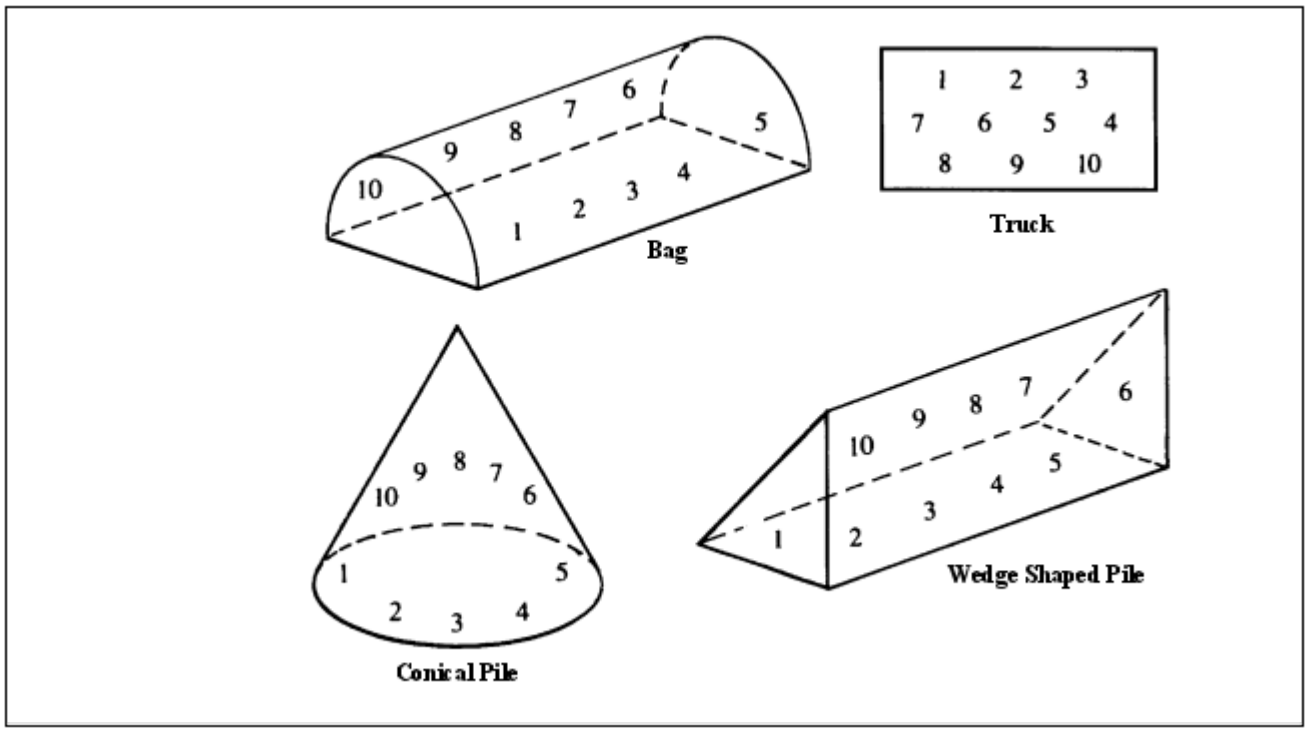
1. If the commercial feed containing additives conforms to the requirements of "Food Additives Permitted in Feed and Drinking" in the Official ~~Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not included any later amendments or editions;~~ Publication; or
2. If the commercial feed is a substance generally recognized as safe and is defined in the Official Publication or listed as a "Substances Generally Recognized as Safe in Animal Feeds" in the Official ~~Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.~~ Publication.

R3-3-913. Sampling Methods

A. Sampling commercial feed. The methods of sampling commercial feed shall comply with the procedures established in ~~4.1.01,~~ the Official ~~Method~~ Method, 965.16 Sampling of Animal Feed, in the ~~"Official Methods of Analysis of AOAC International," 16th Edition, 1997~~ *"Official Methods of Analysis of AOAC International, 22nd Edition (2023)"*, which is incorporated by reference, ~~on file with the Office of the Secretary of State;~~ on file with the Department, and does not include any later amendments or editions of the incorporated matter. Copies are available for inspection at the Department located at 1110 West Washington Street, Suite 450, Phoenix, AZ 85007, or may be purchased from AOAC International, ~~481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417~~ 2275 Research Boulevard, Suite 300, Rockville, Maryland 20850, or by purchasing a print copy or subscribing online at https://members.aoac.org/bookstore/.

B. Sampling whole cottonseed.

1. Sample size - A gross sample not less than 30 pounds shall be taken from a lot. The gross sample shall consist of not less than 10 probes evenly spaced or 10 stream sample passes taken following the procedure prescribed in subsection (B)(4)(b).
2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location, and the results of the analysis reported by a certified laboratory within five working days from receipt of sample.
3. Sampling equipment. Sampling equipment includes:
   a. Scale, graduated in one-half pound increments, and any of the following:
   b. Corkscrew trier, approximately 50 inches in length and capable of taking at least a three-pound sample,
   c. Pneumatic probe sampler ~~such as the "Probe-a-Vac" pneumatic sampler~~,
   d. Stream sampler: A container at least 8 inches x 5 inches x 5 1/2 inches attached to a pole that enables the sampler to pass the container through falling streams of cottonseed,
   e. Automatic stream samplers or other sampling equipment if scientific data documenting its ability to obtain a representative sample is approved by the Associate Director,
   f. ~~Shop-vac~~ Canister style shop vacuum system of no less than 1.5 hp ~~vacuum system~~ capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of 3/4 inch PVC pipe.
4. Sampling procedure.
   a. If a corkscrew trier or ~~Probe-a-Vac~~ pneumatic probe sampler is used, at least 10 evenly spaced probes shall be taken per lot. The probed samples shall be taken according to the following patterns:



The probes shall penetrate at least 50 inches, and at least two of the 10 probes per sample shall reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.

b. If a ~~shop-vac~~ canister style shop vacuum system is used, at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.

c. Stream samples shall be taken while the cottonseed is being discharged, if there is a uniform discharge flow over a set period of time. The sample shall consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the sample size specified in subsection (B)(1).

d. The gross sample shall be weighed to the nearest 1/2 pound but shall not be reduced in size. If any gross sample does not meet the minimum 30 pound weight, that gross sample shall be discarded and the sampling procedure repeated from the beginning. If the ~~shop-vac~~ canister style shop vacuum gross sample is not at least 10 pounds, the sample shall be discarded and the sampling procedure repeated from the beginning.

e. The Associate Director shall approve any modified sampling procedure if scientific data is provided that documents that representative samples will be obtained through the modified sampling procedure.

ARTICLE 10. AGRICULTURAL SAFETY

R3-3-1001. Definitions

In addition to the definitions set forth in A.R.S. § 3-3101 and as defined in the federal regulations under 40 CFR § 170.305 (as amended October 30, 2020, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170/subpart-D/section-170.305 This material is incorporated by reference, is on file with the Department and does not include any later amendments or editions), the following terms apply to this Article:

~~1. "Agricultural emergency" means a sudden occurrence or set of circumstances that:~~

~~a. An agricultural employer could not have anticipated and over which the agricultural employer has no control,~~

~~b. Requires entry into a treated area during a restricted-entry interval, and~~

~~c. No alternative practices would prevent or mitigate a substantial economic loss.~~

2. *"Agricultural employer" means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses agricultural workers.*

3. *"Agricultural establishment" means any farm, forest, nursery, or greenhouse using pesticide products that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only products that do not have a federal worker protection statement on the label.*

4. *"Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes:*

   a. *Food, feed, and fiber plants;*

   b. *Trees;*

   c. *Turfgrass;*

   d. *Flowers, shrubs;*

   e. *Ornamentals; and*

   f. *Seedlings.*

5. *"Chemigation" means the application of pesticides through irrigation systems.*

6. "Consultation" means an on-site visit by, or a response to an inquiry from, the Agricultural Consulting and Training program personnel, pursuant to A.R.S. § 3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.

7. *"De minimis violation" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health* (A.R.S. § 3-3101(2)).

8. "Early entry" means any worker or handler entering a treated area after a pesticide is applied to a location on the agricultural establishment and before the expiration of the restricted-entry interval.

9. "Farm labor contractor" means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.

10. "Flagger" means a person who indicates an aircraft spray swath width from the ground.

11. "Gravity based penalty" means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.

12. "Handler" means any person, including a self-employed person:

   a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who does any of the following:

      i. Mixing, loading, transferring, or applying pesticides;

      ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;

      iii. Handling open containers of pesticides;

      iv. Acting as a flagger;

      v. Cleaning, adjusting, handling, or repairing any part of mixing, loading, or application equipment that may contain pesticide residue;

vi. Assisting with the application of pesticides;

vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling is reached or any of the ventilation criteria in R3-3-1002 or in the labeling has been met to operate ventilation equipment, adjust or remove coverings used in fumigation, or monitor air levels.

viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings.

ix. Performing tasks as a pest control advisor during any pesticide application.

b. The term handler does not include:

i. Any person who handles only pesticide containers that are emptied or cleaned according to pesticide product labeling instructions or, in the absence of labeling instructions, are triple-rinsed or its equivalent;

ii. Any person who handles only pesticide containers that are unopened; or

iii. Any person who repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.

13. "Handler employer" means any person who is self-employed as a handler or who employs a handler, for any type of compensation.

14. *"Nonserious violation" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice* (A.R.S. § 3-3101(6)).

15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170 the Worker Protection Standard, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.

17. *"Pesticide" means:*

(a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant (A.R.S. § 3-341(21)).

18. "Restricted-entry interval" means the time after the completion of a pesticide application during which entry into a treated area is restricted as indicated by the pesticide product label.

19. *"Restricted use pesticide" means a pesticide classified as such by the United States Environmental Protection Agency* (A.R.S. § 3-361(8)).

20. *"Serious violation" means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm*

~~*could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice* (A.R.S. § 3-3101(10)).~~

~~21. "Substantial economic loss" means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.~~

~~22. "Treated area" means any area to which a pesticide is being directed or has been directed.~~

~~23. "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who performs activities relating to the production of agricultural plants on an agricultural establishment. The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment who performs tasks as a pest control advisor.~~

"Worker Protection Standard" or "WPS" means the regulations as prescribed in 40 CFR §§ 170.1 *et seq.*, excluding 40 CFR §§ 170.401(c)(4) and 170.501(c)(4) (as amended October 30, 2020, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170). This material is incorporated by reference, on file with the Department and does not include any later amendments of editions.

R3-3-1002. ~~Worker Protection Standards~~Repealed

~~Worker protection regulations shall be as prescribed in 40 CFR 170, excluding 40 CFR 170.130 and 170.230, as amended July 1, 2002. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.~~

R3-3-1003. ~~Pesticide Safety Training~~ Worker and Handler Trainers; Records

~~**A.** Training exemptions.~~

~~1. Handler. A handler who currently meets one of the following conditions is exempt from the requirements under subsection (D)(1) and (D)(3):~~

~~a. Certified as an applicator of restricted use pesticides under R3-3-208,~~

~~b. Certified as a trainer under this Section, or~~

~~c. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.~~

~~2. Worker. A worker who meets one of the following conditions is exempt from the requirements under subsections (C), (D)(1), and (D)(2):~~

~~a. Certified as an applicator of restricted use pesticides under R3-3-208,~~

~~b. Holds a current handler card under subsection (D)(4),~~

~~c. Certified as a trainer under this Section, or~~

~~d. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.~~

~~**B.** Training verification.~~

~~1. Handler. The handler employer shall verify, before the handler performs a handling task, that the handler:~~

~~a. Meets a condition listed in subsection (A)(1); or~~

~~b. Received pesticide safety training during the last three years, excluding the month in which the training was completed.~~

~~2. Worker. The agricultural employer shall verify that a worker:~~

a. Meets a condition listed in subsection (A)(2); or

b. Received pesticide safety training during the last five years before allowing a worker entry into an area:

i. To which a pesticide was applied during the last 30 days, or

ii. For which a restricted-entry interval for a pesticide was in effect during the last 30 days.

3. The agricultural employer and the handler employer, or designee, shall verify that a training exemption claimed in subsection (A)(1) or (A)(2) is valid by reviewing the appropriate certificate issued by the Department, the EPA, or an EPA-approved program.

4. The agricultural employer and the handler employer, or designee, shall visually inspect the handler's or worker's EPA-approved Worker Protection Standard training verification card to verify that the training requirements prescribed in subsections (B)(1) or (B)(2) are met. If the employer believes that a worker or handler training verification card is valid, the verification requirement of subsection (B)(1) or (B)(2) is satisfied.

5. An EPA-approved Worker Protection Standard training verification card is valid if issued:

a. As prescribed in this Section, or

b. By a program approved by the Department, and

c. Within the time-frames prescribed in subsection (B)(1) or (B)(2).

6. The agricultural employer shall provide a worker who does not possess the training required in subsection (B)(2) with the pesticide safety information prescribed in subsection (C) and the pesticide safety training prescribed in subsection (D)(1) and (D)(2). The agricultural employer shall provide pesticide safety training to a worker before:

a. The worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities; or

b. The sixth day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.

C. Pesticide safety information.

1. The agricultural employer shall provide pesticide safety information to a worker who does not meet the training requirements of subsection (B) before the worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect. The agricultural employer shall provide safety information in a manner that the worker can understand. The safety information shall include the following:

a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;

b. Workers may prevent pesticides from entering their bodies by:

i. Following directions or signs, or both, about keeping out of a treated or restricted area;

ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;

iii. Wearing work clothing that protects the body from pesticide residue;

iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;

v. Washing work clothes separately from other clothes before wearing; and

vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.

2. The agricultural employer shall document compliance by obtaining the employee's signature or other verifiable means to acknowledge the employee's receipt of the information required in subsection (C)(1).

D. Pesticide safety training. The agricultural employer or handler employer shall ensure that pesticide safety training is provided before the sixth day of entry into a pesticide-treated area. The pesticide safety training program shall be in a language easily understood by a worker or handler, using a translator if necessary. The program shall relate solely to pesticide safety training. Information shall be presented either orally from written material or in an audiovisual manner and shall contain nontechnical terms. The trainer shall respond to questions from attendees.

1. General pesticide safety training. The following pesticide safety training shall be presented to either a handler or a worker:
   a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;
   b. Routes by which pesticides can enter the body;
   c. Signs and symptoms of common types of pesticide poisoning;
   d. Emergency first aid for pesticide injuries or poisonings;
   e. How to obtain emergency medical care;
   f. Routine and emergency body decontamination procedures, including emergency eyeflushing techniques;
   g. Warnings about taking pesticides or pesticide containers home; and
   h. How to report violations to the Department, including providing the Department's toll-free pesticide hotline telephone number.
2. Worker training. In addition to the information in subsection (D)(1), a pesticide safety training program for a worker shall include the following:
   a. Where and in what form pesticides may be encountered during work activities;
   b. Hazards from chemigation and drift;
   c. Hazards from pesticide residue on clothing; and
   d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including:
      i. Application and entry restrictions,
      ii. Posting of warning signs,
      iii. Oral warning,
      iv. The availability of specific information about applications,
      v. Protection against retaliatory acts, and
      vi. The design of the following warning sign:

3. ~~Handler training. In addition to the information in subsection (D)(1), a pesticide safety training program for a handler shall include the following:~~
   a. ~~Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;~~
   b. ~~Need for and appropriate use of personal protective equipment;~~
   c. ~~Prevention, recognition, and first aid treatment of heat-related illness;~~
   d. ~~Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;~~
   e. ~~Environmental concerns such as drift, runoff, and potential impact on wildlife; and~~
   f. ~~Requirements of this Article applicable to handler employers for the protection of handlers and other individuals, including:~~
      i. ~~The prohibition against applying pesticides in a manner that will cause contact with workers or other individuals;~~
      ii. ~~The requirement to use personal protective equipment;~~
      iii. ~~The provisions for training and decontamination, and~~
      iv. ~~Protection against retaliatory acts.~~
4. ~~The trainer shall issue an EPA-approved Worker Protection Standard training verification card to each handler or worker who successfully completes training, and shall maintain a record in indelible ink containing the following information:~~
   a. ~~Name and signature of the trained worker or handler;~~
   b. ~~Training verification card number;~~
   c. ~~Issue and expiration date of the training verification card;~~
   d. ~~Social security number or a unique trainer-assigned identification number of the worker or handler;~~
   e. ~~Name and signature of the trainer; and~~
   f. ~~Address or location of where the training occurred, including city, county, and state.~~

~~E.~~**A.** Trainer requirements.

1. A person applying for pesticide safety trainer certification shall:
   a. Complete the ~~Department~~ Worker Protection Standard compliant pesticide safety training program ~~established in subsection (D)(1) through (D)(3)~~ administered by the Department; or
   b. Hold a current PCA license or restricted use certification, issued by the Department for a PCA or certified applicator, as prescribed under R3-3-207 or R3-3-208.
2. An applicant shall submit a signed and dated affidavit to the Department verifying that each worker or handler will be trained according to the training requirements of ~~subsection (D)~~ the Worker Protection Standard. The affidavit shall include the ~~applicant's:~~ applicant's name, address, e-mail address, telephone and fax numbers, as applicable.
   a. ~~Name, address, e-mail address, and telephone and fax numbers, as applicable; and~~
   b. ~~Social security number.~~
3. Trainer certification is:

a. Nontransferable; ~~and~~

b. ~~Is valid~~ Valid for three years from the date issued under subsection ~~(E)(1)(a)~~ (A)(1)(a), excluding the month in which the trainer was certified, and is renewable upon completion of the ~~Department~~ Worker Protection Standard compliant pesticide safety training program ~~established in subsection (D)(1) through (D)(3)~~ administered by the Department; or

c. ~~Is valid~~ Valid initially for one year from the date issued under subsection ~~(E)(1)(b)~~ (A)(1)(b), excluding the month in which the trainer certification was issued; and ~~if the PCA license or restricted use certification remain current, and is renewable for three years upon completion of the pesticide safety training program established in subsection (D)(1) through (D)(3)~~.

d. If the PCA license or restricted use certification remains current, is renewable for three years upon completion of the Worker Protection Standard compliant pesticide safety training administered by the Department.

4. A trainer shall maintain the records required in subsection ~~(D)(4)~~ (B) for ~~five years for workers, and three years for handlers~~ two years, excluding the month in which the verification card was issued.

5. Upon request by the Department, the trainer shall make available worker and handler records prescribed in subsection ~~(D)(4)~~ (B) for inspection and copying by the Department.

6. A trainermay issue a Worker Protection Standard training verification card to each handler or worker who successfully completes training, and shall maintain a record as required in (B).

B. Training records shall include the following recorded in indelible ink:

1. Name and signature of the trained worker or handler;
2. Training verification card number, if utilized;
3. Issue and expiration date of the training verification card;
4. A unique trainer-assigned identification number of the worker or handler;
5. Name and signature of the trainer; and
6. Address or location of where the training occurred, including city, county, and state.

~~F.~~**C.** A trainer shall permit the Assistant Director or designee to enter a place where worker safety training is being presented to observe and question trainers and attendees to determine compliance with the requirements of this Section.

~~G.~~ **D.** The Department may suspend, revoke, or deny trainer certification if any of the following occur:

1. Failing to follow the worker and handler training requirements prescribed in ~~subsections (D)(1) through (D)(3)~~ 40 CFR §§ 170.401 and 170.501 of the WPS;
2. ~~Failing to issue training verification cards to workers and handlers as prescribed in subsection (D)(4);~~
3. ~~3.~~2. Failing to maintain the training information prescribed in subsection ~~(E)(4);~~ (B)
4. ~~4.~~3. Failing to fulfill the requirements of the affidavit as prescribed in subsection ~~(E)(2); or~~ (A)(2); or
5. ~~5.~~4. Having had a similar certification revoked, suspended, or denied in any jurisdiction within the last three years.

R3-3-1004. Notification Requirements for Farm Labor Contractors

A. The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:

1. The location of the agricultural establishment's central posting site; and

2. The restrictions on entering the treated area as specified in 40 CFR § 170.120(d) of the WPS, if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR § 170.120(a), (b) and (c) of the WPS.

B. The farm labor contractor shall:

1. Post or provide the worker in writing, with the information in 40 CFR § 170.122 of the WPS, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR § 170.120(d) of the WPS if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area and is not posted as allowed or required in 40 CFR § 170.120(a), (b) and (c) of the WPS.

R3-3-1006. Agricultural Emergency

A. Any grower, a group of growers, or designee may request the Assistant Director for an agricultural emergency.

B. Possibility of agricultural emergency.

1. If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:
   a. The cause of the emergency,
   b. The area where the emergency may occur,
   c. An explanation of why early entry is necessary,
   d. Why other methods cannot be used to avoid the early entry, and
   e. The justification that substantial economic loss will occur.
2. The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists, if the grower or requesting party submits written evidence that includes the information in subsection (B)(1), within four hours of receiving the information.
3. If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial of the agricultural emergency.
4. If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately and provide the Assistant Director with written evidence of the emergency within five days. The Assistant Director shall, within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.

C. Occurrence of agricultural emergency.

1. If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department, orally, the next business day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:
   a. The cause of the emergency,
   b. The area where the emergency occurred,

c. A brief explanation of why early entry was necessary,

d. Why other methods could not be used to avoid the early entry, and

e. The justification that substantial economic loss would have occurred.

2. If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions whether the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial.

3. The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party confirming or denying the request for the agricultural emergency.

R3-3-1007. Violations and Civil Penalties

A. Serious violations. The base penalty for any serious violation is $500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. §§ 3-3113 and 3-3114.

B. Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors prescribed in A.R.S. § 3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

~~— VIOLATION GRAVITY FACTOR~~

~~— (1 - lowest; 4 - highest)~~

~~— **VIOLATION** — — — — — — **GRAVITY**~~

~~— Central Posting — — — — — — — 1 - 2~~

~~— Training — — — — — — — 1 - 4~~

~~— Decontamination — — — — — — — 1 - 4~~

~~— Personal Protective Equipment — — — — — — — 1 - 4~~

~~— Pesticide Applications and Notice — — — — — — — 1 - 4~~

~~— Pesticide Application Restrictions — — — — — — — 2 - 4~~

~~— Other Requirements — — — — — — — 1 - 4~~

VIOLATION GRAVITY FACTOR

(1 - Lowest; 4 - highest)

VIOLATION	**GRAVITY**
Central Posting	1 - 2
Training	1 - 4
Decontamination	1 - 4
Personal Protective Equipment	1 - 4
Pesticide Application and Notice	1 - 4
Pesticide Application Restrictions	2 - 4
Other Requirements	1 - 4

C. Size-of-business. The Assistant Director shall use:

1. The maximum number of employees at any one time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or
2. A site-specific employee count, if the violation does not endanger employees at other locations of the business; or
3. The number of persons trained by a trainer during the previous 12 months that violate the training provisions of ~~this Section~~ R3-3-1003.

~~— — **SIZE-OF-BUSINESS**~~

~~— — — — — **Number of Employees or**~~

~~— **Size Category** - - - **Number of People Trained**~~

~~— **I** — — — 1-10~~

~~— II — — — 11-75~~

~~— III — — — 76-150~~

~~— IV — — — More than 150~~

SIZE OF BUSINESS

Size Category	Number of Employees or (Number of People Trained)
I	1 - 10
II	11 - 75
III	76 - 150
IV	More than 150

D. Base penalty. The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

~~— **BASE PENALTY**~~

~~— Gravity — — — — Size Category~~

~~— **Factor** — — **I** — **II** — **III** — **IV**~~

~~— 1 — — $250 — $300 — $350 — $400~~

~~— 2 — — 300 350 400 450~~

~~— 3 — — 350 400 450 500~~

~~— 4 — — 500 500 500 500~~

BASE PENALTY

Gravity	Size Category			
Factor	**I**	**II**	**III**	**IV**
1	$250	$300	$350	$400
2	$300	$350	$400	$450
3	$350	$400	$450	$500
4	$500	$500	$500	$500

E. Combined or group violations. The Assistant Director may combine or group violations.

1. Violations may be combined and assessed one penalty if the violation does not cause any immediate danger to public health or safety or damage to property. Example: Eight workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only one training penalty being assessed against the employer.
2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity. Example: Two crews from the same company are engaged in an improper handling activity and one crew is using a pesticide with a "danger" signal word, (skull and cross bones) while the other crew is using a pesticide with a "warning" signal word. This situation may result in the employer being assessed one penalty based on the penalty for the "danger" (skull and cross bones) violation.

~~**F.** If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. § 3-3114.~~

R3-3-1008. Penalty Adjustments

A. The Assistant Director shall assign an appropriate number of points for each of the following five factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.

1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.
2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.
3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used ~~in assessing a~~ to decrease the penalty.

~~— **BASE ADJUSTMENT FACTORS**~~

~~— **Pesticide**~~

~~— Signal word danger with skull and~~

~~— — crossbones — — — — — — — 5~~

~~— Signal word danger — — — — — — — — 4~~

~~— Warning — — — — — — — — 3~~

~~— Caution — — — — — — — — 2~~

~~— Indirect relation to the violation — — — — — — — — 1~~

~~— **Harm to Human Health**~~

~~— Actual Injuries or temporary reversible~~
~~illness resulting in hospitalization or a~~
~~variable but limited period of disability.~~

~~— — (hospital care greater than 8 hours) — — — — — — — 9~~

~~— Actual (doctor care required, less than~~

~~— — 8 hours) — — — — — — — 6~~

~~— Minor supportive care only — — — — — — — — 2 - 4~~

~~— Consequence potential — — — — — — — — — 1 - 2~~

~~— No relationship found — — — — — — — — 0~~

~~— **Compliance History**~~

~~— One or more violations in the~~

~~previous 12 months — — — — — — — — — 4~~

~~— One or more violations in the~~

~~previous 24 months — — — — — — — — — 3~~

~~— One or more violations in the~~

~~— previous 36 months — — — — — — — — 1~~

~~— No violation history — — — — — — — — 0~~

~~— **Culpability**~~

~~— Knowing or should have known — — — — — — — — — 4~~

~~— Negligence — — — — — — — — 2~~

~~— Neither — — — — — — — — 0~~

~~— **Good Faith** — — — — — — — — 0 - –2~~

BASE ADJUSTMENT FACTORS

Pesticide Labeling

Signal word "Danger" with skull and crossbones	5
Signal word "Danger"	4
Signal word "Warning"	3
Signal word "Caution"	2
Indirect relation to the violation	1

Harm to Human Health

Actual Injuries or temporary reversible illness resulting in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours)	9
Actual Injuries or temporary reversible illness resulting in doctor care (doctor care required, less than 8 hours)	6
Minor supportive care only	2 - 4
Consequence potential	1 - 2
No relationship found	0

Compliance History

One or more violations in the previous 12 months	4
One or more violations in the previous 24 months	3
One or more violations in the previous 36 months	1
No violation history	0

Culpability	
Knowing or should have known	4
Negligence	2
Neither	0
Good Faith	0 - (-2)
Violation corrected within 14 days	-1
Violation corrected within 7 days	-2

B. The Assistant Director may reduce the base penalty for a nonserious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

~~**FINAL PENALTY CALCULATION**~~

~~Number of Points~~	~~Nonserious Violation Penalty Adjustment~~	~~Serious Violation Penalty Adjustment~~
~~3 or below~~	~~Base =80%~~	~~Base Penalty~~
~~4~~	~~Base =65%~~	~~Base + 10%~~
~~5~~	~~Base =50%~~	~~Base + 20%~~
~~6~~	~~Base =35%~~	~~Base + 30%~~
~~7~~	~~Base =20%~~	~~Base + 40%~~
~~8~~	~~Base =5%~~	~~Base + 50%~~
~~9~~	~~Base Penalty~~	~~Base + 60%~~
~~10~~	~~Base + 20%~~	~~Base + 70%~~
~~11~~	~~Base + 35%~~	~~Base + 80%~~
~~12~~	~~Base + 50%~~	~~Base + 90%~~
~~13~~	~~Base + 65%~~	~~Base + 100%~~
~~14~~	~~Base + 80%~~	~~Base + 100%~~
~~15 or more~~	~~Base + 100%~~	~~Base + 100%~~

FINAL PENALTY CALCULATION

Number of Points	**Non-serious Violation** Penalty Adjustment	**Serious Violation** Penalty Adjustment
3 or below	Base -80%	Base Penalty
4	Base -65%	Base +10%
5	Base -50%	Base +20%
6	Base -35%	Base +30%
7	Base -20%	Base +40%

8	Base -5%	Base +50%
9	Base Penalty	Base +60%
10	Base +20%	Base +70%
11	Base +35%	Base +80%
12	Base +50%	Base +90%
13	Base +65%	Base +100%
14	Base +80%	Base +100%
15 or more	Base +100%	Base +100%

Example: A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection: (1) No training for 35 seasonal workers on the harvest crew; (2) No available decontamination supplies; (3) No safety poster at the central posting location; (4) No emergency telephone number posted, and no medical facility location posted at the central posting location; (5) No posted pesticide application information at the central posting location.

~~— Step 1. Use the *Violation Gravity Factor* table to determine the gravity of the violation.~~

~~– (1) Training, 1-4 — — — — 2 points, all 35~~
~~— — — — — workers are~~
~~— — — — — combined;~~

~~– (2) Decontamination, 1-4 — — — — 3 points, no supplies~~
~~— — — — — were available within~~
~~— — — — — the prescribed~~
~~— — — — — distance and it has~~
~~— — — — — been 25 days since~~
~~— — — — — the most recent~~
~~— — — — — application;~~

~~– (3) - (5) Central~~
~~— Posting, 1-2 — — — 1 point, since the~~
~~— — — — — violations concerns~~
~~— — — — — the same factor, they~~
~~— — — — — are combined. (There~~
~~— — — — — is evidence that the~~
~~— — — — — old poster blew away~~
~~— — — — — and the pesticide~~
~~— — — — — application~~
~~— — — — — information is kept~~
~~— — — — — available in the~~
~~— — — — — secretary's desk, but~~

— — — — — it is not 'readily'

— — — — — available.)

— Step 2. Use the *Size of Business* table to determine the size category.

— 75 employees falls into the size category H;

— Step 3. Use the *Base Penalty* table to determine the base penalty. Use column H based on the *Size of Business* determination from step 2.

— Violation 1, with a gravity factor of 2, equals a base penalty of $350;

— Violation 2, with a gravity factor of 3, equals a base penalty of $400;

— Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of $300.

— Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

— Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

— Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

— Compliance History. This farm has no previous violation history. 0 points.

— Culpability. The supervisor attended a "train-the-trainer" course two years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the first two violations the supervisor should have known about the requirements. For the last three violations, the central posting sight was not checked frequently enough to ensure compliance. For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.

— Good Faith. The inspector came back five days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance. Since the employer corrected the violations quickly. –1 point.

— Step 5. Add the points for each violation from Step 4.

— Violation 1 — — — 1 + 1 + 0 + 4 + –1 = 5

— Violation 2 — — — 1 + 1 + 0 + 4 + –1 = 5

— Violations 3, 4, 5 — — — 1 + 1 + 0 + 2 + –1 = 3

— Step 6. Using the *Final Penalty Calculation* table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for nonserious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.

Violation 1 5 points — — Base - 50% = 350-175 = $175

Violation 2 5 points — — Base - 50% = 400-200 = $200

Violations

- 3, 4, 5 - 3 points — Base - 80% = 300-240 = $60

— — — — — Adjusted Penalty Total $435

Step 1. Use the Violation Gravity Factor table to determine the gravity of the violation.	
(1) Training, 1-4 points	2 points, all 35 workers are combined;

(2) Decontamination, 1-4 points	3 points, no supplies were available and it has been 25 days since the most recent application;
(3) - (5) Central Posting, 1-2 points	1 point since the violations concerns the same factor, they are combined. (There is evidence that the old poster blew away and the pesticide application information is kept available in the secretary's desk, but it is not 'readily' available.)
Step 2. Use the *Size of Business* table to determine the size category.	35 employees falls into the size category II.

Step 3. Use the *Base Penalty* table to determine the base penalty. Use column II based on the *Size of Business* determination from Step 2.

Violation 1	Gravity factor of 2	Equals a base penalty of $350;
Violation 2	Gravity factor of 3	Equals a base penalty of $400;
Violation 3, 4, and 5	Gravity factor of 1	Equals a base penalty of $300

Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide	It was a indirect relationship because of the timing of the application and when the workers were in the treated area.	1 point.
Harm to Human Health	There was no harm to health and the pesticide had not been applied recently.	1 point.
Compliance History	This farm has no previous violation history.	0 points.
Culpability	The supervisor attended a “train-the-trainer” course two years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the first two violations the supervisor should have known about the requirements. For the last three violations, the central posting sight was not checked frequently enough to ensure compliance.	For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.
Good Faith	The inspector came back five days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance.	Since the employer corrected the violations quickly. -1 point.

Step 5. Add the points for each violation from Step 4.

Violation 1	1 + 1 + 0 + 4 + -1	= 5 points

Violation 2	1 + 1 + 0 + 4 + -1		= 5 points
Violations 3, 4, and 5	1 + 1 + 0 + 2 + -1		= 3 points
Step 6. Using the Final Penalty Calculation table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for nonserious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.			
Violation 1	5 points	Base -50% =	$350 -$175 = $175
Violation 2	5 points	Base -50% =	$400 -$200 = $200
Violation 3, 4, and 5	3 points	Base -80% =	$300 -$240 = $60
Adjusted Penalty Total = $435			

R3-3-1009. Failure to Abate

~~A. The Director shall issue a notification of failure-to-abate an alleged violation if a violation has not been corrected as specified on the citation. Failure-to-abate penalties, pursuant to A.R.S. § 3-3113(E), shall be applied if an employer or handler has not corrected a previous cited violation that is a final order of the Director. When determining the appropriate penalty amount, the Director shall take into consideration a good faith effort to abate the violation.~~

~~B. If a person does not file a timely notice of contest within the 30-day contest period, the citation and proposed penalties shall be a final order of the Director.~~

~~C. If a person files a notice of contest pursuant to A.R.S. § 3-3116(A), the period for the abatement shall not begin, as to those violations contested, until the day following the entry of the final order by the Director affirming the citation. If the person contests only the amount of the proposed penalty, the person shall correct the alleged violation within the prescribed abatement period.~~

A. The Director shall include in a citation for an alleged violation of this Article a reasonable time to abate the violation.

B. When a cited person timely files a request for hearing to contest a violation, the abatement period does not begin to run until the entry of a final order as long as the request for hearing was initiated in good faith and not solely for delay or avoidance of penalties. If a person contests only the amount of the proposed penalty, the person shall correct the violation within the originally prescribed abatement period.

C. If the Director has reason to believe the cited person has failed to correct the violation within the abatement period, the Director shall notify the person by mail of the failure, the proposed penalty, and the right to request a hearing.

D. On a showing by a cited person of a good faith effort to comply with the abatement requirements of a citation and that the abatement has not been completed because of factors beyond the person's reasonable control, the Department shall issue an order affirming or modifying the abatement requirements in the citation after an opportunity for a hearing.

R3-3-1010. Calculation of Additional Penalties For Unabated Violations

~~A. The Assistant Director shall calculate a daily penalty for unabated violations if failure to abate a serious or nonserious violation exists at the time of reinspection. That penalty shall not be less than the penalty for the violation when cited, except as provided in subsection (C).~~

1. ~~If no penalty was initially proposed, the Assistant Director shall determine a penalty. In no case shall the penalty be more than $1,000 per day, the maximum allowed by A.R.S. § 3-3113(E).~~
2. ~~The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except for the following: The number of days unabated shall be counted from the day following the abatement date specified in the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection.~~

B. ~~When calculating the additional daily penalty, the Assistant Director shall consider the extent that the violation has been abated, whether the employer has made a good faith effort to correct the violation, and it is beyond the employer's control to abate. Based on these factors, the Assistant Director may reduce or eliminate the daily penalty. Example: If three of five instances have been corrected, the daily proposed penalty (calculated as outlined in subsection (A) without regard to any partial abatement), may be reduced by the percentage of the total violations which have been corrected, in this instance, three of five, or 60%.~~

A. If the Director has reason to believe the cited person has failed to correct a serious or nonserious violation within the abatement period, the Director shall assess additional civil penalties on the cited person as follows:

1. The Director shall use R3-3-1007 and R3-3-1008 to calculate an additional daily penalty for each unabated violation.
2. The additional daily penalty shall neither be less than the original penalty for the cited violation or exceed $1,000 per day per violation.
3. The additional daily penalty shall be multiplied by the number of calendar days the violation has continued unabated beyond the abatement period.

B. Notwithstanding subsection (A), the Director may reduce or eliminate the additional penalty based on:

1. The extent that the violation has been abated,
2. The cited person's good faith effort in correcting the violation, and
3. Whether the abatement has not been completed because of factors beyond the cited person's reasonable control.

R3-3-1011. Repeated or Willful Violations

A. ~~The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last three years from the date of notice.~~ The penalty for a repeated violation shall be calculated as follows:

1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before~~, up to the maximum allowed by A.R.S. § 3-3113(A)~~.
2. The penalty for a repeated serious violation shall be multiplied five times for the first repeated violation and seven times if the violation has been cited twice before~~, up to the maximum allowed by A.R.S. § 3-3113(A)~~.
3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation~~, up to the maximum allowed by A.R.S. § 3-3113(A)~~.
4. A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.
5. ~~If the Assistant Director determines, through documentation, that it is appropriate, the~~ The penalty may be multiplied by 10~~, up to the maximum allowed by A.R.S. § 3-3113(A).~~, not to exceed the maximum penalty, if it is justified

through appropriate documentation.

B. The Assistant Director may adjust the ~~gravity based~~ base penalty found under R3-3-1007(D) by a multiplier up to 10 for any willful violation~~, up to the maximum allowed by A.R.S. § 3-3113(A)~~.

C. The Assistant Director shall not ~~allow a reduction~~ use base adjustment factors in R3-3-1008 to reduce the penalty for any serious or nonserious willfully repeated violation.

D. Repeated violations are based on prior violations occurring within the previous three years.

E. The penalty for a repeated or willful violation shall not exceed ten thousand dollars.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

ARTICLES 1 THROUGH 5 AND 7 THROUGH 10

Summary

The statutory purpose of the pesticide certification and training program ("Program") (Articles 1 through 5) is to certify qualified and trained individuals in the safe, and proper use and handling of restricted use pesticides, including investigative provisions and penalties for issues of non-compliance. Additionally, the rulemaking is required to comply with a federal regulatory requirements, pursuant to 40 CFR §§ 171.1 *et seq.*, to maintain primacy delegation under a federal program. The rulemaking is also intended to align with the federal regulations under 40 CFR §§ 170 *et seq,* 172 *et seq.*, 14 CFR §§ 107.1, 137, and 48.1, and 21.171, *et seq.*, as they pertain to pesticide use and handling certification. The Department of Agriculture ("Department") bears minimal costs in implementing the Program. Other than the Department, no political subdivision is directly affected by the Program. Beneficiaries of Program are applicators, handlers, sellers and the public. Lastly, proposed changes will make the rules clearer and more concise, to align with current departmental practices and to reduce overly-burdensome regulations while mainting regulatory compliance, as indicated in the Divisions Five-Year Rule Review to the Governor's Regulatory Review Council ("GRRC").

The statutory purpose of the rules codified in Articles 7 through 9 is to establish the compliance requirements for the manufacturers and dealers of pesticides, fertilizers and commercial animal feed pursuant to A.R.S. §§ 3-341 *et seq.*, 3-261 *et seq.*, 3-2601 *et seq.*, 3-2641, 3-2661 *et seq.*, and 3-2691 *et seq.* This rulemaking is intended to align with current federal regulations under 40 CFR Parts 156 and 157, which are incorporated by reference under rule 703 in relation to prohibited acts for the packaging of pesticides. The resource *"Official Publication - AAPFCO"* is incorporated by reference in rule R3-3-801 and 804 as they relate to fertilizer compliance. The resource *"Official Publication (2023)"* is incorporated by reference under rule R3-3-901, 905, and 910 as they relate to commercial feed compliance. The federal regulation 21 CFR § 73 is incorporated by reference in rule R3-3-904 in relation to coloring in commercial feed. The publication, *"Official Method 965.16 of Official Methods of Analysis of the AOAC International, 22nd Edition (2023)"* is incorporated by reference in rule R3-3-913 as it relates to the sampling of commercial feed. This rulemaking is also intended to align with current departmental practices; make the rules clearer and more concise; update outdated

references; and reduce overly-burdensome regulations while mainting regulatory compliance, as indicated in the Divisions Five-Year Rule Review to the Governor's Regulatory Review Council ("GRRC").

The statutory purpose of the rules codified in Article 10 is to establish a program to align with the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") (7 U.S.C. §§ 135 *et seq.*), and the worker protection standards of Arizona, as indicated in A.R.S. §§ 3-3101 *et seq.*, to ensure the health and safety of pesticide workers, handlers, and the public. This rulemaking is also intended to align with current current departmental practices; make the rules clearer and more concise; update outdated references; and reduce overly-burdensome regulations while mainting regulatory compliance, as indicated in the Divisions Five-Year Rule Review to the Governor's Regulatory Review Council ("GRRC").

1. Identification of the proposed rulemaking.

The explanation of the proposed changes are as follows:

R3-3-101: Proposed changes will update antiquated federal references, include new definitions to align with current practices, federal regulations and provide clarification for other amended areas of the Chapter.

Table 1: Proposed changes for the licensing time-frames will update the authority references for clarity and will remove any outdated licenses that are no longer provided by the Department or that are covered under other certification types. Changes will also add the licensing time-frames for a "Drone Pilot License".

R3-3-200: With the repeal of three rules in this rulemaking (R3-3-202, 209, and 1002) as required under A.R.S. § 41-1039(C), the addition of this new section will consolidate the general licensing application and renewal provisions; list licensing fees; describe the education and Continuing Education Units ("CEU") requirements; and prescribe the general exam requirements that are consistent throughout the Chapter that were previously listed in each respective licensing or certification rule (R3-3-201, 203, 204, 205, 206, 207, and 208). It will also pull in the license and fee exemption provisions from rule R3-3-209.

R3-3-201: Proposed changes will make technical corrections and include provisions for complying with the lawful presence requirements under A.R.S. § 41-1080.

R3-3-202: This rule will be repealed, and federal core testing standards will be incorporated by reference in other parts of the Chapter.

R3-3-203: Proposed changes will align with federal regulations under 40 CFR Part 170, make technical changes, and remove antiquated provisions.

R3-3-204: Proposed rule changes will update federal references. It will clarify provisions for complying with the lawful presence requirements under A.R.S. § 41-1080. Changes will also prescribe the requirements for obtaining a drone pilot license for the application of a pesticide using pilotless aircraft that is register with the FAA.

R3-3-205: Proposed rule changes will make technical corrections to the rule, update federal references, and clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080.

R3-3-206: Proposed rule changes will update provisions to comply with the addition of drone equipment and make other technical changes.

R3-3-207: Proposed changes will clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080, make technical changes, and provide clarification on obtaining CEUs, and on the renewal application process, and on the fees that are required by the Department within the specified time-period.

R3-3-208: Proposed rule changes update federal references, include provisions to comply with federal regulations under 40 CFR Part 171, make technical corrections, clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080, and remove irrelevant sub-sections. Another change to this rule includes guidelines on the Department's requirements to obtain reciprocal certifications.

R3-3-209: This rule will be repealed. The updated license and fee exemption language is incorporated into the new R3-2-200 rule.

R3-3-210: Proposed changes to this rule make technical corrections and incorporate federal requirements for the suspension or revocation of a license, permit, or certification.

R3-3-211: Proposed changes to this rule include clarification language for CEU subject approval, update a rule reference, and make technical corrections.

R3-3-212: Proposed changes to this rule ensure compliance with federal regulations regarding experimental use permits for pesticide use.

Appendix A: This appendix will be repealed and federal testing categories for certification are incorporated by reference in other sections of the Article.

R3-3-301: Proposed changes to this rule will make technical changes and prescribe restrictions for altered or

repackaged pesticides. Proposed changes also include the requirements for the supervision of noncertified pesticide applicators.

R3-3-302: Proposed changes include technical changes and incorporate recordkeeping requirements for non-certified applicators to comply with federal regulations under 40 CFR Part 171.

R3-3-303: Proposed rule changes remove many of the provisions that are initially prescribed in rule R3-3-212 and incorporate them by reference. Proposed changes also simplify the reporting process for an experimental use pesticide.

R3-3-305: Proposed changes align with federal requirements for pesticide sales including the requirement to have a valid certification and the requirement that restricted use pesticides shall only be sold to a properly licensed person.

R3-3-306: Proposed changes make technical corrections and align with federal regulations.

R3-3-307: Proposed changes update the federal regulation that is incorporated by reference, 17 CFR Part H, and include provisions for drone operations.

R3-3-401: Proposed changes make technical corrections and update terms.

R3-3-402: Proposed changes make technical corrections to align with the rulemaking.

R3-3-403: Proposed changes update the emergency reporting reference with ADEQ.

R3-3-404: Proposed changes make technical corrections to align with references to ADEQ's groundwater protection list.

R3-3-502 and 503: Proposed changes make technical corrections to align with the rulemaking.

R3-3-505: Proposed changes add provisions that relate to the classification of unlisted violations to align with federal requirements, including penalties for violations that could harm the economy, environment, or human or animal health. The proposed rulemaking also prescribes provisions for the Director to deny, suspend or revoke an applicator certification for specific violations.

R3-3-506: Proposed changes make technical corrections to align with the rulemaking.

R3-3-701: Proposed changes alphabetize the definition terms.

R3-3-702: Proposed changes clarify what is needed to register a pesticide with the Arizona Department of Environmental Quality and will eliminate the requirement of providing two pesticide labels for registration. Under the proposed rule, only one label need be provided for registration. The proposed changes also remove an

outdated fee requirement.

R3-3-703: Proposed changes reduce the timeframe to register an expired pesticide from 3 years to 2 years and clarify that the term "Act" refers to the Federal Insecticide, Fungicide, and Rodenticide ACT (FIFRA).

R3-3-704: Proposed changes eliminate the the requirement of providing two labels for a label revision. Under the proposed rule, only one label need be provided for a label revision. Proposed changes also incorporate the table of allowed deviations into the rule as subsection "C".

R3-3-801: Proposed changes update the reference to the "Official Publication" for fertilizers.

R3-3-802: Proposed changes eliminate the requirement of including a facsimile number. Instead, under the proposed rule, an email address will be required. The proposed changes also make technical changes to align with the rulemaking, and remove an outdated fee requirement.

R3-3-803: Proposed changes update an incorporated reference, clarify inspection fee provisions, and remove an outdated fee requirement.

R3-3-804: Proposed changes update an incorporated reference, clarify inspection fee provisions, and remove an outdated fee requirement.

R3-3-901: Proposed changes update the reference on how to obtain a copy of the "Official Publication" and include a definition for the term "pneumatic probe sampler".

R3-3-902: Proposed changes eliminate the requirement of including a facsimile number. Instead, under the proposed rule, an email address will be required. The proposed changes also update incorporated references.

R3-3-903: Proposed changes to the rule clarify that a commercial feed license number is required to pass the inspection fee on to the purchaser.

R3-3-904: Proposed changes to the rule update where a milk and milk product "Color Requirement" card can be obtained to correlate with the recent move of the Department's office location. The proposed changes also clarify requirements for milk and milk products that are used as commercial feed.

R3-3-905: Proposed changes to the rule add a requirement to remove expired feed from sale and a requirement to label whole cottonseed and commercial feed that has not been tested for aflatoxin contamination.

R3-3-910: Proposed changes to the rule update incorporated references and their location.

R3-3-913: Proposed changes to the rule update incorporated references and their location, and replace equipment product names "Shop-vac" and "Probe-a-vac" with generalized product terms.

R3-3-1001: Proposed changes remove a number of unnecessary terms and align with the proposed changes throughout the Article. Included is the incorporated reference for the definition of the Worker Protection Standard in 40 CFR Part 170.

R3-3-1002: This rule is repealed and incorporated by reference in other sections of the Article.

R3-3-1003: Proposed changes to this rule ensure compliance with federal regulations under the Worker Protection Standard in 40 CFR Part 170, including trainer requirements and record keeping provisions.

R3-3-1004: Proposed changes make a technical correction to refer to the Worker Protection Standard in 40 CFR Part 170, as applicable.

R3-3-1006: Proposed changes include a requirement that a decision to declare an agricultural emergency based on written evidence.

R3-3-1007: Proposed changes reformat the information in tables and makes technical corrections. They also remove a provision on assessing a penalty based on inability to negotiate a settlement and change an incorrect reference.

R3-3-1008: Proposed changes reformat the information in tables and makes technical corrections.

R3-3-1009: Proposed changes, as required by federal regulations under 40 CFR §§ 170 *et seq*, prescribe the provisions for violations that require abatement to correct the violation.

R3-3-1010: Proposed changes conform with current practices, by prescribing grounds to reduce or eliminate a penalty in order to comply with federal regulations under 40 CFR part 170.

R3-3-1011: Proposed changes make technical corrections to align with the rulemaking and comply with federal regulations under 7 CFR § 170.305 and 40 CFR Part 170.

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

The persons directly affected by the rulemaking in Articles 1 through 5 are pest control advisors, pesticide applicators, and pesticide dealers. The proposed rulemaking will not impose any additional costs. The benefits of the rulemaking will outweigh the costs of those directly affected since the rulemaking will clarify the rules and make them consistent with federal requirements.

The persons directly affected by the rulemaking in Articles 7 through 9 are pesticide, fertilizer, and commercial feed manufacturers and dealers. The proposed rulemaking will not impose any additional costs. The benefits to the regulated parties will include clearer and more concise rule language to reduce confusion and will align with current national standards for consistency.

The persons directly affected by the rulemaking in Article 10 are employers of pesticide workers, handlers, and trainers. The proposed rulemaking will not impose any additional costs. The benefits of the rulemaking include clearer and more concise rule language to reduce confusion and will clarify by making the rules consistent with current federal regulations.

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.

The effect of the rulemaking will not require any additional full-time employees to the Department and there will be no additional costs for the implementation of the rulemaking since the Department has already established a framework for the programs affected by the rulemaking.

(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.

The rulemaking is not expected to effect revenues or payrolls for the regulated community. Businesses will benefit from the proposed changes throughout the rulemaking that align with current federal laws and regulations, and the rulemaking is intended to remove inconsistencies and reduce the overall regulatory burden. Businesses may benefit from the rulemaking in Articles 1 through 5 with the inclusion of a certification process for drone pesticide application that would otherwise not be an option for certification. Additionally, businesses may benefit from the rulemaking since it will allow for reciprocal certifications for applicants who are licensed by other states or tribes.

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.

It is not expected that employment in businesses, agencies, or political subdivisions will be directly affected by the rulemaking.

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.

Small businesses could include a majority of the pesticide application companies, pesticide dealers, and pest control advisors since most operate with fewer than 100 employees.

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

It is expected that there will not be any additional administrative or other costs required for compliance associated with the proposed rulemaking.

(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 finds that the use of any method in section 41-1035 is not feasible since establishing less stringent compliance or reporting requirements; establishing less stringent

schedules or deadlines; consolidating compliance or reporting requirements; or exempting a small business would not comply with federal law. Additionally, the rules in these Articles are intended to provide guidelines for safe use of pesticides, fertilizer, and commercial feed, diminishing those requirements could result in the endangerment to the health and safety of the regulated community and the public. The use of performance standards is not applicable to this rulemaking.

(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.

The proposed rulemaking will not have an effect on state revenues since there is no change to the certification or licensing fees; and there is no increase to the penalties for program violations.

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.

The Department finds there are no less intrusive or less costly alternatives to the proposed rulemaking. The substance of the rules is dictated, to a large extent, by the federal government.

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 data was produced from any studies or research for the rulemaking.

Gmail

Brian Mcgrew <bmcgrew@azda.gov>

Re: Responsible individual

1 message

Clark Webb <CWebb@dcoy.com> Wed, Jun 7, 2023 at 11:02 AM
To: "ckoury@azna.org" <ckoury@azna.org>
Cc: Lin Evans <levans120@cox.net>, Jack Peterson <jpeterson@azda.gov>, Brian Mcgrew <bmcgrew@azda.gov>

Works for me.

Sent from my iPhone

> On Jun 7, 2023, at 10:42 AM, ckoury@azna.org wrote:
>
> **[WARNING] This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**
>
> I'm fine with aware but not sure it will pass GRRC, but that's their issue 😊
>
> Cheryl Goar Koury
>
> Executive Director
>
> Arizona Nursery Association/Arizona Crop Protection Association
>
> *NOTE NEW ADDRESS:*
>
> 1710 W Ranch Rd, Suite 202
>
> Tempe, AZ 85284
>
> Office 480-966-1610
>
> Cell 602-541-3921
>
> ckoury@azna.org
>
> www.azna.org
>
> ---
>
> **From:** Lin Evans <levans120@cox.net>
> **Sent:** Wednesday, June 7, 2023 9:50 AM
> **To:** Jack Peterson <jpeterson@azda.gov>
> **Cc:** Brian Mcgrew <bmcgrew@azda.gov>; ckoury@azna.org; cwebb@dcoy.com
> **Subject:** Re: Responsible individual
>
> I think any of those options would accomplish what we are trying to convey.

Lin

Sent from my iPhone

On Jun 7, 2023, at 9:32 AM, Jack Peterson <jpeterson@azda.gov> wrote:

Yeah, I thought about that too. The point was that people should not be surprised by being the responsible individual (RI). As a supervisor, people don't always do things consensually, sometimes they have to be assigned. So again the point is that they are aware they are the RI. How about this? and is AWARE THEY ARE designated by the seller under R3-3-203.

To me this is not an enforcement issue we would deal with as the intent is to have someone with knowledge of pesticide safety at the location. This is to say there needs to be communication. So a disgruntled person leaves and complains they did not know they were the RI. We would not regulate on that...enforcement discretion.

Jack Peterson

Associate Director, EPSD

602-542-3575

Arizona Department of Agriculture

Environmental and Plant Services Division

mailing: 1802 W. Jackson St., **#78**, Phoenix AZ 85007

physical: 1110 W Washington St, Phoenix, AZ 85007

On Wed, Jun 7, 2023 at 9:16 AM Brian Mcgrew <bmcgrew@azda.gov> wrote:

> Jack,
>
> This does not add any legal issues, but I can see how the term might get interpreted in that way. Here is some alternative language that means the same thing:
>
> "Responsible individual" means an individual at a seller's location who ~~has passed the core examination prescribed in R3-3-202 and is designated by the seller under R3-3-203.~~ is a certified applicator or is licensed as a PCA in Arizona by the Department, THAT HAS DEMONSTRATED COMPETENCY RELATING TO PESTICIDE SAFETY, and is CONSENSUALLY designated by the seller under R3-3-203.
>
> Regards,
>
> Brian

Brian McGrew

Industrial Hemp Program Manager

Arizona Department of Agriculture

Environmental and Plant Services Division

postal: 1802 W. Jackson St., #78, Phoenix AZ 85007

physical: 1110 W Washington St., Phoenix, AZ 85007

email: bmcgrew@azda.gov

phone: 602-542-3228

fax: 602-542-1004

Quality... from the land to you

GUIDE TO ARIZONA AGRICULTURE

On Wed, Jun 7, 2023 at 9:05 AM <ckoury@azna.org> wrote:

> Brian:
>
> Thanks for sending.....I like the clarity however, I just have to ask.....is the word KNOWINGLY adding any legal stuff to this?
>
> Thanks,
>
> Cheryl
>
> Cheryl Goar Koury
>
> Executive Director
>
> Arizona Nursery Association/Arizona Crop Protection Association
>
> *NOTE NEW ADDRESS:*
>
> 1710 W Ranch Rd, Suite 202
>
> Tempe, AZ 85284

Office 480-966-1610

Cell 602-541-3921

ckoury@azna.org

www.azna.org

From: Brian Mcgrew <bmcgrew@azda.gov>
Sent: Tuesday, June 6, 2023 2:11 PM
To: Lin Evans <levans120@cox.net>; cwebb@dcoy.com; ckoury@azna.org
Cc: Jack Peterson <jpeterson@azda.gov>
Subject: Responsible individual

Good afternoon,

We've taken a look at the definition of "Responsible individual" and have drafted some alternative language. What are your thoughts on:

"Responsible individual" means an individual at a seller's location who ~~has passed the core examination prescribed in R3-3-202 and is designated by the seller under R3-3-203.~~ is a certified applicator or is licensed as a PCA in Arizona by the Department, THAT HAS DEMONSTRATED COMPETENCY RELATING TO PESTICIDE SAFETY, and is KNOWINGLY designated by the seller under R3-3-203.

Let me know if you have any comments or suggestions.

Thanks,

Brian

Brian McGrew

Industrial Hemp Program Manager

Arizona Department of Agriculture

Environmental and Plant Services Division

postal: 1802 W. Jackson St., #78, Phoenix AZ 85007

physical: 1110 W Washington St., Phoenix, AZ 85007

email: bmcgrew@azda.gov

phone: 602-542-3228

fax: 602-542-1004

Quality... from the land to you

GUIDE TO ARIZONA AGRICULTURE

Arizona Farm Bureau Federation
325 S. Higley Rd, Suite 210
Gilbert, AZ 85296

July 3, 2023

Brian McGrew
Arizona Department of Agriculture
1802 W. Jackson St., #78
Phoenix, AZ 85007

Submitted electronically to bmcgrew@azda.gov

RE: Environmental and Plant Services Division proposed rulemaking to modify the administrative rules under Title 3, Chapter 3, Articles 1 through 5 and 7 through 10

Dear Mr. McGrew:

The Arizona Farm Bureau appreciates the opportunity to provide comments to the Arizona Department of Agriculture's (AZDA) Environmental Services Division regarding modifications made to the administrative rules under Title 3, Chapter 3, Articles 1 through 5 and 7 through 10. These rules cover the Environmental Services Divisions Rules relating to General Provisions; Permits, Licenses, and Certification; Pesticide Use, Sales, and Equipment, Recordkeeping and Reporting; Nonexclusive Lists of Serious, Nonserious, and De Minimis Violations; Pesticide; Fertilizer Materials; Commercial Feed; and Agricultural Safety.

We are largely supportive of the rule modifications, in particular those which modify current rules to comply with federal requirements that must be in place for AZDA to maintain primacy over federal programs related to pesticides and worker protection standards. We understand that the Environmental Services Division of AZDA has a responsibility to ensure that the state regulations conform with federal regulations for which they have primacy over. We further support modifications that reduce undue regulatory burden while maintaining statutory intent, as well as those that align with current practices and update outdated references.

Our organization appreciates AZDA staff's willingness to meet with stakeholders to answer questions and concerns regarding revisions and updates to the rule. We urge the Department to continue working cooperatively with stakeholders throughout the remaining portion of the rulemaking process, as well as implementation of the rules.

Thank you for your consideration.

Sincerely,

Stefanie Smallhouse, President
Arizona Farm Bureau Federation

July 3, 2023

Brian McGrew
Arizona Department of Agriculture
1802 W. Jackson St., #78
Phoenix, AZ 85007

Submitted electronically to bmcgrew@azda.gov

RE: Environmental and Plant Services Division proposed rulemaking to modify the administrative rules under Title 3, Chapter 3, Articles 1 through 5 and 7 through 10

Dear Brian McGrew:

The Arizona Nursery Association is submitting these comments to the Arizona Department of Agriculture's (AZDA) Environmental Services Division regarding modifications made to the administrative rules under Title 3, Chapter 3, Articles 1 through 5 and 7 through 10. These rules cover the Environmental Services Divisions Rules relating to General Provisions; Permits, Licenses, and Certification; Pesticide Use, Sales, and Equipment, Recordkeeping and Reporting; Nonexclusive Lists of Serious, Nonserious, and De Minimis Violations; Pesticide; Fertilizer Materials; Commercial Feed; and Agricultural Safety.

We are supportive of the rule modifications, in particular those which modify current rules to comply with federal requirements that must be in place for AZDA to maintain primacy over federal programs related to pesticides and worker protection standards. We further support modifications that reduce undue regulatory burden while maintaining statutory intent, as well as those that align with current practices and update outdated references. We have worked with the AZDA staff to review these rules and the department held a meeting where our members could get their questions answered and concerns addressed regarding the rule package.

We urge the Department to continue working cooperatively with stakeholders throughout the remaining portion of the rulemaking process, as well as implementation of the rules.

Sincerely,

Cheryl Koury
Executive Director

1710 W Ranch Road – Suite 202 – Tempe, AZ 85284 – 480-966-1610 – ckoury@azna.org

AzCPA
Arizona Crop Protection Association

July 3, 2023

Brian McGrew
Arizona Department of Agriculture
1802 W. Jackson St., #78
Phoenix, AZ 85007

Submitted electronically to bmcgrew@azda.gov

RE: Environmental and Plant Services Division proposed rulemaking to modify the administrative rules under Title 3, Chapter 3, Articles 1 through 5 and 7 through 10

Dear Brian McGrew:

The Arizona Crop Protection Association is submitting these comments to the Arizona Department of Agriculture's (AZDA) Environmental Services Division regarding modifications made to the administrative rules under Title 3, Chapter 3, Articles 1 through 5 and 7 through 10. These rules cover the Environmental Services Divisions Rules relating to General Provisions; Permits, Licenses, and Certification; Pesticide Use, Sales, and Equipment, Recordkeeping and Reporting; Nonexclusive Lists of Serious, Nonserious, and De Minimis Violations; Pesticide; Fertilizer Materials; Commercial Feed; and Agricultural Safety.

We are supportive of the rule modifications, in particular those which modify current rules to comply with federal requirements that must be in place for AZDA to maintain primacy over federal programs related to pesticides and worker protection standards. We further support modifications that reduce undue regulatory burden while maintaining statutory intent, as well as those that align with current practices and update outdated references. We have worked with the AZDA staff to review these rules and the department held a meeting where our members could get their questions answered and concerns addressed regarding the rule package.

We urge the Department to continue working cooperatively with stakeholders throughout the remaining portion of the rulemaking process, as well as implementation of the rules.

Sincerely,

Cheryl Koury
Executive Director

1710 W Ranch Road – Suite 202 – Tempe, AZ 85284 – 480-966-1610 – ckoury@azna.org

3 AAC 3 Oral Proceeding (2023-07-05 11:00 GMT-7) - Transcript

Attendees

Brian Mcgrew, Jack Peterson, Ryan Pessah

Transcript

Brian Mcgrew: All right, good morning. Thank you for participating in today's public hearing since there's no attendees in person, I'll forgo the housekeeping items. This meeting is being recorded. The Arizona Department of Agriculture's Environmental and Plant Services Division is holding this public hearing today, to receive oral comments, regarding the proposed rulemaking to modify the administrative rules under Title 3 Chapter 3, Article, 1 through 5 and 7 through 10. The proposed rulemaking was posted to Volume 29 issue 22 of the Arizona Administrative Register on June 2nd 2023. This is available on the Secretary of State's website.

Brian Mcgrew: Once the floor is open for comment, if you do wish to speak, please clearly state your name, and the name of the organization that you represent. If you do speak, we will need your contact information, so we can reach out to provide a response to that. Comments received today will be part of the public record. The department may choose not to provide a response to comments or criticisms regarding the proposed rulemaking today, but a response will be provided at a later time if needed. The meeting will conclude once all comments are received, we will conclude no later than 2:00 pm Today. I don't think that'll be a problem for us. If we do find the comments are lengthy or repetitive, we may ask to keep comments to no more than four minutes.

Brian Mcgrew: We received no speaker cards prior to the meeting today. So, I will go ahead and start the meeting and open the floor for anyone here that would like to provide comments?

Ryan Pessah: Hello.

Brian Mcgrew: Yes.

Ryan Pessah: I'm not here to provide a comment but for some reason, I was under the impression that you would be reviewing the proposed changes. Is that a mistake on my part?

Brian Mcgrew: Yes, the proposed rulemaking has been made publicly available. This meeting is just to receive any sort of oral comments regarding those proposed changes.

Ryan Pessah: when you say that has been publicly available, you mean the changes not a summary of the changes.

Brian Mcgrew: Yes, on the notice of proposed rulemaking, There's a summary of those changes, as well as the actual proposed changes.

Ryan Pessah: All Yeah, I read through them. I just didn't know if you were gonna have slides or go over it and that way, thank you.

Brian Mcgrew: No problem. Did you have any questions that we might be able to answer for you?

Ryan Pessah: Nope, Thank you.

Brian Mcgrew: Okay. No problem. Thank you for attending.

Brian Mcgrew: Good morning.

Ryan Pessah: Morning. It's just Ryan I just spoke with you earlier. I was just joining on a different device. Am I the only one on the call?

Brian Mcgrew: gotcha. Yes, so far, we're just gonna give it a few more minutes, just in case there's somebody That has any difficulty logging in.

Ryan Pessah: Yeah because I had difficulty calling in. So I had to do it through my phone and now my Internet just started working so I just joined on my laptop.

Brian Mcgrew: No problem.

Ryan Pessah: Thank you.

Brian Mcgrew: we'll probably leave it open for another, maybe five minutes and then we'll adjourn the meeting.

Brian Mcgrew: It is 11:15 without receiving any other additional comments or criticisms, we'll go ahead and close the record and adjourn this meeting. Again, thank you for attending the meeting and hope you have a great day.

Meeting adjourned at 11:15 AM

3 A.A.C. 3 Supp. 19-3

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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 July 1, 2019 through September 30, 2019

Title 3

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

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:

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The release of this Chapter in Supp. 19-3 replaces Supp. 18-3, 1-51 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 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

Authority: A.R.S. §§ 3-341 et seq. and 3-3101 et seq.

Title 3, Chapter 3, Article 1, Section R3-3-101 renumbered from Title 3, Chapter 10, Article 1, Section R3-10-101; Title 3, Chapter 3, Article 2, Sections R3-3-201 through R3-3-212 renumbered from Title 3, Chapter 10, Article 2, Sections R3-10-201 through R3-10-212; Title 3, Chapter 3, Article 3, Sections R3-3-301 through R3-3-314 renumbered from Title 3, Chapter 10, Article 2, Sections R3-10-301 through R3-10-314; Title 3, Chapter 3, Article 4, Sections R3-3-401 through R3-3-404 renumbered from Title 3, Chapter 10, Article 4, Sections R3-10-401 through R3-10-404; Title 3, Chapter 3, Article 5, Sections R3-3-501 through R3-3-506 renumbered from Title 3, Chapter 10, Article 5, Sections R3-10-501 through R3-10-506; Title 3, Chapter 3, Article 6, Sections R3-3-601 through R3-3-617 renumbered from Title 3, Chapter 10, Article 6, Sections R3-10-601 through R3-10-617; Title 3, Chapter 3, Article 7, Sections R3-3-701 through R3-3-712 renumbered from Title 3, Chapter 3, Article 1, Sections R3-3-01 through R3-3-12; Title 3, Chapter 3, Article 8, Sections R3-3-801 through R3-3-812 renumbered from Title 3, Chapter 3, Article 2, Sections R3-3-21 through R3-3-32; Title 3, Chapter 3, Article 9, Sections R3-3-901 through R3-3-916 renumbered to Title 3, Chapter 3, Article 3, Sections R3-3-41 through R3-3-56 (Supp. 91-4).

New Sections R3-10-101, R3-10-201 through R3-10-212, R3-10-301 through R3-10-306, R3-10-308 through R3-10-312, R3-10-401 through R3-10-403, R3-10-501 through R3-10-505, and R3-10-601 through R3-10-617 adopted effective November 20, 1987.

Former Sections R3-10-01, R3-10-03, R3-10-20 through R3-10-25, R3-10-40 through R3-10-42, R3-10-42.01, R3-10-43 through R3-10-62, R3-10-64 through R3-10-66, R3-10-70, R3-10-71, R3-10-73 through R3-10-75, R3-10-77 through R3-10-87, R3-10-89, and R3-10-91 repealed effective November 20, 1987.

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

ARTICLE 3. PESTICIDE USE, SALES, AND EQUIPMENT

ARTICLE 4. RECORDKEEPING AND REPORTING

ARTICLE 5. NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS

ARTICLE 6. REPEALED

Article 6, consisting of Sections R3-3-601 through R3-3-617, repealed effective April 11, 1994 (Supp. 94-2).

ARTICLE 7. PESTICIDE

Title 3, Chapter 3, Article 1, Sections R3-3-01 through R3-3-12 renumbered to Title 3, Chapter 3, Article 7, Sections R3-3-701 through R3-3-712 (Supp. 91-4).

ARTICLE 8. FERTILIZER MATERIALS

Title 3, Chapter 3, Article 2, Sections R3-3-21 through R3-3-32 renumbered to Title 3, Chapter 3, Article 8, Sections R3-3-801 through R3-3-812 (Supp. 91-4).

ARTICLE 9. COMMERCIAL FEED

Title 3, Chapter 3, Article 3, Sections R3-3-41 through R3-3-56 renumbered to Title 3, Chapter 3, Article 9, Sections R3-3-901 through R3-3-916 (Supp. 91-4).

ARTICLE 10. AGRICULTURAL SAFETY

(Authority: A.R.S. § 3-3101 et seq.)

Title 3, Chapter 8, Article 2, Sections R3-8-201 through R3-8-208 renumbered to Title 3, Chapter 3, Article 10, Sections R3-3-1001 through R3-3-1008 (Supp. 91-4).

New Article 7 adopted effective July 13, 1989. (Supp. 89-3).

Article 2, consisting of Sections R3-2-201 through R3-8-208, transferred from the Industrial Commission, Title 4, Chapter 13, Article 7, Sections R4-13-701 through R4-13-708, pursuant to Laws 1990, Ch. 374, § 445 (Supp. 91-3).

Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).

ARTICLE 11. ARIZONA NATIVE PLANTS

Article 11, consisting of Sections R3-3-1101 through R3-3-1111 and Appendix A, recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

ARTICLE 1. GENERAL PROVISIONS

R3-3-101. Definitions

In addition to the definitions in A.R.S. §§ 3-341 and 3-361, the following terms apply to Articles 1 through 5 of this Chapter:

"Acute toxicity" means adverse physiological effects that result from a single dose or single exposure to a chemical; or any poisonous effect produced by a single dose or single exposure to a chemical within a short period of time, usually less than 96 hours.

"Adulterate" means to change a pesticide so that:

Its strength or purity falls below the standard of quality stated on the labeling under which it is sold,

Any substance has been substituted wholly or in part for the pesticide, or

Any constituent of the pesticide has been wholly or in part abstracted.

"Agricultural aircraft pilot" means any individual licensed by the Department who pilots an agricultural aircraft to apply a pesticide.

"Agricultural commodity" means any plant, animal, plant product, or animal product produced for commercial or research purposes.

"Agricultural establishment" means any farm, forest, nursery, or greenhouse.

"Agricultural purpose" means use of a pesticide on an agricultural commodity. It excludes the sale or use of pesticides, in properly labeled packages or containers, for either of the following:

Home use, or

Use in swimming pools or spas.

"Aircraft" means any mechanism used in flight, excluding a remote-controlled mechanism.

"ALJ" means an individual or the Director who sits as an administrative law judge, who conducts administrative hearings in a contested case or an appealable agency action, and who makes decisions regarding the contested case or appealable agency action. A.R.S. § 41-1092(1)

"Animal" means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish and shellfish. A.R.S. § 3-341(3)

"Application site" means the specific location, crop, object, or field to which a pesticide is or is intended to be applied.

"Applicator" means any individual who applies, or causes to have applied, any pesticide on an agricultural establishment or golf course.

"Authorized activities" means, for compliance with A.R.S. § 3-365(D), any organized activities scheduled at a school or child care facility that use the school or child care facility or the school or child care grounds and for which the sponsors or organizers of the activity have received the written approval of a responsible administrative official of the school or child care facility.

"Buffer zone" means an area of land that allows pesticide deposition and residues to decline to a level that poses a reasonable certainty of no harm to a defined area.

"Bulk release" means the release of any pesticide or mixture of pesticides that poses a potential risk to property, human health, or the environment in volumes greater than those prescribed by the pesticide label for the application site. A pesticide dripping from a spray nozzle or minor splashing during mixing is not a bulk release.

"Certified applicator" means any individual who is certified by the Department to use or supervise the use of any restricted use pesticide or to use any pesticide on a golf course.

"CEU" means continuing education unit.

"Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor and is licensed as a child care facility by the Arizona Department of Health Services. A.R.S. § 36-881(3). Child care facilities are commonly known as day care centers.

"Commercial applicator" means a certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of a restricted use pesticide for any purpose or on any property other than property owned or controlled by:

The applicator;

The applicator's employer; or

Another person, if the application is performed without compensation, other than trading of personal services between producers of agricultural commodities.

"Contamination" means a concentration of pesticide sufficient to violate state or federal water, soil, food, feed, or air contamination standards, except if legally applied.

"Continued pesticide application" means the continuance of an interrupted application of the same pesticide to the same application site within the same section, township, and range within the same reporting period.

"Custom application equipment" means aircraft, remote-controlled equipment, and ground equipment used for pesticide application by a custom applicator.

"Custom applicator" means any person, except a person regulated by the OPM, who applies pesticides for hire or by aircraft.

"Defoliation" means killing or artificially accelerating the drying of plant tissue with or without causing abscission.

"Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than a human being and a bacterium, virus, or other microorganism on or in a living human being or other living animal. Device does not include firearms, mechanical traps, or equipment used for the application of pesticides if the application equipment is sold separately.

"Diluent" means any substance added to a pesticide before application to reduce the concentration of the active ingredient in the mixture.

"Direct release" means to apply a pesticide outside the boundaries of an application site, at the time of application, while the valve controlling the normal flow of pesticide from the application device is in the open position and the application device is not within the confines of the application site. Direct release does not mean the drift or discharge of a pesticide caused by a mechanical malfunction of the application device that is beyond the control of the operator. Direct release does not mean a release caused by accident, or done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release.

"Disposal" means discarding a pesticide or pesticide container that results in the deposit, dumping, burning, or placing of the container or unused pesticide on land or into the air or water.

"Drift" means the physical movement of pesticide through the air at the time of a pesticide application from the application

site to any area outside the boundaries of the application site. Drift does not include movement of a pesticide or associated degradation compounds to any area outside the boundaries of an application site if the movement is caused by erosion, run off, migration, volatility, or windblown soil particles that occur after application, unless specifically addressed on the pesticide label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Experimental use permit" means a permit issued by the EPA, or the Department pursuant to A.R.S. § 3-350.01, to a person for the purpose of experimentation, which includes the accumulation of information necessary for the registration of a pesticide.

"Exposure" means the inhalation or ingestion of a pesticide, or eye or skin contact with a pesticide.

"Family member" means spouse, child, sibling, parent, grandparent, grandchild, stepparent, or stepchild.

"FFDCA" means the Federal Food, Drug and Cosmetic Act, as amended.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq.

"Fumigant" means a substance or mixture of substances that produces gas vapor or smoke intended to control a pest in stored agricultural commodities or to control burrowing rodents.

"Golf applicator" means a certified applicator who uses a pesticide for the maintenance of a golf course that is owned or controlled by the applicator or the applicator's employer.

"Health care institution" means any institution that provides medical services, nursing services, health screening services, and other health-related services, and is licensed by the Arizona Department of Health Services.

"Highly toxic pesticide" means a pesticide with an acute oral LD_{50} of 50 milligrams per kilogram of body weight or less, dermal LD_{50} of 200 milligrams per kilogram of body weight or less, or inhalation LD_{50} of 0.2 milligrams per liter of air or less, and the label bears the signal words "danger" and "poison" and shows a skull and crossbones.

"Individual" means a human being.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. A.R.S. § 3-341(14)

"Integrated Pest Management" or "IPM" means a sustainable approach to managing pests that uses any combination of biological, chemical, cultural, genetic, manual, or mechanical tools or techniques in a way that minimizes health, environmental, and economic risks.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if there is any, of the pesticide or device. A.R.S. § 3-341(15)

"Labeling" means all labels and other written, printed or graphic matter:

Upon the pesticide or device or any of its containers or wrappers.

Accompanying the pesticide or device at any time.

To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, non-misleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of the state or other states authorized by law to conduct research in the field of pesticides. A.R.S. § 3-341(16).

"LD_{50}" means a single dose of pesticide that will kill at least 50 percent of laboratory test animals as determined by an EPA- approved procedure.

"Livestock" means clovenhoofed animals, horses, mules, or asses.

"OPM" means the Office of Pest Management.

"PCA" or "agricultural pest control advisor" means any individual licensed by the Department who, as a requirement of, or incidental to, the individual's employment or occupation:

Offers a written recommendation to a regulated grower or to any public or private agency concerning the control of any agricultural pest,

Claims to be an authority or general advisor on any agricultural pest or pest condition, or

Claims to be an authority or general advisor to a regulated grower on any agricultural pest.

"Person" means any individual, partnership, association, corporation or organized group of persons whether incorporated or not. A.R.S. § 3-341(19)

"Pest" means:

Any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria or other pathogenic organisms.

Any other form of terrestrial or aquatic plant or animal life, except virus, bacteria or other microorganism on or in living humans or other living animals, which the director declares to be a pest for the purpose of enforcement of this Article. A.R.S. § 3-341(20)

"Pesticide" means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment. A.R.S. § 3-361(6)

"Pesticide container" means any container with an interior surface that is in direct contact with a pesticide.

"Pesticide use" means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers. A.R.S. § 3-361(7)

"Private applicator" means a certified applicator who uses or supervises the use of a restricted use pesticide for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator's employer; or

Another person, if the pesticide is applied without compensation, other than trading of personal services between producers of agricultural commodities.

"Property boundary" means the legal boundary of the land on which a child care facility, health care institution, residence, or school sits, unless another boundary is established by a written agreement with the owner of the child care facility, health care institution, residence, or school. Under a written agreement,

the parties shall not establish a boundary that is less than ten feet from the child care facility, health care institution, residence, or school.

"Ready-to-use" means a registered pesticide, in the manufacturer's original container, that does not require dilution by the end user.

"Regulated grower" means a person who acquires or purchases pesticides or contracts for the application of pesticides to agricultural commodities, onto an agricultural establishment, or onto a golf course as a part of the person's normal course of employment or activity as an owner, lessee, sublessee, sharecropper, or manager of the land to which the pesticide is applied.

"Reporting period" means no later than the Thursday following the calendar week in which an application is completed.

"Residence" means a dwelling place where one or more individuals are living.

"Responsible individual" means an individual at a seller's location who has passed the core examination prescribed in R3-3-202 and is designated by the seller under R3-3-203.

"Restricted use pesticide" means a pesticide classified as such by the EPA. A.R.S. § 3-361(8).

"School" means a public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve. A.R.S. § 15-101(19). School includes a private institution with membership in the North Central Association of Colleges and Schools serving students in kindergarten programs or any combination of grades one through twelve.

"Seller" means any person selling or offering for sale a restricted use pesticide or other type of pesticide intended to be used for an agricultural purpose.

"Service container" means a container used to temporarily hold, store, or transport a pesticide concentrate or a registered, ready-to-use pesticide other than the original labeled container, measuring device, or application device.

"Small scale test" means a test using a pesticide on land or water acreage as described at 40 CFR 172.3(c)(1) or (2).

"Spot application" means a treatment in an area other than a greenhouse or nursery operation that is restricted to an area of a field that is less than the entire field.

"Tag" means a custom application equipment license issued by the Department to a custom applicator licensee.

"Triple rinse" means to flush out a container at least three times, each time using a volume of water, or other diluent as specified on the label, equal to a minimum of 10 percent of the container's capacity or a procedure allowed by the label that produces equivalent or better results.

"Unreasonable adverse effect" means any unreasonable risk to a human being or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or a human dietary risk from residues that result from a use of a pesticide in or on any food as documented by the Department through its investigation.

"Weed" means any plant which grows where not wanted. A.R.S. § 3-341(24)

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-101 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.
3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Regulated Grower Permit	A.R.S. § 3-363	14	14	56	14	70
Seller Permit	A.R.S. § 3-363	14	14	56	14	70
Agricultural Aircraft Pilot License	A.R.S. § 3-363	14	14	56	14	70
Custom Applicator License	A.R.S. § 3-363	14	14	63	14	77
Application Equipment Tag	A.R.S. § 3-363	14	14	56	14	70
Agricultural Pest Control Advisor (PCA) License	A.R.S. § 3-363	14	14	63	14	77
Commercial Applicator Certification (PUC)	A.R.S. § 3-363	14	14	63	14	77
Private Applicator Certification (PUP)	A.R.S. § 3-363	14	14	63	14	77
Private Fumigation Certification	A.R.S. § 3-363	14	14	63	14	77
Golf Applicator Certification (PUG)	A.R.S. § 3-363	14	14	63	14	77
Experimental Use Permit	A.R.S. § 3-350.01	14	14	28	14	42
Pesticide Registration	A.R.S. § 3-351	14	14	91	14	105
License to Manufacture or Distribute Commercial Feed	A.R.S. § 3-2609	14	14	42	14	56
Commercial Fertilizer License Specialty Fertilizer Registration	A.R.S. § 3-272	14 14	14 14	42 56	14 14	56 70
Agricultural Safety Trainer Certification	A.R.S. § 3-3125	28	14	28	14	56
ARIZONA NATIVE PLANTS						
Notice of Intent Confirmation Notice of Intent	A.R.S. § 3-904	14	14	14	14	28
• Salvage Assessed Native Plant Permits	A.R.S. § 3-906	14	14	14	14	28
• Salvage Restricted Native Plant Permits		14	14	14	14	28
• Scientific Permits		14	14	14	14	28
Movement Permits	A.R.S. § 3-906	14	14	14	14	28
Annual Permits for Harvest-Restricted Native Plants	A.R.S. § 3-907	14	14	14	14	28

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2663, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

R3-3-201. Regulated Grower Permit; Fee

A. A regulated grower shall not order, purchase, take delivery of, use, or recommend the use of any pesticide for an agricultural purpose or golf course without a valid regulated grower permit, issued by the Department.

B. A person applying for a regulated grower permit, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name, signature, and social security or employer's identification number of the applicant;
2. Date of the permit application;
3. Name, address, e-mail address, if applicable, and daytime telephone number of the company or farm where the applicant may be reached;
4. Permit renewal period; and
5. Sections, townships, ranges, and acres of the land where pesticides may be applied.

C. The applicant shall submit the completed application to the Department accompanied by a $20 fee for each year or portion of the year during which the permit is valid.

D. A regulated grower permit is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-202. Core Examination

A. In addition to other requirements prescribed by this Article, an individual seeking any of the following shall obtain a score of at least 75 percent on a written core examination administered by the Department:

1. Designation as a responsible individual;
2. An initial license as:
   a. An agricultural aircraft pilot;
   b. A custom applicator;
   c. An agricultural pest control advisor; or
3. An initial certification as:
   a. A private applicator;
   b. A commercial applicator; or
   c. A golf applicator.

B. The Department shall administer examinations by appointment at every Environmental Services Division office. The Department shall ensure that the examination tests the knowledge and understanding of the following subjects that are described in more detail at Appendix A, subsections (A) and (C):

1. Pesticide use, safety, and toxicity;
2. Pesticide labels and labeling;
3. Pesticide terminology;
4. Common causes of accidents;
5. Necessity for protective equipment;
6. Poisoning symptoms;
7. Practical first aid; and
8. Statutes and rules relating to the sale, application, and use of pesticides.

C. An individual who fails the examination may retake the examination no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-201 (Supp. 91-4). Former Section R3-3-202 renumbered to R3-3-203; new R3-3-202 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-203. Seller Permit; Fee; Responsible Individual

A. A person shall not act as a seller without a valid seller permit, issued by the Department.

B. A seller shall obtain a seller permit for each physical location where the seller sells or offers for sale any restricted use pesticide or pesticide for an agricultural purpose within the state.

C. A person applying for a seller permit, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the responsible individual, and license number, if applicable;
2. Date of the permit application;
3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the location selling a restricted use pesticide or a pesticide for an agricultural purpose;
4. Permit renewal period;
5. Name, e-mail address, and daytime telephone number of the Arizona contact for each out-of-state seller, if applicable;
6. Address where records required to be maintained under R3-3-401 will be kept;
7. Whether the applicant has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application; and
8. If applicable, the number of the license or certificate of the responsible individual, and current seller permit number.

D. The applicant shall submit the completed application to the Department accompanied by a $100 fee for each year or portion of the year during which the permit is valid.

E. A seller permit is not transferable, expires on December 31, and is valid for one or two years, depending on the permit renewal period selected by the applicant. The Department shall not renew a seller permit unless the seller is in compliance with the provisions established in subsection (F), if applicable.

F. A seller shall designate a different responsible individual for each physical location in this state that sells or offers for sale any restricted use pesticide.

1. If a responsible individual terminates employment at an assigned location, the seller shall designate another responsible individual within 30 calendar days and notify the Department of the replacement.

2. For a responsible individual who is not a commercial applicator or a PCA:
   a. The core examination expires December 31, unless the initial examination is passed in the last quarter of a calendar year, in which case the expiration is December 31 of the following year; and
   b. The responsible individual shall retake and pass the core examination every year, unless the responsible individual completes three CEUs annually before the renewal date.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-203 (Supp. 91-4). Former Section R3-3-203 renumbered to R3-3-204; new R3-3-203 renumbered from R3-3-202 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-204. Agricultural Aircraft Pilot License; Examination; Fee; Renewal

A. An individual shall not act as an agricultural aircraft pilot without:
1. A valid agricultural aircraft pilot license issued under this Section, and
2. A valid commercial applicator certification issued under R3-3-208.

B. The Department shall not issue or renew an agricultural aircraft pilot license, and an existing agricultural aircraft pilot license is invalid unless the applicant or license holder has a valid commercial pilot's certificate issued by the Federal Aviation Administration and a valid commercial applicator certification.

C. An individual applying for an agricultural aircraft pilot license, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name, social security number, and signature of the applicant;
2. Date of application;
3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;
4. License renewal period;
5. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
6. Copy of the applicant's commercial pilot certificate issued by the Federal Aviation Administration, if not previously filed with the Department;
7. Applicant's commercial applicator certification number; and
8. Whether the applicant has had a similar certification or license revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application and the nature of the violation.

D. The applicant shall submit the completed application to the Department, accompanied by a $50 fee for each year or portion of the year during which the license is valid.

E. An agricultural aircraft pilot license is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.

F. Examinations.
1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:
   a. Safe flight and application procedures, including steps to be taken before starting a pesticide application, such as survey of the area to be treated, and considering the possible hazards to public health;
   b. Calibration of aerial application equipment; and
   c. Operation and application in the vicinity of schools, child care facilities, health care institutions, and residences.
2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

G. Renewal; expired license.
1. An applicant may renew an expired license without retaking the written examinations in subsection (F) under the following conditions:
   a. The applicant submits the completed application and fee within 30 days after the expiration date, and
   b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.
2. All other applicants for renewal shall retake the written examinations prescribed in subsection (F).

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-204 (Supp. 91-4). Former Section R3-3-204 renumbered to R3-3-205; new R3-3-204 renumbered from R3-3-203 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-205. Custom Applicator License; Examination; Fee; Renewal

A. A person shall not act as a custom applicator without a valid custom applicator license issued by the Department.

B. A person applying for a custom applicator license, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name and signature of the applicant;
2. Date of the license application;
3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business under subsection (C);
4. Tax identification number of the business;
5. License renewal period;
6. Whether the application is for ground or air custom application, or both;
7. Names and current certification numbers of the commercial applicators employed by the business, as prescribed in subsection (C)(1);
8. Evidence of insurance coverage, showing the name of the insurance carrier, policy number, policy term, policy limits, and any applicable exclusions; and
9. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation.

C. The Department shall not issue or renew a custom applicator license and an existing custom applicator license is invalid unless the applicant or license holder:
1. Is a commercial applicator or employs at least one individual who is certified as a commercial applicator under R3-3-208;
2. Maintains or the business that employs the applicator or license holder maintains public liability, drift, and property damage insurance coverage with an aggregate

amount of at least $300,000 during the licensing period. The applicant or license holder shall provide evidence of insurance coverage to the Department upon initial application, for each renewal, or upon request of the Department; and

3. Files with the Department a copy of the commercial applicator's valid Federal Aviation Administration commercial agricultural aircraft operator's certificate, if using aircraft. If not already on file with the Department, an applicant or license holder shall submit a copy of the certificate with the completed application form.

D. A custom applicator license holder may:

1. Temporarily relinquish a custom applicator license if the custom applicator:
   a. Advises the Department of termination of the insurance prescribed in subsection (C)(2), and the effective date of termination; and
   b. Ceases to act as a custom applicator on the termination date.
2. Reinstate the custom applicator license within the same licensing time period, without again paying the fee as prescribed in subsection (E), if the custom applicator:
   a. Purchases insurance as prescribed in subsection (C)(2), and
   b. Notifies the Department of the effective date of the insurance.

E. The applicant shall submit the completed application to the Department, accompanied by a $100 fee for each year, or portion of the year during which the license is valid.

F. A custom applicator license is not transferable, expires on December 31, and is valid for one or two years, depending on the renewal period selected by the applicant.

G. Examinations.

1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:
   a. Calibration of application equipment;
   b. Aerial application procedures, if applicable; and
   c. Ground application procedures, if applicable.
2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

H. Renewal; expired license.

1. An applicant may renew an expired license without retaking the written examinations in subsection (G) under the following conditions:
   a. The applicant submits the completed application and fee within 30 days after the expiration date, and
   b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.
2. All other applicants for renewal shall retake the written examinations prescribed in subsection (G).

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-205 (Supp. 91-4). Former Section R3-3-205 renumbered to R3-3-206; new R3-3-205 renumbered from R3-3-204 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-206. Tag; Fee

A. A custom applicator shall not use custom application equipment unless the equipment has a valid tag. The custom applicator licensee shall place and maintain a valid tag so that it is prominently displayed on the pesticide application equipment.

B. A person applying for a tag shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;
2. Date of the application;
3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;
4. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business, if applicable; and
5. Manufacturer, make, model and serial number, and if an aircraft, the aircraft registration number ("N" number) of the application equipment.

C. The Department shall not issue or renew a tag and an existing tag is invalid if the custom applicator license is invalid.

D. An applicant shall submit the completed application to the Department, accompanied by a $25 fee for each piece of equipment, for each year or portion of the year during which the tag is valid.

E. A tag expires on December 31, and is valid for the same time period as the custom applicator license.

F. A custom applicator licensee shall not transfer a tag except as follows:

1. If a licensed piece of equipment is destroyed, rendered unusable, or transferred out of the state, the custom applicator licensee may transfer the tag to another piece of equipment.
2. If a licensed piece of equipment is leased, sold, or traded, the custom applicator licensee shall transfer the tag with the equipment to the lessee or new owner.
3. Before transferring a tag, the custom applicator licensee shall notify the Department that the tag is being transferred and identify the person to whom the tag is being transferred or identify the piece of equipment to which the tag is being transferred, or the tag is invalid.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-206 (Supp. 91-4). Former Section R3-3-206 renumbered to R3-3-207; new R3-3-206 renumbered from R3-3-205 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-207. Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption

A. An individual shall not act as a PCA without a valid PCA license issued by the Department. To advise in any of the categories listed in subsection (I), a PCA shall pass the specific examination associated with the category.

B. An individual applying for a PCA license shall provide the following information on a form obtained from the Department:

1. The applicant's name, address, e-mail address, daytime telephone number, social security number, and signature;
2. Date of the application;
3. License renewal period;
4. Name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer, if applicable;
5. Examinations that the applicant has passed by category; and

6. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation resulting in the revocation, suspension, or denial.

C. An individual applying for a PCA license, except an individual who holds or has held a PCA license in this state within the previous five years shall meet one of the following five sets of qualifications:

1. College degree.
   a. Possess a bachelor's degree (B.A. or B.S.), master's degree or doctorate degree in any subject; and
   b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D).
2. Master's degree in a biological science.
   a. Possess a master's degree in a biological science;
   b. Have 12 months of work experience related to a core area listed in subsection (D); and
   c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
3. Doctorate degree in a biological science.
   a. Possess a doctorate degree in a biological science; and either
   b. Meet the qualifications in subsection (C)(2)(b) and (C)(2)(c); or
   c. Have a letter of recommendation from the faculty member that supervised the dissertation or the division head of the discipline.
4. Other education with unlicensed experience.
   a. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D);
   b. Have 24 months of work experience related to a core area listed in subsection (D); and
   c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
5. Other education with licensed experience.
   a. Be currently licensed as a pest control advisor (PCA) or equivalent in another state; and
   b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D), except that each year of verifiable licensed experience under subsection (C)(5)(a) within the previous 5 years qualifies for two semester hours up to 10 hours. The semester hours based on licensed experience do not reduce the minimum hours required from each individual core area.
   c. The applicant shall provide proof of the equivalency of a license from another state.

D. The 42 semester hours (63 quarter units) of college-level curricula specified in subsection (C) shall come from the core areas shown in the following table, with at least the minimum indicated hours (or units) coming from each individual core area. A single course shall not count toward the minimum hours of more than one core area. At least one course from the pest management systems and methods core area shall emphasize integrated pest management principles.

Core Area	Examples of Subjects	Sem. Hours	Qtr. Units
Physical, biological, and earth sciences, and mathematics	Inorganic chemistry; organic chemistry; biochemistry; plant biology or botany; general ecology; biology; genetics; plant physiology; zoology; post-algebra mathematics	12	18
Crop health	Soils and irrigation; vegetation management or weed science; plant pathology; entomology; plant nutrition or fertility; nematology; vertebrate management	6	9
Pest management systems and methods	Applied courses in entomology, plant pathology, vegetation management or weed science, and other pest management disciplines; pesticides or use of pesticides; pest control equipment systems; alternative cropping systems; sustainable or organic agricultural systems; biological control	3	4.5
Production systems	Horticulture; viticulture; forestry; agronomy; crop, vegetable, fruit or animal sciences; other production systems (e.g., wildlife production, cattle production)	3	4.5

E. Alternative curricula credits.

1. A current crop advisor certificate issued by the American Society of Agronomy qualifies for three semester hours in one of the following core areas: physical, biological and earth sciences and mathematics; crop health; or production systems.
2. Non-traditional courses such as a senior project, an internship, cooperative work experience, independent study, a dissertation or a thesis qualify for three semester hours in one of the core areas of crop health, pest management systems and methods, or production systems, as applicable.
3. For applicants with a bachelor's, master's, or doctorate degree, at least one year of full-time related work experience qualifies for three semester hours in one of the core areas of pest management systems and methods or production systems, as applicable.

F. In addition to the information required by subsection (B), an applicant shall submit to the Department:

1. An official transcript verifying the courses completed and the degrees granted to the applicant.
2. Documentation verifying alternative curricula relied on under subsection (E). Documentation of subsection (E)(2) and (E)(3) shall include a letter certifying completion and describing the activity from the institution, a faculty member or supervisor.

3. If applicable, the letter required for licensure under subsection (C).
4. A $50 fee.

G. A PCA license is not transferable, expires on December 31, and is:
1. Issued for up to one year as an initial license;
2. Renewed every one or two years, depending on the renewal period selected by the applicant; and
3. Renewed for all categories of license under subsection (I) for the same renewal period.

H. Renewal.
1. The continuing education requirement in subsection (H)(5) is not applicable to an individual who passes the examination prescribed in subsection (I) and who applies for a PCA license between October 1 and December 31 of the test year.
2. Upon renewal, a PCA license is valid for one or two years, depending on the renewal period selected by the applicant, provided the applicant meets the criteria prescribed under subsection (H).
3. An applicant shall submit the completed application, accompanied by a $50 fee for each licensing year or portion of the year during which the license is valid.
4. Renewal; expired license.
   a. An applicant may renew an expired license without retaking the written examinations under subsection (I) provided the applicant:
      i. Complies with the CEU requirements in subsection (H)(5),
      ii. Submits a completed application and fee within 30 days after the expiration date, and
      iii. Does not provide any pest control-related service from the date the license expired until the date the renewal is effective.
   b. All other applicants for renewal shall retake the applicable written examinations prescribed in subsection (I).
5. The Department shall not renew a PCA license unless, before the expiration of the current license, the licensee completes 15 CEUs for each year of the renewal period or passes any applicable examination prescribed in subsection (I). The licensee shall complete CEU credit during the calendar years the current license is in effect. CEUs earned that are in excess of the requirements do not carry forward for use with future renewals.
6. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.

I. Examinations.
1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of integrated pest management in any of the following categories by scoring at least 75 percent on a written examination:
   a. Weed control,
   b. Invertebrate control,
   c. Nematode control,
   d. Plant pathogen control,
   e. Vertebrate pest control,
   f. Plant growth regulators, or
   g. Defoliation.
2. An individual who fails the examination may retake it no more than two times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

J. Exemption. An individual operating in an official capacity for a college or university, providing recommendations in a not-for-profit capacity, or merely furnishing information concerning general and labeling usage of a registered pesticide is not considered an authority or general advisor for the purposes of this Chapter.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-207 (Supp. 91-4). Former Section R3-3-207 repealed; new R3-3-207 renumbered from R3-3-206 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3855, effective January 28, 2014 (Supp. 13-4).

R3-3-208. Applicator Certification; Examination; Fee; Renewal

A. An individual shall not act as a private applicator, golf applicator, or commercial applicator unless the individual is certified by the Department.

B. Application. An individual applying for either commercial, golf, or private applicator certification shall pay the applicable fee and submit a completed application to the Department containing the following information on a form obtained from the Department:
1. The applicant's name, address, e-mail address if applicable, daytime telephone number, Social Security number, and signature;
2. Date of the application;
3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
4. Whether the application is for a commercial, golf, or private applicator certification;
5. If applicable, an indication the applicant seeks private applicator fumigation certification;
6. If applicable, an indication the applicant seeks golf applicator aquatic certification;
7. For commercial certification, the categories in which the applicant seeks to be certified;
8. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and
9. Certification renewal period.

C. Private applicator fumigation certification.
1. Fumigation certification requires certification as a private applicator, a golf applicator, or a commercial applicator.
2. Fumigation certification allows a private applicator or a commercial applicator acting as a private applicator to use, apply, or supervise the use or application of a fumigant to an on-farm raw agricultural commodity or on-farm burrowing rodent problem.
3. Fumigation certification allows a golf applicator to use and apply a fumigant to a golf course burrowing rodent problem.

D. Golf applicator aquatic certification allows a golf applicator to use or apply an aquatic pesticide to a body of water on a golf course to control an aquatic pest problem.

E. Golf restricted use pesticide certification allows a golf applicator to use or apply restricted use pesticides to an ornamental and turf area of a golf course.

F. Examinations. The Department shall administer examinations by appointment at every Environmental Services Division

office. An applicant shall achieve a passing score of 75 percent in the applicable subject area in order to receive initial certification.

1. Commercial applicator certification (PUC). In addition to the core examination required by R3-3-202, an applicant shall demonstrate knowledge and understanding of the subjects listed in Appendix A, subsection (B) for each commercial certification category sought.
2. Commercial certification categories. An individual may apply for commercial applicator certification in any of the following categories:
   a. Agricultural pest control;
   b. Forest pest control;
   c. Seed-treatment;
   d. Aquatic pest control;
   e. Right-of-way pest control;
   f. Public health pest control;
   g. Regulatory pest control: M-44 or rodent, if a government employee; or
   h. Demonstration and research pest control.
3. Private applicator (PUP) and golf applicator (PUG) certification. An applicant shall demonstrate knowledge and understanding of the core examination subjects listed in R3-3-202.
4. Fumigation certification. An applicant seeking private applicator fumigation certification shall also pass a separate fumigation examination.
5. Aquatic certification. An applicant seeking aquatic certification shall also pass a separate aquatics examination.
6. An individual who fails an examination may retake it no more than three times in a 12-month period, and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

G. Fee.

1. An applicant for private or commercial certification shall pay a $50 fee per year of certification.
2. An applicant for golf certification shall pay a $100 fee per year of certification.

H. Applicator certification is not transferable, expires on December 31, and is:

1. Issued for the remainder of the calendar year as an initial certification;
2. Renewed for one or two years, depending on the renewal period selected by the applicant; and
3. Renewed for all categories of certification for the same renewal period.

I. Renewal.

1. An applicant for renewal of an applicator certification shall select a one or two-year renewal period.
2. An applicant shall submit the completed application accompanied by the applicable fee for a one-year renewal or double the fee for a two-year renewal.
3. CEU requirements.
   a. The Department shall not renew a private applicator or golf applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs for each year of the renewal period.
   b. The Department shall not renew a commercial applicator certification unless, prior to expiration of the current certification, the applicator completes six CEUs for each year of the renewal period.
   c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's private, golf, or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.
   d. The Department shall not renew an aquatic certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's golf applicator certification under this subsection and completes three additional CEUs per year of the renewal period. The three additional CEUs per year may also be used to simultaneously satisfy the three additional CEUs per year requirement in subsection (H)(3)(c).
   e. An applicator shall complete CEU credit while the current certification period is in effect. CEU credits earned in excess of the requirements do not carry forward for use in subsequent renewals.
   f. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.
   g. The CEU requirements are not applicable to an individual renewing an initial certification issued between October 1 and December 31.
4. Examination exception. An applicator who fails to complete the CEUs required for renewal may renew a certification, prior to expiration, for one year by submitting the completed application accompanied by the applicable fee and retaking and passing the applicable certification examination prescribed in this Section.

J. Renewal; expired certification.

1. An applicant may renew an expired certification without retaking the written examinations provided the applicant:
   a. Has satisfied the CEU requirements,
   b. Submits a completed application and fee within 30 days after the expiration date, and
   c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective.
2. All other applicants for renewal shall complete the requirements for initial certification, including retaking and passing the written examinations prescribed in this Section.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-208 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2481, effective November 10, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3). Amended by final rulemaking at 22 A.A.R. 367, effective April 5, 2016 (Supp. 16-1).

R3-3-209. License and Fee Exemptions

A. A person who applies pesticides in buildings or for structural pest control purposes is not required to apply for or possess any license or certification from the Department.

B. A person who sells, offers for sale, delivers, or offers for delivery a general use pesticide, to be used for private, noncommercial use in or around the home or a person who sells general use pesticides for swimming pool or spa maintenance is not required to apply for or possess a seller's permit from the Department.

C. A state, federal, or other governmental employee who makes pest control recommendations or applies or supervises the use of restricted use pesticides while engaged in the performance of official duties shall meet the requirements of this Article,

but is not required to pay a fee for either a PCA license or a commercial applicator certification.

D. A person who only furnishes information concerning label requirements governing a registered pesticide is not required to apply for or possess a PCA license from the Department.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-209 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-210. Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification

A. The Director has the authority to deny, or after an administrative hearing, suspend or revoke a license, permit, or certification of any person who:
1. Fails to demonstrate sufficient reliability, expertise, integrity, and competence in engaging in pesticide use;
2. Submits an inaccurate application for a license, permit, or certification; or
3. Has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application.

B. Upon notice of a denial, the applicant may request, in writing, that the Director provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10 to appeal the denial of the license, permit, or certification.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-210 (Supp. 91-4). Former Section R3-3-210 repealed; new R3-3-210 renumbered from R3-3-211 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-211. CEU Course Approval; Subject Approval

A. CEU course approval.
1. A person who wishes to have the Department determine whether a course qualifies for CEU credit shall submit the following information to the Department:
   a. Name, address, e-mail address, if applicable, and telephone number of the course's sponsor;
   b. Signature of the sponsor or the sponsor's representative;
   c. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
   d. Brief description of the information covered within each subject;
   e. Brief biography of the presenter, demonstrating the presenter's qualifications;
   f. Fees charged for attending the course;
   g. Date and location of each session; and
   h. Whether the course is open to the public.
2. A person who requires prior notification of the number of CEUs that can be earned by completing an approved course before it is held shall submit the information required in subsection (A)(1) to the Department at least 14 business days before the course is held.
3. The Department may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the Department modifies the number of CEUs earned, the Department shall send a letter of modification to the course organizer, who shall be requested to inform all individuals who attended the course.

B. Subject approval. The Department shall grant one hour of CEU credit for every 50 minutes of actual instruction in an approved program relating to agricultural pest control or any of the following subjects:
1. Those listed in R3-3-208(F)(1),
2. IPM, or
3. Any other pesticide or pesticide use subject approved by the Associate Director.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-211 (Supp. 91-4). Former Section R3-3-211 renumbered to R3-3-210; new R3-3-211 renumbered from R3-3-212 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-212. Experimental Use Permit

A. Small scale pesticide testing. For a person exempted by Section 5 of FIFRA or 40 CFR 172.3 from the requirement of a federal experimental use permit the following apply:
1. The person shall, in addition to meeting the requirements in R3-3-303, provide to the Associate Director a statement of purpose and an affidavit verifying that the pesticide will be applied to an application site that does not exceed the total area described in 40 CFR 172.3(c); and
2. If testing on the grounds of a college or university agricultural center or campus, or company-owned research facility, the testing is exempt from subsection (A)(1) and the reporting requirements in R3-3-303.

B. A person engaged in a small scale test, except a person exempt under subsection (A)(2), shall comply with the requirements prescribed in R3-3-302, if applicable.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-212 (Supp. 91-4). Former Section R3-3-212 renumbered to R3-3-211; new R3-3-212 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

Appendix A. - Testing Categories
TESTING CATEGORIES

A. Commercial Applicator Certification, 40 CFR 171.4(b)(i)-(viii).
1. Label & labeling comprehension.
   a. The general format and terminology of pesticide labels and labeling;
   b. The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
   c. Classification of the product, general or restricted; and
   d. Necessity for use consistent with the label.
2. Safety. Factors including:
   a. Pesticide toxicity and hazard to man and common exposure routes;
   b. Common types and causes of pesticide accidents;
   c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
   d. Need for and use of protective clothing and equipment;
   e. Symptoms of pesticide poisoning;
   f. First aid and other procedures to be followed in case of a pesticide accident; and
   g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesti-

cides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
   a. Weather and other climatic conditions;
   b. Types of terrain, soil or other substrate;
   c. Presence of fish, wildlife and other non-target organisms; and
   d. Drainage patterns.
4. Pests. Factors such as:
   a. Common features of pest organisms and characteristics of damage needed for pest recognition;
   b. Recognition of relevant pests; and
   c. Pest development and biology as it may be relevant to problem identification and control.
5. Pesticides. Factors such as:
   a. Types of pesticides;
   b. Types of formulations;
   c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
   d. Hazards and residues associated with use;
   e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
   f. Dilution procedures.
6. Equipment. Factors including:
   a. Types of equipment and advantages and limitations of each type; and
   b. Uses, maintenance and calibration.
7. Application techniques. Factors including:
   a. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;
   b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
   c. Prevention of drift and pesticide loss into the environment.
8. Laws and regulations. Applicable State and Federal laws and regulations.

B. Commercial Certification Categories, 40 CFR 171.4(c)(1) through (6) and (8) through (10).

1. Agricultural pest control.
   a. Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.
   b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.
2. Forest pest control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in this state and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.
3. Seed-treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.
4. Aquatic pest control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.
5. Right-of-way pest control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.
6. Public health pest control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.
7. Regulatory pest control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws

relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

8. Demonstration and research pest control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problems situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding of a pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in (G)(1). In addition, they shall meet the specific standards required for subsections (c)(1) through (7) of this subsection as may be applicable to their particular activity.

C. Private Certification, 40 CFR 171.5(a)(1) through (5).
1. Recognize common pests to be controlled and damage caused by them.
2. Read and understand the label and labeling information, including the common name of pesticides the applicator applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or reentry restrictions; and any specific disposal procedures.
3. Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
4. Recognize local environmental situations that must be considered during application to avoid contamination.
5. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

Historical Note

New Appendix made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Appendix A subsection (B) CFR citation corrected from 40 CFR.4 to 40 CFR 171.4 at the request of the Department, Office File No. M09-448, filed December 8, 2009 (Supp. 09-4).

ARTICLE 3. PESTICIDE USE, SALES, AND EQUIPMENT

R3-3-301. General

A. A person shall not use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with the pesticide labeling except that:
1. A pesticide may be applied at a dosage, concentration, or frequency less than that specified on the pesticide labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.
2. A pesticide may be applied against any target pest not specified on the labeling if the application is to an application site specified on the pesticide labeling, unless the labeling specifically prohibits use against the pest.
3. A pesticide may be applied by any method of application not prohibited by the pesticide labeling unless the labeling specifically states that the pesticide may be applied only by the methods specified on the labeling.
4. A pesticide may be mixed with a fertilizer if the labeling does not prohibit the mixture.
5. A pesticide may be used in any manner that is consistent with Sections 5, 18, or 24 of FIFRA.

B. A person shall not use, apply, or store or instruct another to use, apply, or store a pesticide unless the pesticide is:
1. Registered with the Department and the EPA, or
2. Previously registered with the Department and the EPA and cancelled or suspended by the EPA with a current end-use provision in effect.

C. Subsection (B) does not apply to a:
1. Pesticide registrant that temporarily stores pesticides produced for shipment out of the state;
2. Person who has applied for registration or exemption in this state; or
3. Person who is acting under an experimental use permit on the grounds of a college or university agricultural center or campus, or a company-owned research facility.

D. A person shall not allow drift that causes any unreasonable adverse effect.

E. A person shall not cause the direct release of a pesticide and an individual shall not instruct an applicator in a manner to cause the direct release of a pesticide causing any unreasonable adverse effect.

F. Regulated grower responsibility.
1. After a pesticide is applied to a field on an agricultural establishment, the regulated grower shall not harvest a crop from the field, or permit livestock to graze in the field in violation of any provision of the pesticide labeling.
2. Before a pesticide application, a regulated grower shall ensure that all individuals and livestock subject to the regulated grower's control are outside the application site.

G. Emergency pest control measures. A person acting under a government-sponsored emergency program, shall not apply, cause, or authorize another to apply or cause a pesticide to come into contact with an individual, animal, or property outside the boundaries of the application site.

H. If possible when applying pesticides by aircraft, a pilot shall fly crosswind, unless an obstacle does not permit it, and shall begin the application at the downwind side of the field so that the pesticide is dispersed on the return swathe.

I. A person shall not apply a highly toxic pesticide, other than a pesticide registered by the EPA for ultra low volume application, in a volume that is less than one gallon per acre in the final spray form. The content of that gallon shall be at least 50 percent water.

J. A buffer zone may receive direct application or drift of pesticides as permitted by law.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-301 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-302. Form 1080; Requirement for Written Recommendation

A. A PCA or regulated grower shall provide the following information, as applicable, in writing on a Form 1080, sign the

form, and provide a copy to the custom applicator before each pesticide application that is to be made by a custom applicator:
1. Name and permit number of the seller;
2. Date the recommendation is written;
3. Name and permit number of the regulated grower upon whose application site the pesticide will be applied;
4. County where the application site is located;
5. Pest conditions present;
6. Whether the application site is within a pesticide management area under R3-3-304;
7. Anticipated date of harvest;
8. Restricted entry interval;
9. Label days to harvest;
10. Date recommended for the pesticide application;
11. Specific application site being treated;
12. Township, range, and section of the application site;
13. Number of acres or application sites in each section being treated;
14. Additional field description, if any;
15. Brand name and EPA registration number of the pesticide to be applied or number of the pesticide regulated under Section 18 of FIFRA to be applied;
16. Rate and unit of measure per acre or dilution per 100 gallons;
17. Total quantity of pesticide concentrate to be applied;
18. Total acres to be treated and total volume per acre or total number of application sites to be treated;
19. Whether the application includes an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and is soil-applied as defined in A.A.C. R18-6-101;
20. Whether a supplemental label is required;
21. Method of pesticide application;
22. Label restrictions or special instructions, if any;
23. Name of the custom applicator making the application;
24. Anticipated pesticide delivery location; and
25. Signature and credential number of the regulated grower or PCA making the recommendation.

B. A custom applicator shall not apply a pesticide unless the custom applicator has received a signed copy of the recommendation from the PCA or the regulated grower on the Form 1080 before the application. The custom applicator shall apply the pesticide according to the recommendation on the Form 1080 unless the recommendation conflicts with the pesticide label or labeling, in which case the custom applicator shall note these deviations on the Form 1080 and apply the pesticide according to the pesticide label or labeling, or as provided in R3-3-301(A).

C. Before the application of a pesticide recommended by a PCA, the PCA shall notify the regulated grower, or the regulated grower's representative, of the scheduled application date. If the application date or time changes from that scheduled with the regulated grower, the custom applicator shall notify the regulated grower of the revised date and time of the application.

D. After completing the application, the custom applicator shall sign the pesticide application report portion of Form 1080 to verify that the pesticide was applied according to the recommendation and provide the following information in writing on the form:
1. Date and time of each application;
2. Date and time of the first and last spot application and a general description of the location, if applicable;
3. Wind direction and velocity;
4. Tag number, if applicable;
5. Name and credential number of the grower or custom applicator business;
6. Signature and credential number of the applicator; or name of the application equipment operator, and if a restricted use pesticide is applied, the signature and credential number of the certified applicator; and
7. Any deviation from the recommendation.

E. Reporting shall be as prescribed in R3-3-404.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-302 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-303. Experimental Use

A. A person supervising application of a pesticide under a federal experimental use permit shall provide the Department with the following information in writing at least five days before application of the experimental use pesticide:
1. A copy of the EPA-approved experimental use permit, as required by Section 5 of FIFRA;
2. Name, address, e-mail address, if applicable, and daytime telephone number of the supervising technical individual for the experimental use;
3. Application site to be treated, the location of the application site, the quantity of the commodity or the area of land to be treated, and the number of structures, if any;
4. Total amount of active ingredient to be applied in this state;
5. Rate of formulation applied per unit of measure;
6. Method of application;
7. Time period during which the application will be made; and
8. Any special experimental use permit condition as determined by the Department or by the EPA.

B. If any information provided under subsection (A) changes, the person supervising the pesticide application under a federal experimental use permit shall notify the Department at least 24 hours before the application of the experimental use pesticide. If the notification of change is given verbally, the person supervising the pesticide application under a federal experimental use permit shall provide the Department with written confirmation within 15 days after the date of the change.

C. At least 24 hours before the application, the supervising technical individual shall provide the Department with the following information:
1. Name, address, e-mail address, if applicable, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest control application, that are involved in the application of the experimental use pesticide;
2. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest control application as defined in A.R.S. § 32-2301(20);
3. Name, address, e-mail address, if applicable, and telephone number of the applicator applying the pesticide; and
4. Date and time of the intended application.

D. An applicator shall not apply an experimental use pesticide in a manner other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4).

Renumbered from R3-10-303 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-306 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-304. Pesticide Management Areas; Criteria for Designation

A. The Associate Director shall annually publish a list of all locations within the state that are designated as pesticide management areas under A.R.S. § 3-366. The list is available at every Environmental Services Division office.

B. The Director shall designate a location as a pesticide management area if all of the following evaluation criteria are met:
1. The distance between the application site and the property boundary of any residence, school, child care facility, or health care institution is less than 1/4 mile;
2. A pesticide is applied by aircraft;
3. A pesticide complained about under subsection (B)(4) is highly toxic or odoriferous; and
4. The Department receives complaints alleging pesticide misuse within a 12-month period from at least five or five percent, whichever is greater, of the residences located less than 1/4 mile from the application site or a complaint from any school, child care facility, or health care institution located less than 1/4 mile from the application site.

C. If, upon a written request from a person, or upon the Department's initiative, the Director determines that a pesticide management area no longer meets all of the criteria listed in subsection (B), the Director may remove the pesticide management area from the Department's annual list.

D. A person may petition the Department at any time to add or delete an area to or from the list of pesticide management areas. The petitioner shall address all of the criteria listed in subsection (B). The Director shall make a decision on each petition no later than 90 days from the date the petition was submitted.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-304 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-308 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-305. Pesticide Sales

A. A seller shall not sell, offer for sale, deliver, or offer for delivery any restricted use pesticide or pesticide for an agricultural purpose without determining that the pesticide will be used by a person who:
1. Has a valid certification or regulated grower permit issued by the Department or OPM for use of the pesticide, or
2. Works under the direct supervision of a person who has a valid certification or regulated grower permit issued by the Department or OPM for the use of the pesticide.

B. If a pesticide is sold for an agricultural purpose, the seller shall write the permit numbers of the seller and regulated grower on each sale and delivery ticket or invoice, and on each pesticide container or carton. If a pallet is delivered to an individual purchaser, the seller may write the seller and regulated grower numbers on the outside of the shrink-wrapped pallet.

C. A seller shall register with the Department the name and address of each salesperson and PCA employed for the purpose of selling pesticides in this state.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-305 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-309 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons

A. A person shall not sell, offer for sale, deliver, or offer for delivery a restricted use pesticide to a person other than a certified applicator without having first obtained written documentation from a certified applicator or a noncertified recipient that the material is to be applied by or under the supervision of a certified applicator.

B. The seller shall obtain one of the following types of written documentation to satisfy the requirement in subsection (A):
1. A photocopy or fax of the certificate issued to the certified applicator who will be applying or supervising application of the restricted use pesticide and:
   a. A statement signed by the certified applicator, authorizing and identifying the noncertified individual to purchase or receive the restricted use pesticide for the certified applicator; or
   b. A copy of a signed contract or agreement, authorizing and identifying the noncertified person to receive the restricted use pesticide for the certified applicator; or
2. A form on file with the seller that contains the following information:
   a. Name of any individual authorized to receive the restricted use pesticides for the certified applicator;
   b. Relationship of an authorized individual to the certified applicator (partner, employee, co-worker, or family member);
   c. List of the restricted use pesticides an authorized individual is allowed to receive, specifying the:
      i. Trade name; and
      ii. EPA registration number; or
      iii. State special local need registration number issued by the Department; or
      iv. Emergency exemption number, issued by the EPA under Section 18 of FIFRA, if applicable;
   d. Signature of the authorized individual and the date signed; and
   e. Certified applicator's signature, work address, work phone number, certification number, and certification categories (private fumigation or commercial and one or more of the following: agricultural pest, seed-treatment, right-of-way, forestry, aquatic, regulatory, or public health).

C. A seller shall request proof of identification from any noncertified individual accepting restricted use pesticides on behalf of a certified applicator if the individual is unknown to the seller.

D. A noncertified individual who receives a restricted use pesticide on behalf of a certified applicator shall sign all sale documents for restricted use pesticides.

E. If, at the time of the sale of the restricted use pesticide, the noncertified individual receiving the pesticide satisfies the requirements of subsection (B) by presenting a signed statement, contract, or agreement, the seller shall maintain on file a copy of the signed statement, contract, or agreement.

F. The seller shall retain records of all sales or deliveries made and maintain the documents required by this Section for at least two years from the date of sale.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).

Renumbered from R3-10-306 (Supp. 91-4). Former Section R3-3-306 renumbered to R3-3-303; new R3-3-306 renumbered from R3-3-310 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-307. Aircraft and Agricultural Aircraft Pilots

A. A person shall not operate an aircraft to apply pesticides in this state unless the aircraft has a valid Federal Aviation Administration airworthiness certificate and a valid tag issued under R3-3-206.

B. A custom applicator shall not permit an individual who does not hold a valid agricultural aircraft pilot license and a valid commercial applicator certification to apply pesticides by aircraft.

Historical Note

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-307 (Supp. 91-4). Former Section R3-3-307 repealed; new R3-3-307 renumbered from R3-3-312 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-308. Pesticide Containers and Pesticides; Storage and Disposal

A. Each person storing pesticides or non-triple rinsed pesticide containers shall:
1. Provide a secure, well-ventilated storage location;
2. Verify that the containers are nonleaking and closed if not in use; and
3. Conspicuously post a sign at the entrance to the storage area warning others that pesticides are stored inside.

B. A person shall not place misleading wording or markings on a service container that are not related to the pesticide in the container.

C. A person using a service container to store or transport a pesticide concentrate or registered ready-to-use pesticide, shall place a durable and legible label or tag on the service container that lists:
1. Name, e-mail address, if applicable, and telephone number of the applicator or custom applicator using the pesticide;
2. Brand or trade name of the pesticide;
3. EPA registration number;
4. Name and percentage of the active ingredient;
5. Dilution, if any, in the service container;
6. EPA-assigned signal word (danger, warning, or caution) for the registered label; and
7. The phrase "KEEP OUT OF REACH OF CHILDREN."

D. A person shall not store or transport any pesticide in a container that has been used for food, feed, beverages, drugs, or cosmetics, or, because of shape, size, or marking is identified with food, feed, beverages, drugs, or cosmetics.

E. A person shall not dump, negligently store, or leave unattended any pesticide, service container, or pesticide container or part of a container, at any place or under any condition that will create a hazard to an individual, an animal, or property.

F. A person shall not dispose of any pesticide or pesticide container except according to label directions and all applicable laws.

G. Before a person disposes of any pesticide container, the person shall ensure that the following steps are taken:
1. After emptying each pesticide container other than a pressurized container, a paper bag, or a container designed for reuse with the same pesticide and described in R3-3-309, the container is triple rinsed and:
   a. The rinsate is not discharged into the environment unless the discharge is performed according to label directions, and applicable laws;
   b. The rinsate is placed into a service container or the application equipment for use on an application site, or the rinsate is disposed as allowed by the label;
   c. Each container is punctured or crushed after it is triple rinsed to render the container incapable of holding any material; and
2. A pesticide container that is a combustible bag or package is thoroughly emptied and either:
   a. Folded and tied into bundles or otherwise secured, or
   b. Enclosed securely in a secondary container that is labeled as containing pesticide residue.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-308 (Supp. 91-4). Former Section R3-3-308 renumbered to R3-3-304; new R3-3-308 renumbered from R3-3-313 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-309. Returnable, Reusable, Recyclable, and Reconditionable Pesticide Containers

A. A pesticide container, as defined in R3-3-101, labeled as a returnable, reusable container, or for which the label contains provisions for recycling or reconditioning, may be shipped according to label directions to a dealer, distributor, formulator, or a reconditioning or recycling facility that is operated in accordance with applicable laws.

B. If a pesticide container is being held for shipment under subsection (A), the person holding the container shall, immediately after use, place it in a secure environment, inaccessible for any use other than shipment according to label directions.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-309 (Supp. 91-4). Former Section R3-3-309 renumbered to R3-3-305; new R3-3-309 renumbered from R3-3-314 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-310. Fumigation Use

A. An individual shall not perform a fumigation unless the individual is a certified fumigant applicator or a certified fumigant applicator is physically present in the immediate vicinity supervising the individual performing the fumigation.

B. An individual storing, handling, or applying a fumigant shall follow all label requirements. If the label does not specify warning requirements, the individual shall comply with the following provisions:
1. Before the fumigation begins, warning signs shall be posted in visible locations on or in the immediate vicinity of all entrances to and on every side of the space or area being fumigated.
2. Warning signs shall be printed in red on white background and shall:
   a. State the English and Spanish words "DANGER/PELIGRO";
   b. Contain a skull and crossbones symbol if shown on the product label;
   c. State "Area or commodity under fumigation. DO NOT ENTER/NO ENTRE"; and
   d. State the name of the fumigant, the date and time the fumigant was injected, and the name, e-mail

address, if applicable, and telephone number of the certified applicator.

C. A certified fumigant applicator who engages in or who supervises another in the fumigation process shall ensure that the label requirements are followed, including requirements relating to the use of personal protective equipment and posting required warning signs.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-310 (Supp. 91-4). Former Section R3-3-310 renumbered to R3-3-306; new R3-3-310 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-311. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-311 (Supp. 91-4). Section repealed by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-312. Renumbered

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-312 (Supp. 91-4). Section renumbered to R3-3-307 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-313. Renumbered

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-313 (Supp. 91-4). Section renumbered to R3-3-308 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-314. Renumbered

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-314 (Supp. 91-4). Section renumbered to R3-3-309 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

ARTICLE 4. RECORDKEEPING AND REPORTING

R3-3-401. Pesticide Seller Records

A. A seller of any restricted use pesticide, device, or any pesticide sold for an agricultural purpose shall maintain all records showing the receipt, sale, delivery, or other disposition of the pesticide or device sold for at least two years from the date of sale. If a seller intends to change the location of the records, the seller shall file a signed statement with the Department before the move stating the new address.

B. When any pesticide for agricultural purposes, or a restricted use pesticide regulated by the OPM, is sold, delivered, or otherwise disposed of, a seller shall maintain the following records and information:

1. Bill of lading or other similar record of the receipt of the pesticide at the selling establishment;
2. Seller's dated sales receipt, delivery receipt, or invoice of the transaction, delivery, or other disposition of the pesticide;
3. Name and address of the purchaser;
4. Regulated grower permit number, or the OPM license number of the purchaser, if applicable;
5. State special local need registration number issued under Section 24 of FIFRA, if applicable;
6. Emergency exemption permit number granted by the EPA under Section 18 of FIFRA, if applicable;
7. Experimental use permit number, if applicable;
8. Pesticide brand name and the EPA registration number; and
9. Quantity of the pesticide sold to the purchaser.

C. In addition to the information required in subsection (B), when a restricted use pesticide is sold, delivered, or otherwise disposed of for use by a certified applicator, a seller shall maintain records that contain the following information:

1. Name and address of the residence or principal place of business of each person to whom the restricted use pesticide is sold, delivered, or otherwise disposed of, and any records required under R3-3-306;
2. Certified applicator's name, address, certification number, and the expiration date of the applicator's certification; and
3. Categories in which the applicator is certified, if applicable.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-401 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-402. Private and Golf Applicator Records; Restricted Use Pesticide

A. Following an application to a field on an agricultural establishment of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator shall complete an application record on a form approved by the Department, that includes the following:

1. Name of the private applicator and the applicator's certification number;
2. Name and permit number of the seller;
3. Name of the pesticide applied and its EPA registration number;
4. Date and time of application;
5. Name of regulated grower;
6. Method of application;
7. Crop name and the number of acres treated with the pesticide;
8. Rate per acre of the active ingredient or formulation of the pesticide;
9. Total volume of pesticide used per acre; and
10. County, range, township, and section of the field that received the application.

B. Following an application to a non-field of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator or golf applicator shall complete an application record on a form approved by the Department, that includes the following:

1. The information requested under subsection (A)(1) through (A)(6);
2. Item treated;
3. Rate per item treated;
4. Total volume used in the application; and
5. Application site location by county, range, township, and section, or by physical address.

C. A private applicator and golf applicator shall retain records required by this Section for at least two years from the date of the private application.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4).

Renumbered from R3-10-402 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-403. Bulk Release Report

A. An applicator shall notify the Department at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the applicator shall immediately report the release to the Arizona Department of Public Safety Duty Office.

B. Within 30 days after a bulk release, the applicator shall provide a written report to the Department listing all details of the release, including:

1. Location and cause of the release;
2. Disposition of the pesticide released;
3. Measures taken to contain the bulk release;
4. Name and EPA registration number of the pesticide released;
5. Name, e-mail address, if applicable, and telephone number of the applicator's contact person;
6. Date and time of the release;
7. Specific environment into which the release occurred;
8. Known human exposure to the pesticide, if observed; and
9. Estimated amount of pesticide or pesticide mixture released.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-403 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-404. Form 1080; Reports to the Department

A. A custom applicator shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302.

B. A regulated grower shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302, for application of a pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-101.

C. A custom applicator or regulated grower may report continued pesticide applications and spot applications within the same reporting period on a single Form 1080.

D. A custom applicator or a regulated grower shall submit the Form 1080 to the Department during the reporting period.

E. A PCA or custom applicator shall retain a copy of each Form 1080 for at least two years from the date of the application.

Historical Note

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-404 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-405. Disposal Records; Agricultural Pesticide Concentrate

An applicator shall maintain the following information for two years:

1. EPA registration number, product name, active ingredient, and amount of agricultural pesticide concentrate disposed of;
2. Date of disposal;
3. Method of disposal; and
4. Specific location of the disposal site, or name of licensed disposal contractor.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

ARTICLE 5. NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS

R3-3-501. Serious Violations

The following is a nonexclusive list of acts that are serious violations if exposure to the pesticide produces a substantial probability that death or serious physical harm could result, unless the violator did not, and could not with the exercise of reasonable diligence, as documented in the investigative record, know of such safety or human health risk, in which case the violation is nonserious:

1. Storing a pesticide or pesticide container improperly,
2. Dumping or disposing a pesticide or pesticide container in violation of this Chapter,
3. Leaving a pesticide or pesticide container unattended,
4. Spraying or applying a pesticide in a manner inconsistent with labeling instructions, or
5. Adulterating a pesticide.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-501 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-502. Nonserious Violations

A. General violations. The following is a nonexclusive list of acts that are nonserious violations if the violation has a direct or immediate relationship to safety, health, or property damage, but does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health, or property damage risk in which case the violation is de minimis. A person shall not:

1. Improperly store, dump, or leave unattended any pesticide, pesticide container or part of a pesticide container, or service container.
2. Make a false statement or misrepresentation in an application for a permit, license, or certification, or a permit, license, or certification renewal.
3. Falsify any records or reports required to be made under Articles 2 through 4 of this Chapter.
4. Operate an aircraft or ground equipment in a faulty, careless, or negligent manner during the application of a pesticide.
5. Apply or instruct another to apply a pesticide so that it comes into contact with:
   a. An individual;
   b. An animal; or
   c. Property, other than the application site being treated.
6. Use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with its pesticide label or labeling except as provided by R3-3-301(A).
7. Use, sell, apply, store, or instruct another to use, sell, apply, or store a pesticide:
   a. That is not registered with the Department and the EPA, or
   b. Outside the EPA authorized end-use provision if previously registered with the Department and the EPA and cancelled or suspended by the EPA.
8. Fail to provide accurate or approved labeling when registering a pesticide.

B. Seller violations. A seller shall not:
1. Sell pesticides without a valid seller's permit issued by the Department,
2. Provide a pesticide to a regulated grower who does not have a valid permit,
3. Fail to maintain records required under Articles 2 through 4 of this Chapter,
4. Fail to maintain complete sales records of restricted use pesticides required under Articles 3 and 4 of this Chapter,
5. Adulterate a pesticide,
6. Make false or misleading claims about a pesticide to any person,
7. Modify a label or labeling without proper authorization, or
8. Provide a pesticide to an unauthorized person.

C. PCA violations. A PCA shall not:
1. Act as a PCA without a valid agricultural pest control advisor license issued by the Department,
2. Make a false or fraudulent statement in any written recommendation about the use of a pesticide,
3. Make a recommendation regarding the use of a pesticide in a specific category in which the individual is not licensed, or
4. Make a written recommendation for the use of a pesticide in a manner inconsistent with its pesticide label or the exceptions as provided in R3-3-301(A).

D. Agricultural aircraft pilot violations. A pilot shall not apply a pesticide by aircraft without a valid agricultural aircraft pilot license issued by the Department.

E. Custom applicator violations. A custom applicator shall not:
1. Allow application equipment to be operated in a careless or reckless manner during the application of a pesticide,
2. Make a custom application without a valid custom applicator's license issued by the Department,
3. Make a custom application of a restricted use pesticide without a valid commercial applicator certification issued by the Department,
4. Allow an aircraft to be operated during the application of a pesticide by an individual who does not have a valid agricultural aircraft pilot license issued by the Department, or
5. Apply a pesticide without a written Form 1080 as prescribed in R3-3-302(A).

F. Regulated grower violations. A regulated grower shall not:
1. Purchase, apply, or use a pesticide without a valid regulated grower's permit issued by the Department;
2. Apply a restricted use pesticide without being a commercial applicator, private applicator, or restricted use pesticide certified golf applicator;
3. Apply any pesticide on a golf course without being a golf applicator; or
4. Allow a pesticide application on a golf course without having the proper protective equipment required by the label available to the applicator.

G. Certified applicator violations. A certified applicator shall not:
1. Allow the unsupervised application of a restricted use pesticide,
2. Fail to maintain complete records required under Articles 2 through 4 of this Chapter, or
3. Use a restricted use pesticide without a valid commercial applicator, private applicator, or golf applicator restricted use pesticide certification issued by the Department.

H. Exemptions. The following incidents are not pesticide use violations under this Section:
1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-502 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

R3-3-503. De minimis Violations

A. Seller violations. It is a de minimis violation if a seller:
1. Fails to record seller and regulated grower permit numbers on containers, cartons, and delivery tickets;
2. Fails to register the seller's representatives; or
3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.

B. PCA violations. It is a de minimis violation if a PCA:
1. Fails to put recommendations in writing as prescribed at R3-3-302(A),
2. Fails to provide complete information required on written recommendations under R3-3-302, or
3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.

C. Custom applicator violations. It is a de minimis violation if a custom applicator:
1. Fails to maintain complete records required under Articles 2 through 4 of this Chapter, or
2. Fails to file reports as required under Articles 3 and 4 of this Chapter.

D. Regulated grower violations. It is a de minimis violation if a regulated grower:
1. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter; or
2. Fails to file reports as required under Article 4 of this Chapter including whether the application includes a pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-101.

E. Certified applicator violations. A certified applicator shall not fail to file reports as required under Articles 3 and 4 of this Chapter.

F. A third de minimis violation of the same or similar type from among those listed in subsections (A) through (E) in a three-year period is a nonserious violation.

G. Exemptions. The following incidents are not a violation under this Section:
1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-503 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-504. Mitigation

A. A violation listed in R3-3-501 is a nonserious violation if:
1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety or human health risk involved; or
2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.

B. A violation listed in R3-3-502 is a de minimis violation if:
1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety, health, or property damage risk involved; or
2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-504 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-505. Unlisted Violations

A. The Department shall classify a violation of Articles 2 through 4 of this Chapter or of A.R.S. Title 3, Chapter 2, Article 6 that is not listed in R3-3-501, R3-3-502, or R3-3-503 as a serious, nonserious, or de minimis violation depending upon the specific factual circumstances surrounding the violation.

B. A third de minimis violation of the same or similar type in a three-year period is a nonserious violation.

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-505 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-506. Penalty and Fine Point System

A. The ALJ shall assess points, as applicable, against a violator for the violation of each pesticide rule or statute, or the Associate Director shall assess points, as applicable, for the violation of each pesticide rule or statute upon entering into a negotiated settlement as a result of an informal settlement conference under A.R.S. § 41-1092.06, in accordance with the following point system. From each of subsections (A)(1) through (6), one choice shall be selected, unless otherwise appropriate, based upon supporting evidence in the record of the proceeding before the ALJ or Associate Director. Points shall be totaled for the violation of each pesticide rule or statute.

1. Health effects.
   a. No evidence of human exposure to pesticides and no evidence of the substantial probability of human exposure to pesticides. 0
   b. Substantial probability of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant. 5-10
   c. Evidence of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant. 11-20
   d. Human exposure to pesticides that required treatment by a physician, nurse, paramedic, or physician's assistant, but which did not result in pesticide poisoning. 21-30
   e. Human exposure to pesticides that required either hospitalization for less than 12 hours or treatment as an outpatient for five consecutive days or less by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning. 31-45
   f. Human exposure to pesticides that required either hospitalization for 12 hours or longer, or treatment as an outpatient for more than five consecutive days by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning. 46-100
   g. Human exposure to pesticides resulting in death from pesticide poisoning (serious violation unless otherwise documented in the investigative record). 101-180
2. Environmental consequences and property damage. (Select one or more as evidence indicates.)
   a. No evidence of substantial probability of environmental or property damage. 0
   b. Substantial probability of water contamination. 5-10
   c. Evidence of water source contamination. 11-20
   d. Substantial probability of soil contamination causing economic damage. 5-10
   e. Evidence of soil contamination causing economic damage. 11-20
   f. Substantial probability of nontarget bird kills. 5-10
   g. Evidence of nontarget bird kills. 11-20
   h. Substantial probability of nontarget fish kills. 5-10
   i. Evidence of nontarget fish kills. 11-20
   j. Nontarget kills involving game or furbearing animals as defined by A.R.S. § 17-101(B). 10-20
   k. Any property damage (nonserious violation only under A.R.S. § 3-361(4)). 10-20
   l. Air contamination causing official evacuation by federal, state, or local authorities. 10-20
   m. Killing one or more threatened or endangered species. 15-20
   n. Killing one or more domestic animals. 15-20
3. Culpability
   a. Knowing.Knew or reasonably should have known by reasonable diligence of the prohibitions or restrictions that are the basis of the misconduct cited. 5-10
   b. Willfully. Actual knowledge of the prohibitions or restrictions but engages in misconduct. 20-50
4. Prior violations or citations. Violations or citations within three years from the date the violation was committed. (Select one or more as evidence indicates.)

Prior violation history	Current violation Nonserious	Current violation Serious
None	0	0

One or more De minimis	5	0
One Nonserious	10	5
One Nonserious, same or substantially similar to current violation	20	10
Two Nonserious	30	15
Two Nonserious, same or substantially similar to current violation	40	20
Three Nonserious	60	30
Three Nonserious, same or substantially similar to current violation	70	35
Additional Nonserious: same or substantially similar to current violation, points per each additional violation beyond three	10	5
One Serious	20	10
One Serious, same or substantially similar to current violation	40	20
Two Serious	60	30
Two Serious, same or substantially similar to current violation	80	40
Three Serious	120	60
Three Serious, same or substantially similar to current violation	140	70
Additional Serious: same or substantially similar to current violation, points per violation	20	10

5. The length of time a violation has been allowed to continue by the violator after notification by the Department.
   a. Less than one day. 0
   b. One day but less than one week. 1-10
   c. One week but less than one month. 11-20
   d. One month but less than two months. 21-30
   e. Two months or more. 31-40
6. Wrongfulness of conduct
   a. Conduct resulting in a violation that does not cause any immediate damage to public health, safety, or property. 4-5
   b. Conduct resulting in a violation that the evidence establishes may have a substantial probability of an immediate effect upon public health, safety, or property. 6-8
   c. Conduct resulting in a violation that the evidence establishes had an immediate effect upon public health, safety, or property, but does not fall within subsection (6)(e). 9-10
   d. Conduct causing the substantial probability of serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property. 20-35
   e. Conduct resulting in serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property. 36-50

B. The ALJ or Associate Director, after determining points pursuant to subsection (A) shall assess a fine or penalty, or fine and penalty, for each violation in accordance with the following schedules:

1. Nonserious violation as defined under A.R.S. § 3-361.
   a. 53 points or less. A fine of $50 to $150; a penalty of one to three months' probation, with a condition of violating probation being one to three hours of continuing education.
   b. 54 to 107 points. A fine of $151 to $300; a penalty of four to six months' probation with a condition of violating probation being one to 10 days' suspension.
   c. 108 points or more. A fine of $301 to $500; a penalty of seven to 12 months' probation with a condition of violating probation being 15 to 30 days' suspension or revocation for a period of up to one year.
2. Serious violation as defined under A.R.S. § 3-361.
   a. 46 points or less. A fine of $1,000 to $2,000; a penalty of one to three months' probation with a condition of violating probation being five to 10 days' suspension for a nonserious violation or 15 to 30 days' suspension for a serious violation.
   b. 47 to 93 points. A fine of $2,001 to $5,000; a penalty of four to six months' probation with a condition of violating probation being 15 to 30 days' suspension for a nonserious violation and 31 to 90 days' suspension for a serious violation.
   c. 94 points or more. A fine of $5,001 to $10,000; a penalty of probation for seven to 12 months with a condition of violating probation being two to four months' suspension for a nonserious violation and four to 12 months' suspension for a serious violation, or revocation for the remainder of the license year and an additional period of one to three years.
3. The first de minimis violation is not considered a violation of probation.

Historical Note
Adopted effective September 13, 1989 (Supp. 89-3). Renumbered from R3-10-506 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

ARTICLE 6. REPEALED

R3-3-601. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4).

Renumbered from R3-10-601 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-602. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-602 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-603. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-603 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-604. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-604 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-605. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-605 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-606. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-606 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-607. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-607 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-608. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-608 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-609. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-609 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-610. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-610 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-611. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-611 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-612. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-612 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-613. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-613 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-614. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-614 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-615. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-615 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-616. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-616 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-617. Repealed

Historical Note
Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-617 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

ARTICLE 7. PESTICIDE

R3-3-701. Definitions

In addition to the definitions in A.R.S. § 3-341, the following terms apply to this Article:

1. "Discontinuation" means when the registrant is no longer distributing a pesticide into Arizona.
2. "Pest" means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots, and plant parts.
3. "Official sample" means any sample of pesticide taken by the Associate Director, or the Associate Director's agent, and designated as official.

Historical Note
Former rule 1; Former Section R3-3-01 repealed, new Section R3-3-01 adopted effective January 18, 1978 (Supp. 78-1). Amended effective December 29, 1978 (Supp. 78-6). Section R3-3-701 renumbered from R3-3-01 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-702. Pesticide Registration; Fee

A. Registration. Any person registering a pesticide shall provide the following documents and information on a form provided by the Department with a nonrefundable $100 fee for each pesticide, for each year of the registration:

1. The name, address, telephone number, and signature of the applicant;
2. The name and address of the company appearing on the label;
3. The Social Security number or tax identification number;

4. The date of the application;
5. The brand and name of the pesticide being registered;
6. The EPA registration number of the pesticide if applicable;
7. The analytical methods for any analyses of residues for the active ingredients of the pesticide, if requested by the Department;
8. The toxicological and safety data, if requested by the Department;
9. The name and telephone number of the person providing the toxicological and safety data;
10. Two pesticide labels for any pesticide not previously registered;
11. The material safety data sheet for each pesticide; and
12. The license time-period option.

B. A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for one or two years.

C. If an applicant elects a two-year pesticide registration, any additional pesticide registered during that two-year registration shall have the same registration end-date as any other pesticide currently registered by that applicant with the Department.

D. Notwithstanding subsection (A), during fiscal year 2020, a person registering a pesticide or renewing a pesticide registration shall pay a $100 fee for each pesticide for each year of registration.

Historical Note

Former rule II; Former Section R3-3-02 renumbered and amended as Section R3-3-01, former Sections R3-3-11 and R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Amended subsection (C) effective January 1, 1979, subsection (D) effective January 1, 1982 (Supp. 78-6). Editorial corrections, subsection (B), paragraphs (6) through (9) (Supp. 79-6). Amended by deleting subsection (D) effective March 5, 1982 (Supp. 82-2). Section R3-3-702 renumbered from R3-3-02 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 1334, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1759, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 20 A.A.R. 2452, effective July 24, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 23 A.A.R. 1940, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2222, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2084, effective August 27, 2019 (Supp. 19-3).

R3-3-703. General Provisions

A. Discontinued pesticides. In addition to the requirements for discontinued pesticides established in A.R.S. § 3-351(K), any person holding a pesticide found in the channels of trade following the three-year discontinuation period shall be responsible to register or dispose of the pesticide.

B. Sampling.
1. The Associate Director, or the Associate Director's agent, may sample, inspect, and analyze any pesticide distributed within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws pertaining to this Article, or if a complaint has been filed with the Department.
2. The analytical results of pesticide formulations as listed on a label shall comply with the allowed deviations listed in R3-3-704(B).
3. The results of an official analyses of any pesticide not in compliance with the allowed deviations listed in R3-3-704(B) shall be sent to the Associate Director, to the registrant, or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of the noncompliant pesticide sample.

C. Prohibited acts. No person shall purchase a pesticide to repackage the pesticide for distribution and sale without relabeling the repackaged container and complying with the provisions of the Act.

Historical Note

Section R3-3-703 renumbered from R3-3-03 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-704. Labels

A. Within two weeks of a pesticide label revision, a registrant shall provide the Department with two pesticide labels that have been revised since the pesticide was originally registered.

B. The Associate Director may request a copy of a pesticide label if the label on file is older than three years.

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

ALLOWED DEVIATIONS OF ANALYTICAL RESULTS FROM LABEL CLAIMS FOR ACTIVE INGREDIENTS IN PESTICIDE FORMULATIONS

Claim %	HCV(1) %	HSD(2)	Allowed Deviations for "uniform"(3) samples		Allowed Deviations for "non-uniform"(4) samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06
1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47
10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24
90.0	2.03	1.83	84.51	100.97	82.68	104.63

(1) HCV(%) = Horwitz Coefficients of Variation = $2^{(1 - 0.5 \log (\text{claim } \%/100))}$
(2) HSD = Horwitz Standard Deviation = (Claim %) HCV %)/100
(3) "Uniform" samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.
(4) "Non-uniform" samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the "non-uniform" guidelines may be used for allowed deviations. States may use judgment in placing a sample into the "uniform" or "non-uniform" category.

Historical Note
Former rule IV; Former Section R3-3-04 renumbered and amended as Section R3-3-01 effective January 18, 1978 (Supp. 78-1). Section R3-3-704 renumbered from R3-3-04 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-705. Renumbered

Historical Note
Former rule V; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-705 renumbered from R3-3-05 (Supp. 91-4).

R3-3-706. Renumbered

Historical Note
Former rule VI; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-706 renumbered from R3-3-06 (Supp. 91-4).

R3-3-707. Renumbered

Historical Note
Section R3-3-707 renumbered from R3-3-07 (Supp. 91-4).

R3-3-708. Renumbered

Historical Note
Former rule VIII; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-708 renumbered from R3-3-08 (Supp. 91-4).

R3-3-709. Renumbered

Historical Note
Former Administrative rule 1; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-709 renumbered

from R3-3-09 (Supp. 91-4).

R3-3-710. Renumbered

Historical Note
Section R3-3-710 renumbered from R3-3-10 (Supp. 91-4).

R3-3-711. Renumbered

Historical Note
Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-11 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-711 renumbered from R3-3-11 (Supp. 91-4).

R3-3-712. Renumbered

Historical Note
Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-712 renumbered from R3-3-12 (Supp. 91-4).

ARTICLE 8. FERTILIZER MATERIALS

R3-3-801. Definitions

In addition to terms and definitions in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not include any later amendments, and the definitions in A.R.S. § 3-262, the following term applies to this Article:

"Official Publication" means the Official Publication of the Association of American Plant Food Control Officials, amended 1999. Copies may be purchased from NC Dept. of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607-6468.

Historical Note
Former rule I; Former Section R3-3-21 repealed, former Section R3-3-24 renumbered and amended as Section R3-3-21 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-801 renumbered from R3-3-21 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-802. Licensure; Specialty Fertilizer Registration; Fees

A. Commercial fertilizer license. Any person applying for a commercial fertilizer license, under A.R.S. § 3-272, to manufacture or distribute commercial fertilizer, shall provide the following information on the license application provided by the Department with a nonrefundable fee of $125 for each year of the license:
1. The following information on the license application provided by the Department:
2. The name, title, and signature of the applicant;
3. The date of the application;
4. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
5. The Social Security number or tax identification number;
6. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(4);
7. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(4); and
8. The license time-period option.

B. A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

C. Specialty fertilizer registration.
1. Any manufacturer or distributor whose name appears on a specialty fertilizer label shall provide the following information to the Department with a nonrefundable fee of $50 per brand and grade of specialty fertilizer for each year of the registration:
   a. The name, address, telephone number, and signature of the applicant;
   b. The name and address of the company on the label;
   c. The date of the application;
   d. The grade, brand, and name of the specialty fertilizer;
   e. The current specialty fertilizer label; and
   f. The registration time-period option.
2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
3. If an applicant elects a two-year specialty fertilizer registration, any additional fertilizer registered during that two-year registration shall have the same registration end-date as other fertilizer currently registered by that applicant with the Department.

D. During fiscal year 2011, notwithstanding subsection (C)(1), the nonrefundable fee per brand and grade of specialty fertilizer is $40.

Historical Note
Former rule II; Former Section R3-3-22 repealed, former Section R3-3-25 renumbered and amended as Section R3-3-22 effective January 12, 1978 (Supp. 78-1). Section R3-3-802 renumbered from R3-3-22 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

R3-3-803. Tonnage Reports; Inspection Fee

A. Quarterly tonnage reports and inspection fee.
1. The inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial fertilizer distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial fertilizer without a license as required under A.R.S. § 3-2009 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
   a. If the inspection fee is being passed on to the purchaser:
      i. The assigned number and name of the currently licensed company;
      ii. The commercial fertilizer by code or grade;

iii. The amount of commercial fertilizer in whole tons;
iv. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
v. The date of the report.

b. If the licensee pays tonnage fees for the distribution of a commercial fertilizer:
i. The grade;
ii. The amount of commercial fertilizer distribution by county;
iii. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
iv. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
v. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
vi. The date of the report.

B. Estimated tonnage report. A licensee may estimate the annual fertilizer material tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.

1. The licensee shall submit the estimated annual commercial fertilizer tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
a. The estimated tonnage of commercial fertilizer to be distributed;
b. The grade;
c. The amount of distribution by county;
d. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
e. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
f. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
g. The date of the report.
2. The licensee shall pay at least $8 per year. Adjustments for overestimates or underestimates for a licensee with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
4. Overestimation of tonnage.
a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is $0.10 per ton. The tonnage must be rounded to the nearest whole ton.

Historical Note

Former rule III; Former Section R3-3-23 repealed, former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-803 renumbered from R3-3-23 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

R3-3-804. General Provisions

A. Labeling.

1. The grade numbers for primary nutrients that accompany the brand name of a commercial fertilizer shall be listed on the label in the following order: total nitrogen, available phosphate, and soluble potash. Other guaranteed nutrient values shall not be included with the grade numbers unless:
a. The guaranteed nutrient value follows the grade number;
b. The guaranteed nutrient value is immediately preceded with the name of the claimed nutrient to which it refers in the guaranteed analysis; and
c. The name printed on the label is as prominent as the numbers.
2. The materials from which claimed nutrients are derived shall be listed on the label.
3. No grade is required for fertilizer materials that claim no primary plant nutrient (i.e., 0-0-0).
4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of elements.
5. The label shall include the brand name of a fertilizer. Misleading or confusing numerals shall not be used in the brand name on the label.
6. Fertilizer material not defined in the Official Publication may be used as fertilizer material if a definition or other method of analysis and agronomic data for fertilizer material is approved by the Associate Director.

B. Claims and misleading statements.

1. Any nutrient claimed as a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. An ingredient shall not be claimed as a nutrient unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.
2. Scientific data supporting the claim of improved efficacy or increased productivity shall be made available for inspection to the Associate Director upon request.
3. If the name of a fertilizer material is used as part of a fertilizer brand name, such as blood, bone or fish, the guaranteed nutrients shall be derived from or supplied entirely by the named fertilizer material.
4. Fertilizer material subject to this Article and applicable laws shall not bear false or misleading statements.

C. Deficiencies.

1. The value of a nutrient deficiency in a fertilizer material shall take into account total value of all nutrients at the guaranteed level and the price of the fertilizer material at the time of sale.
2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.

D. All investigational allowances shall be conducted as prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

E. Leased fertilizer material storage containers shall be clearly labeled with the following:

1. Grade numbers;
2. Brand name, if applicable; and

3. The statement, "Leased by (Name and address of lessor) to (Name and address of lessee)."

C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is $0.10 per ton. The tonnage must be rounded to the nearest whole ton.

Historical Note
Former rule IV; Former Section R3-3-24 renumbered and amended as Section R3-3-21, new Section R3-3-24 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-804 renumbered from R3-3-24 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-805. Repealed

Historical Note
Former rule V; Former Section R3-3-25 renumbered and amended as Section R3-3-22, new Section R3-3-25 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-805 renumbered from R3-3-25 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-806. Repealed

Historical Note
Former rule VI; Former Section R3-3-26 repealed, new Section R3-3-26 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-806 renumbered from R3-3-26 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-807. Repealed

Historical Note
Former rule VII; Former Section R3-3-27 repealed, new Section R3-3-27 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-807 renumbered from R3-3-27 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-808. Repealed

Historical Note
Former rule VIII; Former Section R3-3-28 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-28 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-808 renumbered from R3-3-28 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-809. Repealed

Historical Note
Former rule IX; Former Section R3-3-29 repealed effective January 12, 1978 (Supp. 1). New Section R3-3-29 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-809 renumbered from R3-3-29 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-810. Repealed

Historical Note
Former rule X; Former Section R3-3-30 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-30 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-810 renumbered from R3-3-30 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-811. Repealed

Historical Note
Former Administrative rule 1; Amended effective December 14, 1979 (Supp. 79-6). Section R3-3-811 renumbered from R3-3-31 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-812. Renumbered

Historical Note
Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Section R3-3-812 renumbered from R3-3-32 (Supp. 91-4).

ARTICLE 9. COMMERCIAL FEED

R3-3-901. Definitions
In addition to the feed ingredient definitions and feed terms in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not contain any later amendments or editions, and the definitions in A.R.S. § 3-2601, the following terms apply to this Article:

1. *"Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611.* A.R.S. § 3-2601(2)
2. "Lot" means any distinct, describable, and measurable quantity that contains no more than 100 tons.
3. "Official Publication" means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999. Copies may be purchased from the Assistant Secretary/Treasurer, P.O. Box 478, Oxford, IN 47971.

Historical Note
Former rule I; Former Section R3-3-41 renumbered and amended as Section R3-3-42, new Section R3-3-41 adopted effective January 12, 1978 (Supp. 78-1). Amended effective April 13, 1978 (Supp. 78-2). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-901 renumbered from R3-3-41 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-902. Licensure; Fee; Ammoniation

A. Any person applying for a commercial feed license, under A.R.S. § 3-2609, to manufacture or distribute commercial feed shall provide the following information and a nonrefundable fee of $10 for each year of the license:

1. A copy of the label of each commercial feed product intended for distribution within the state or not already filed by the applicant with the Department; and
2. The following information on the license application provided by the Department:
   a. The name, title, and signature of the applicant;
   b. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
   c. The social security number or tax identification number;
   d. The date of the application;

e. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(2)(b);
f. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(2)(b); and
g. The license time-period option.

B. A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

C. Ammoniation. Any person who ammoniates feed or feed material for distribution or sale shall obtain a commercial feed license and is responsible for all testing, labeling, or other requirements pertaining to commercial feed, unless the feed is ammoniated on the premises of the person using the ammoniated feed.

Historical Note

Former rule II; Former Section R3-3-42 renumbered and amended as Section R3-3-43, former Section R3-3-41 renumbered and amended as Section R3-3-42 effective January 12, 1978 (Supp. 78-1). Section R3-3-902 renumbered from R3-3-42 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-903. Tonnage Reports; Inspection Fee

A. Quarterly tonnage report and inspection fee.
1. The inspection fee for all commercial feed sold or distributed in Arizona is 20¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial feed distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial feed without a license as required under A.R.S. § 3-2609 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
   a. If the inspection fee is being passed on to the purchaser:
      i. The assigned number and name of the currently licensed company;
      ii. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
      iii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
      iv. The date of the report.
   b. If the licensee pays a tonnage fee for the distribution of a commercial feed:
      i. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
      ii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
      iii. The date of the report.

B. Estimated tonnage report. A licensee may estimate the annual commercial feed tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.
1. The licensee shall submit the estimated annual commercial feed tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
   a. The estimated tonnage of commercial feed to be distributed;
   b. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
   c. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
   d. The date of the report.
2. The licensee shall pay at least $8 per year. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
4. Overestimation of tonnage.
   a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
   b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

Historical Note

Former rule III; Former Section R3-3-43 renumbered and amended as Section R3-3-44, former Section R3-3-42 renumbered and amended as Section R3-3-43 effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-903 renumbered from R3-3-43 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed

A. A person shall not sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed unless the milk or milk product:
1. Meets Grade A milk standards as specified in A.A.C. R3-2-802;
2. Is produced as prescribed in A.A.C. R3-2-805; or
3. Is decharacterized with food coloring approved by the Federal Food, Drug, and Cosmetic Act and the decharacterization:
   a. Does not affect nutritive value; and
   b. Matches the color on the Color Requirement card, incorporated by reference and on file with the Office of the Secretary of State. Any person decharacterizing milk and milk products may obtain a Color Requirement card from the Environmental Services Division Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona 85007.

B. Labeling. All milk or milk product commercial feed labels shall be approved by the Associate Director before use.

1. The principal display panel of a decharacterized milk or milk product commercial feed container shall prominently state "WARNING - NOT FOR HUMAN CONSUMPTION" in capital letters. The letters shall be at least 1/4 inch on containers of 8 oz. or less and at least 1/2 inch on all other containers.
2. The container label shall also bear the statement "This product has not been pasteurized and may contain harmful bacteria" in letters at least 1/8 inch in height.

C. Milk or milk products intended for commercial feed shall not be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it meets Grade A standards or is decharacterized and clearly identified "Not for Human Consumption."

Historical Note

Former rule IV; Former Section R3-3-44 repealed, former Section R3-3-43 renumbered and amended as Section R3-3-44 effective January 12, 1978 (Supp. 78-1).Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-904 renumbered from R3-3-44 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-905. Labeling; Precautionary Statements

A. Ingredient statement.
1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name.
2. All labels for commercial feed and customer-formula feed containing cottonseed or a cottonseed product shall separately list the ingredients in the ingredient statement in addition to any collective term listed.

B. Labeling and expression of guarantees.
1. All labeling and expression of guarantees shall comply with the commercial feed-labeling guide, medicated commercial feed labeling, and expression of guarantees requirements prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.
2. The label shall include the brand or product name, and shall indicate the intended use of the feed. The label shall not contain any false or misleading statements.
3. Directions for use and precautionary statements.
   a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall clearly state its safe and effective use. The directions shall not require special knowledge of the purpose and use of the feed.
   b. Directions for use and precautionary statements shall be provided for feed containing non-protein nitrogen as specified in R3-3-906.
   c. All whole cottonseed or commercial feed, and customer-formula feed delivered to the consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and shall contain the following:
      i. "This feed contains 20 or less ppb aflatoxin and may be fed to any animal;" or
      ii. "WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption."
   d. A distributor of whole cottonseed or cottonseed product intended for further processing, planting seed, or for any other purpose approved by the Director, shall document in writing to the Department that:
      i. The lot of whole cottonseed or cottonseed product will not be used as commercial feed until the lot is tested and compliant with all state laws; and
      ii. The documentation prescribed in subsection (B)(3)(c) is not required.
   e. The distributor shall maintain the documentation for one year.
   f. The lot of whole cottonseed or cottonseed product shall be labeled as follows: "WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state laws."

Historical Note

Former rule V; Former Section R3-3-45 repealed, new Section R3-3-45 adopted effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-905 renumbered from R3-3-45 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-906. Non-protein Nitrogen

A. Urea and other non-protein nitrogen products are acceptable ingredients in commercial feed for ruminant animals as a source of equivalent crude protein.
1. If commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen or if the equivalent crude protein from all forms of non-protein nitrogen exceeds 1/3 of the total crude protein, the label shall include directions for the safe use of the feed and the following precautionary statement: "Caution: Use as Directed."
2. The directions for use and the precautionary statement shall be printed and placed on the label so that an ordinary person under customary conditions of purchase and use can read and understand the directions.

B. Non-protein nitrogen products are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. A medicated feed label shall contain feeding directions or precautionary statements, or both, with sufficient information to ensure that the feed is properly used.

Historical Note

Former rule VI; Former Section R3-3-46 repealed, new Section R3-3-46 adopted effective January 12, 1978 (Supp. 78-1). Amended effective January 29, 1979 (Supp. 79-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-906 renumbered from R3-3-46 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-907. Repealed

Historical Note
Former rule VII; Former Section R3-3-47 repealed, former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). Amended by adding subsection (F) effective July 20, 1984 (Supp. 84-4). Section R3-3-907 renumbered from R3-3-47 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-908. Repealed

Historical Note
Former rule VIII; Former Section R3-3-48 repealed, new Section R3-3-48 adopted effective January 12, 1978 (Supp. 78-1). Amended for spelling correction, subsection (E), effective January 29, 1979 (Supp. 79-1). Amended by adding subsection (J) effective July 20, 1984 (Supp. 84-4). Section R3-3-908 renumbered from R3-3-48 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

R3-3-909. Repealed

Historical Note
Former rule IX; Former Section R3-3-49 repealed, new Section R3-3-49 adopted effective Jan. 12, 1978 (Supp. 78- 1). Amended by adding subsection (D) effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-909 renumbered from R3-3-49 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-910. Drug and Feed Additives

A. Drug and feed additive approval.
1. Before a label is approved by the Associate Director for commercial feed containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions if the material is not recognized as a commercial feed.
2. If a complaint has been filed with the Department, the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions.

B. Evidence of safety and efficacy of a commercial feed may be:
1. If the commercial feed containing additives conforms to the requirements of "Food Additives Permitted in Feed and Drinking" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not included any later amendments or editions; or
2. If the commercial feed is a substance generally recognized as safe and is defined in the Official Publication or listed as a "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

Historical Note
Former rule X; Former Section R3-3-50 repealed, new Section 3-3-50 adopted effective January 12, 1978 (Supp. 78- 1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-910 renumbered from R3-3-50 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-911. Repealed

Historical Note
Former rule XI: Former Section R3-3-51 repealed, new Section R3-3-51 adopted effective January 12, 1978 (Supp. 78- 1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-911 renumbered from R3-3-51 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

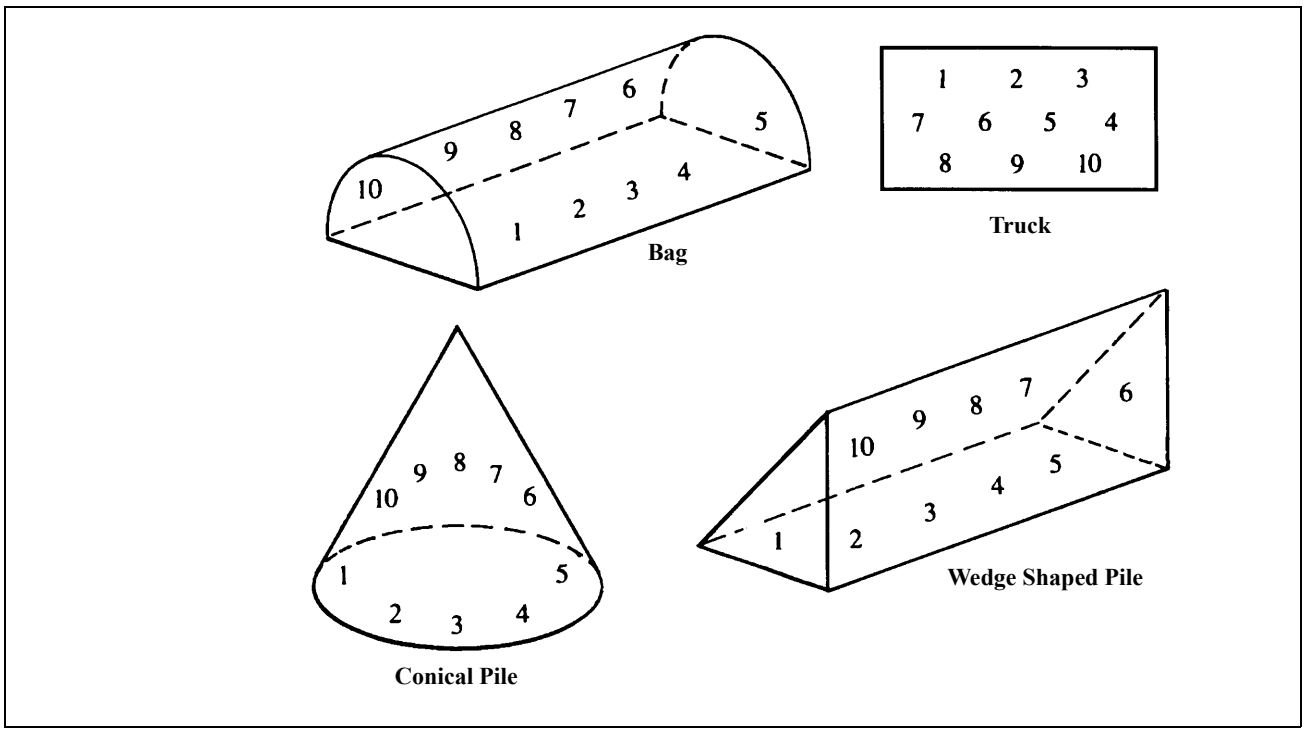
R3-3-912. Repealed

Historical Note
Former rule XII: Former Section R3-3-52 repealed. New Section R3-3-52 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-912 renumbered from R3-3-52 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-913. Sampling Methods

A. Sampling commercial feed. The methods of sampling commercial feed shall comply with the procedures established in 4.1.01, Official Method 965.16 Sampling of Animal Feed, in the "Official Methods of Analysis of AOAC International," 16th Edition, 1997, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter. Copies may be purchased from AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.

B. Sampling whole cottonseed.
1. Sample size - A gross sample not less than 30 pounds shall be taken from a lot. The gross sample shall consist of not less than 10 probes evenly spaced or 10 stream sample passes taken following the procedure prescribed in subsection (B)(4)(b).
2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location, and the results of the analysis reported by a certified laboratory within five working days from receipt of sample.
3. Sampling equipment. Sampling equipment includes:
   a. Scale, graduated in one-half pound increments, and any of the following:
   b. Corkscrew trier, approximately 50 inches in length and capable of taking at least a three-pound sample,
   c. Pneumatic probe sampler such as the "Probe-a-Vac" pneumatic sampler,
   d. Stream sampler: A container at least 8 inches x 5 inches x 5 1/2 inches attached to a pole that enables the sampler to pass the container through falling streams of cottonseed,
   e. Automatic stream samplers or other sampling equipment if scientific data documenting its ability to obtain a representative sample is approved by the Associate Director,
   f. Shop-vac 1.5 hp vacuum system capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of 3/4 inch PVC pipe.
4. Sampling procedure.
   a. If a corkscrew trier or Probe-a-Vac sampler is used, at least 10 evenly spaced probes shall be taken per lot. The probed samples shall be taken according to the following patterns:



The probes shall penetrate at least 50 inches, and at least two of the 10 probes per sample shall reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.

b. If a shop-vac system is used, at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.

c. Stream samples shall be taken while the cottonseed is being discharged, if there is a uniform discharge flow over a set period of time. The sample shall consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the sample size specified in subsection (B)(1).

d. The gross sample shall be weighed to the nearest 1/2 pound but shall not be reduced in size. If any gross sample does not meet the minimum 30 pound weight, that gross sample shall be discarded and the sampling procedure repeated from the beginning. If the shop-vac gross sample is not at least 10 pounds, the sample shall be discarded and the sampling procedure repeated from the beginning.

e. The Associate Director shall approve any modified sampling procedure if scientific data is provided that documents that representative samples will be obtained through the modified sampling procedure.

Historical Note

Former Administrative Rule 1. Former Section R3-3-53 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-53 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Amended as an emergency effective October 11, 1978, pursuant to A. R. S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-53 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-913 renumbered from R3-3-53 (Supp. 91-4). Patterns omitted in Supp. 98-4 under subsection (C)(4)(a) have been corrected to reflect filed rules (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-914. Repealed

Historical Note

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). New Section R3-3-54 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-54 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-914 renumbered from R3-3-54 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-915. Repealed

Historical Note

Adopted effective December 14, 1979 (Supp. 79-6). Section R3-3-915 renumbered from R3-3-55 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

R3-3-916. Repealed

Historical Note

Adopted effective July 20, 1994 (Supp. 84-4). Section R3-3-916 renumbered from R3-3-56 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

ARTICLE 10. AGRICULTURAL SAFETY

R3-3-1001. Definitions

In addition to the definitions set forth in A.R.S. § 3-3101 the following terms apply to this Article:

1. "Agricultural emergency" means a sudden occurrence or set of circumstances that:
   a. An agricultural employer could not have anticipated and over which the agricultural employer has no control,
   b. Requires entry into a treated area during a restricted-entry interval, and
   c. No alternative practices would prevent or mitigate a substantial economic loss.
2. "Agricultural employer" means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses agricultural workers.
3. "Agricultural establishment" means any farm, forest, nursery, or greenhouse using pesticide products that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only products that do not have a federal worker protection statement on the label.
4. "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes:
   a. Food, feed, and fiber plants;
   b. Trees;
   c. Turfgrass;
   d. Flowers, shrubs;
   e. Ornamentals; and
   f. Seedlings.
5. "Chemigation" means the application of pesticides through irrigation systems.
6. "Consultation" means an on-site visit by, or a response to an inquiry from, the Agricultural Consulting and Training program personnel, pursuant to A.R.S. § 3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.
7. *"De minimis violation" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health* (A.R.S. § 3-3101(2)).
8. "Early entry" means any worker or handler entering a treated area after a pesticide is applied to a location on the agricultural establishment and before the expiration of the restricted-entry interval.
9. "Farm labor contractor" means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.
10. "Flagger" means a person who indicates an aircraft spray swath width from the ground.
11. "Gravity based penalty" means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.
12. "Handler" means any person, including a self-employed person:
    a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who does any of the following:
       i. Mixing, loading, transferring, or applying pesticides;
       ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;
       iii. Handling open containers of pesticides;
       iv. Acting as a flagger;
       v. Cleaning, adjusting, handling, or repairing any part of mixing, loading, or application equipment that may contain pesticide residue;
       vi. Assisting with the application of pesticides;
       vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling is reached or any of the ventilation criteria in R3-3-1002 or in the labeling has been met to operate ventilation equipment, adjust or remove coverings used in fumigation, or monitor air levels.
       viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings.
       ix. Performing tasks as a pest control advisor during any pesticide application.
    b. The term handler does not include:
       i. Any person who handles only pesticide containers that are emptied or cleaned according to pesticide product labeling instructions or, in the absence of labeling instructions, are triple-rinsed or its equivalent;
       ii. Any person who handles only pesticide containers that are unopened; or
       iii. Any person who repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.
13. "Handler employer" means any person who is self-employed as a handler or who employs a handler, for any type of compensation.
14. *"Nonserious violation" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice* (A.R.S. § 3-3101(6)).
15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.
17. *"Pesticide" means:*
    (a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant (A.R.S. § 3-341(21)).

18. "Restricted-entry interval" means the time after the completion of a pesticide application during which entry into a treated area is restricted as indicated by the pesticide product label.
19. *"Restricted use pesticide" means a pesticide classified as such by the United States Environmental Protection Agency* (A.R.S. § 3-361(8)).
20. *"Serious violation" means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice* (A.R.S. § 3-3101(10)).
21. "Substantial economic loss" means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.
22. "Treated area" means any area to which a pesticide is being directed or has been directed.
23. "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who performs activities relating to the production of agricultural plants on an agricultural establishment. The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment who performs tasks as a pest control advisor.

Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1001 renumbered from R3-8-201 (Supp. 91-4). Amended effective March 3, 1995 (Supp. 95-1). Amended effective October 8, 1998 (Supp. 98-4).

R3-3-1002. Worker Protection Standards

Worker protection regulations shall be as prescribed in 40 CFR 170, excluding 40 CFR 170.130 and 170.230, as amended July 1, 2002. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1002 renumbered from R3-8-202 (Supp. 91-4). Section repealed, new Section adopted effective March 3, 1995 (Supp. 95-1). R3-3-1002 renumbered to R3-3-1003; new Section R3-3-1002 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-1003. Pesticide Safety Training

A. Training exemptions.
1. Handler. A handler who currently meets one of the following conditions is exempt from the requirements under subsection (D)(1) and (D)(3):
   a. Certified as an applicator of restricted use pesticides under R3-3-208,
   b. Certified as a trainer under this Section, or
   c. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.
2. Worker. A worker who meets one of the following conditions is exempt from the requirements under subsections (C), (D)(1), and (D)(2):
   a. Certified as an applicator of restricted use pesticides under R3-3-208,
   b. Holds a current handler card under subsection (D)(4),
   c. Certified as a trainer under this Section, or
   d. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.

B. Training verification.
1. Handler. The handler employer shall verify, before the handler performs a handling task, that the handler:
   a. Meets a condition listed in subsection (A)(1); or
   b. Received pesticide safety training during the last three years, excluding the month in which the training was completed.
2. Worker. The agricultural employer shall verify that a worker:
   a. Meets a condition listed in subsection (A)(2); or
   b. Received pesticide safety training during the last five years before allowing a worker entry into an area:
      i. To which a pesticide was applied during the last 30 days, or
      ii. For which a restricted-entry interval for a pesticide was in effect during the last 30 days.
3. The agricultural employer and the handler employer, or designee, shall verify that a training exemption claimed in subsection (A)(1) or (A)(2) is valid by reviewing the appropriate certificate issued by the Department, the EPA, or an EPA-approved program.
4. The agricultural employer and the handler employer, or designee, shall visually inspect the handler's or worker's EPA-approved Worker Protection Standard training verification card to verify that the training requirements prescribed in subsections (B)(1) or (B)(2) are met. If the employer believes that a worker or handler training verification card is valid, the verification requirement of subsection (B)(1) or (B)(2) is satisfied.
5. An EPA-approved Worker Protection Standard training verification card is valid if issued:
   a. As prescribed in this Section, or
   b. By a program approved by the Department, and
   c. Within the time-frames prescribed in subsection (B)(1) or (B)(2).
6. The agricultural employer shall provide a worker who does not possess the training required in subsection (B)(2) with the pesticide safety information prescribed in subsection (C) and the pesticide safety training prescribed in subsection (D)(1) and (D)(2). The agricultural employer shall provide pesticide safety training to a worker before:
   a. The worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities; or
   b. The sixth day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.

C. Pesticide safety information.
1. The agricultural employer shall provide pesticide safety information to a worker who does not meet the training requirements of subsection (B) before the worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect. The agricultural employer shall provide safety information in a man-

ner that the worker can understand. The safety information shall include the following:

a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;
b. Workers may prevent pesticides from entering their bodies by:
   i. Following directions or signs, or both, about keeping out of a treated or restricted area;
   ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;
   iii. Wearing work clothing that protects the body from pesticide residue;
   iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;
   v. Washing work clothes separately from other clothes before wearing; and
   vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.

2. The agricultural employer shall document compliance by obtaining the employee's signature or other verifiable means to acknowledge the employee's receipt of the information required in subsection (C)(1).

D. Pesticide safety training. The agricultural employer or handler employer shall ensure that pesticide safety training is provided before the sixth day of entry into a pesticide-treated area. The pesticide safety training program shall be in a language easily understood by a worker or handler, using a translator if necessary. The program shall relate solely to pesticide safety training. Information shall be presented either orally from written material or in an audiovisual manner and shall contain nontechnical terms. The trainer shall respond to questions from attendees.

1. General pesticide safety training. The following pesticide safety training shall be presented to either a handler or a worker:
   a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;
   b. Routes by which pesticides can enter the body;
   c. Signs and symptoms of common types of pesticide poisoning;
   d. Emergency first aid for pesticide injuries or poisonings;
   e. How to obtain emergency medical care;
   f. Routine and emergency body decontamination procedures, including emergency eyeflushing techniques;
   g. Warnings about taking pesticides or pesticide containers home; and
   h. How to report violations to the Department, including providing the Department's toll-free pesticide hotline telephone number.
2. Worker training. In addition to the information in subsection (D)(1), a pesticide safety training program for a worker shall include the following:
   a. Where and in what form pesticides may be encountered during work activities;
   b. Hazards from chemigation and drift;
   c. Hazards from pesticide residue on clothing; and
   d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including:
      i. Application and entry restrictions,
      ii. Posting of warning signs,
      iii. Oral warning,
      iv. The availability of specific information about applications,
      v. Protection against retaliatory acts, and
      vi. The design of the following warning sign:

3. Handler training. In addition to the information in subsection (D)(1), a pesticide safety training program for a handler shall include the following:
   a. Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
   b. Need for and appropriate use of personal protective equipment;
   c. Prevention, recognition, and first aid treatment of heat-related illness;
   d. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
   e. Environmental concerns such as drift, runoff, and potential impact on wildlife; and
   f. Requirements of this Article applicable to handler employers for the protection of handlers and other individuals, including:
      i. The prohibition against applying pesticides in a manner that will cause contact with workers or other individuals,
      ii. The requirement to use personal protective equipment,
      iii. The provisions for training and decontamination, and
      iv. Protection against retaliatory acts.
4. The trainer shall issue an EPA-approved Worker Protection Standard training verification card to each handler or worker who successfully completes training, and shall maintain a record in indelible ink containing the following information:
   a. Name and signature of the trained worker or handler;
   b. Training verification card number;
   c. Issue and expiration date of the training verification card;
   d. Social security number or a unique trainer-assigned identification number of the worker or handler;
   e. Name and signature of the trainer; and
   f. Address or location of where the training occurred, including city, county, and state.

E. Trainer requirements.

1. A person applying for pesticide safety trainer certification shall:

a. Complete the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or
b. Hold a current PCA license or restricted use certification, issued by the Department for a PCA or certified applicator, as prescribed under R3-3-207 or R3-3-208.

2. An applicant shall submit a signed and dated affidavit to the Department verifying that each worker or handler will be trained according to the requirements of subsection (D). The affidavit shall include the applicant's:
a. Name, address, e-mail address, and telephone and fax numbers, as applicable; and
b. Social security number.

3. Trainer certification is:
a. Nontransferable; and
b. Is valid for three years from the date issued under subsection (E)(1)(a), excluding the month in which the trainer was certified, and is renewable upon completion of the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or
c. Is valid initially for one year from the date issued under subsection (E)(1)(b) if the PCA license or restricted use certification remain current, and is renewable for three years upon completion of the pesticide safety training program established in subsection (D)(1) through (D)(3).

4. A trainer shall maintain the records required in subsection (D)(4) for five years for workers, and three years for handlers, excluding the month in which the verification card was issued.

5. Upon request by the Department, the trainer shall make available worker and handler records prescribed in subsection (D)(4) for inspection and copying by the Department.

F. A trainer shall permit the Assistant Director or designee to enter a place where worker safety training is being presented to observe and question trainers and attendees to determine compliance with the requirements of this Section.

G. The Department may suspend, revoke, or deny trainer certification if any of the following occur:
1. Failing to follow the worker and handler training requirements prescribed in subsections (D)(1) through (D)(3);
2. Failing to issue training verification cards to workers and handlers as prescribed in subsection (D)(4);
3. Failing to maintain the training information prescribed in subsection (E)(4);
4. Failing to fulfill the requirements of the affidavit as prescribed in subsection (E)(2); or
5. Having had a similar certification revoked, suspended, or denied in any jurisdiction within the last three years.

Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1003 renumbered from R3-8-203 (Supp. 91-4). R3-3-1003 repealed; new Section R3-3-1003 renumbered from R3-3-1002 and amended effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

R3-3-1004. Notification Requirements for Farm Labor Contractors

A. The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
1. The location of the agricultural establishment's central posting site; and
2. The restrictions on entering the treated area as specified in 40 CFR 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

B. The farm labor contractor shall:
1. Post or provide the worker in writing, with the information in 40 CFR 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area and is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1004 renumbered from R3-8-204 (Supp. 91-4). Amended effective October 8, 1998 (Supp. 98-4).

R3-3-1005. Container Used For Mixing or Applying Pesticides

A. All openings on containers used for applying pesticides shall be equipped with covers that prevent splashes and spills.

B. All containers shall:
1. Be translucent, or
2. Have a means to indicate externally the internal liquid level in the container, or
3. Have a filler hose nozzle that automatically stops the filling operation before the liquid pesticide mixture spills over the top of the container.

C. Any employer who mixes or applies any liquid pesticide mixture in a container with a capacity of more than 49 gallons shall have a handler present whenever pesticides are mixed or containers are filled to ensure that the liquid pesticide mixture does not spill over the top of the container.

D. Each handler, while mixing pesticides, shall protect the water supply from back-siphoning pesticide mixtures.

Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1005 renumbered from R3-8-205 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

R3-3-1006. Agricultural Emergency

A. Any grower, a group of growers, or designee may request the Assistant Director for an agricultural emergency.

B. Possibility of agricultural emergency.
1. If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:
a. The cause of the emergency,
b. The area where the emergency may occur,
c. An explanation of why early entry is necessary,
d. Why other methods cannot be used to avoid the early entry, and
e. The justification that substantial economic loss will occur.

2. The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists within four hours of receiving the information.

3. If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial of the agricultural emergency.
4. If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately and provide the Assistant Director with written evidence of the emergency within five days. The Assistant Director shall, within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.

C. Occurrence of agricultural emergency.
1. If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department, orally, the next business day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:
   a. The cause of the emergency,
   b. The area where the emergency occurred,
   c. A brief explanation of why early entry was necessary,
   d. Why other methods could not be used to avoid the early entry, and
   e. The justification that substantial economic loss would have occurred.
2. If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions whether the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial.
3. The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party confirming or denying the request for the agricultural emergency.

Historical Note
Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1006 renumbered from R3-8-206 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

R3-3-1007. Violations and Civil Penalties

A. Serious violations. The base penalty for any serious violation is $500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. §§ 3-3113 and 3-3114.

B. Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors prescribed in A.R.S. § 3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

VIOLATION GRAVITY FACTOR
(1 - lowest; 4 - highest)

VIOLATION	**GRAVITY**
Central Posting	1 - 2
Training	1 - 4
Decontamination	1 - 4
Personal Protective Equipment	1 - 4
Pesticide Applications and Notice	1 - 4
Pesticide Application Restrictions	2 - 4
Other Requirements	1 - 4

C. Size-of-business. The Assistant Director shall use:
1. The maximum number of employees at any one time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or
2. A site-specific employee count, if the violation does not endanger employees at other locations of the business; or
3. The number of persons trained by a trainer during the previous 12 months that violate the training provisions of this Section.

SIZE-OF-BUSINESS

Size Category	**Number of Employees or Number of People Trained**
I	1-10
II	11-75
III	76-150
IV	More than 150

D. Base penalty. The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

BASE PENALTY

Gravity	Size Category			
Factor	**I**	**II**	**III**	**IV**
1	$250	$300	$350	$400
2	300	350	400	450
3	350	400	450	500
4	500	500	500	500

E. Combined or group violations. The Assistant Director may combine or group violations.
1. Violations may be combined and assessed one penalty if the violation does not cause any immediate danger to public health or safety or damage to property. Example: Eight workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only one training penalty being assessed against the employer.
2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity. Example: Two crews from the same company are engaged in an improper handling activity and one crew is using a pesticide with a "danger" signal word, (skull and cross bones) while the other crew is using a pesticide with a "warning" signal word. This situation may result in the employer being assessed one penalty based on the penalty for the "danger" (skull and cross bones) violation.

F. If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. § 3-3114.

Historical Note
Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1007 renumbered from R3-8-207 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

R3-3-1008. Penalty Adjustments

A. The Assistant Director shall assign an appropriate number of points for each of the following five factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.

1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.
2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.
3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used in assessing a penalty.

BASE ADJUSTMENT FACTORS

Pesticide	
Signal word danger with skull and crossbones	5
Signal word danger	4
Warning	3
Caution	2
Indirect relation to the violation	1
Harm to Human Health	
Actual Injuries or temporary reversible illness resulting in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours)	9
Actual (doctor care required, less than 8 hours)	6
Minor supportive care only	2 - 4
Consequence potential	1 - 2
No relationship found	0
Compliance History	
One or more violations in the previous 12 months	4
One or more violations in the previous 24 months	3
One or more violations in the previous 36 months	1
No violation history	0
Culpability	
Knowing or should have known	4
Negligence	2
Neither	0
Good Faith	0 - –2

B. The Assistant Director may reduce the base penalty for a nonserious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

FINAL PENALTY CALCULATION

	Nonserious Violation	**Serious Violation**
Number of Points	Penalty Adjustment	Penalty Adjustment
3 or below	Base –80%	Base Penalty
4	Base –65%	Base + 10%
5	Base –50%	Base + 20%
6	Base –35%	Base + 30%
7	Base –20%	Base + 40%
8	Base –5%	Base + 50%
9	Base Penalty	Base + 60%
10	Base + 20%	Base + 70%
11	Base + 35%	Base + 80%
12	Base + 50%	Base + 90%
13	Base + 65%	Base + 100%
14	Base + 80%	Base + 100%
15 or more	Base + 100%	Base + 100%

Example: A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection: (1) No training for 35 seasonal workers on the harvest crew; (2) No available decontamination supplies; (3) No safety poster at the central posting location; (4) No emergency telephone number posted, and no medical facility location posted at the central posting location; (5) No posted pesticide application information at the central posting location.

Step 1. Use the *Violation Gravity Factor* table to determine the gravity of the violation.

(1) Training, 1-4	2 points, all 35 workers are combined;
(2) Decontamination, 1-4	3 points, no supplies were available within the prescribed distance and it has been 25 days since the most recent application;
(3) - (5) Central Posting, 1-2	1 point, since the violations concerns the same factor, they are combined.(There is evidence that the old poster blew away and the pesticide application information is kept available in the secretary's desk, but it is not 'readily' available.)

Step 2. Use the *Size of Business* table to determine the size category.

75 employees falls into the size category II;

Step 3. Use the *Base Penalty* table to determine the base penalty. Use column II based on the *Size of Business* determination from step 2.

Violation 1, with a gravity factor of 2, equals a base penalty of $350;

Violation 2, with a gravity factor of 3, equals a base penalty of $400;

Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of $300.

Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

Compliance History. This farm has no previous violation history. 0 points.

Culpability. The supervisor attended a "train-the-trainer" course two years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the

first two violations the supervisor should have known about the requirements. For the last three violations, the central posting sight was not checked frequently enough to ensure compliance. For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.

Good Faith. The inspector came back five days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance. Since the employer corrected the violations quickly. –1 point.

Step 5. Add the points for each violation from Step 4.

Violation 1	1 + 1 + 0 + 4 + –1 = 5
Violation 2	1 + 1 + 0 + 4 + –1 = 5
Violations 3, 4, 5	1 + 1 + 0 + 2 + –1 = 3

Step 6. Using the *Final Penalty Calculation* table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for nonserious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.

Violation 1 5 points Base - 50% = 350-175 = $175
Violation 2 5 points Base - 50% = 400-200 = $200
Violations 3, 4, 5 3 points Base - 80% = 300-240 = $60
Adjusted Penalty Total $435

Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1008 renumbered from R3-8-208 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

R3-3-1009. Failure to Abate

A. The Director shall issue a notification of failure-to-abate an alleged violation if a violation has not been corrected as specified on the citation. Failure-to-abate penalties, pursuant to A.R.S. § 3-3113(E), shall be applied if an employer or handler has not corrected a previous cited violation that is a final order of the Director. When determining the appropriate penalty amount, the Director shall take into consideration a good faith effort to abate the violation.

B. If a person does not file a timely notice of contest within the 30-day contest period, the citation and proposed penalties shall be a final order of the Director.

C. If a person files a notice of contest pursuant to A.R.S. § 3-3116(A), the period for the abatement shall not begin, as to those violations contested, until the day following the entry of the final order by the Director affirming the citation. If the person contests only the amount of the proposed penalty, the person shall correct the alleged violation within the prescribed abatement period.

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4). Section heading corrected at request of the Department, Office File No. M11-60, filed February 23, 2011 (Supp. 09-4).

R3-3-1010. Calculation of Additional Penalties For Unabated Violations

A. The Assistant Director shall calculate a daily penalty for unabated violations if failure to abate a serious or nonserious violation exists at the time of reinspection. That penalty shall not be less than the penalty for the violation when cited, except as provided in subsection (C).

1. If no penalty was initially proposed, the Assistant Director shall determine a penalty. In no case shall the penalty be more than $1,000 per day, the maximum allowed by A.R.S. § 3-3113(E).
2. The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except for the following: The number of days unabated shall be counted from the day following the abatement date specified in the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection.

B. When calculating the additional daily penalty, the Assistant Director shall consider the extent that the violation has been abated, whether the employer has made a good faith effort to correct the violation, and it is beyond the employer's control to abate. Based on these factors, the Assistant Director may reduce or eliminate the daily penalty. Example: If three of five instances have been corrected, the daily proposed penalty (calculated as outlined in subsection (A) without regard to any partial abatement), may be reduced by the percentage of the total violations which have been corrected, in this instance, three of five, or 60%.

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

R3-3-1011. Repeated or Willful Violations

A. The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last three years from the date of notice.

1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).
2. The penalty for a repeated serious violation shall be multiplied five times for the first repeated violation and seven times if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).
3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation, up to the maximum allowed by A.R.S. § 3-3113(A).
4. A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.
5. If the Assistant Director determines, through documentation, that it is appropriate, the penalty may be multiplied by 10, up to the maximum allowed by A.R.S. § 3-3113(A).

B. The Assistant Director may adjust the gravity based penalty by a multiplier up to 10 for any willful violation, up to the maximum allowed by A.R.S. § 3-3113(A).

C. The Assistant Director shall not allow a reduction for any serious or nonserious willfully repeated violation.

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

R3-3-1012. Citation; Posting

An employer shall post a citation prescribed at A.R.S. § 3-3110(C) for three days or until the violation is abated, whichever time period is longer.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

ARTICLE 11. ARIZONA NATIVE PLANTS

R3-3-1101. Definitions

In addition to the definitions in A.R.S. § 3-901, the following terms apply to this Article:

"Agent" means a person authorized to manage, represent, and act for a landowner.

"Certificate of inspection for interstate shipments" means a certificate to transport protected native plants out of the state.

"Conservation" means prevention of exploitation, destruction, or neglect of native plants while helping to ensure continued public use.

"Cord" means a specific type string or small rope issued by the Department for attaching tags and seals to protected native plants.

"Cord of wood" means a measurement of firewood equal to 128 cubic feet.

"Department" means the Arizona Department of Agriculture.

"Destroy" means to cause the death of any protected native plant.

"Harvest restricted native plant permit" means a permit required to remove the by-products, fibers, or wood from a native plant listed in Appendix A, subsection (D).

"Landowner" means a person who holds title to a parcel of land.

"Noncommercial salvage permit" means a permit required for the noncommercial salvage of a highly safeguarded native plant.

"Original growing site" means a place where a plant is growing wild and is rooted to the ground or any property owned by the same landowner where a protected native plant is relocated or transplanted without an original transportation permit.

"Permittee" means any person who is issued a permit by the Department for removing and transporting protected native plants.

"Protected native plant" means any living plant or plant part listed in Appendix A and growing wild in Arizona.

"Protected native plant tag" means a tag issued by the Department to identify the lawful removal of a protected native plant, other than a saguaro cactus, from its original growing site.

"Saguaro tag" means a tag issued by the Department to identify a saguaro cactus being lawfully moved.

"Salvage assessed native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (C).

"Salvage restricted native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (B).

"Scientific permit" means a permit required to remove a native plant for a controlled experimental project by a qualified person.

"Securely tie" means to fasten in a tight and secure manner to prevent the removal of tags, seals, or cord for reuse.

"Small Native Plant" means any protected plant eight inches in height or less.

"Survey" means the process by which a parcel of land is examined for the presence of protected native plants. A simple survey determines only whether protected native plants are present. A complete survey establishes the kind and number of each species present.

"Wood receipt" means a receipt issued by the Department to identify the lawful removal of a protected native plant harvested for fuel, being removed from its original growing site.

Historical Note

New Section recodified from R3-4-601 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1102. Protected Native Plant Destruction by a Private Landowner

A. Notice of intent.

1. Before a protected native plant is destroyed, the private landowner shall provide the following information to the Department on a form obtained from the Department:
   a. Name, address, and telephone number of the landowner;
   b. Name, address, and telephone number of the landowner's agent, if applicable;
   c. Valid documentation indicating land ownership, including but not limited to a parcel identification number, tax assessment, or deed;
   d. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;
   e. Earliest date of plant destruction; and
   f. Landowner's intent for the disposal or salvage of protected native plants on the land.
2. A landowner intending to destroy protected native plants on an area of less than one acre may submit the information required in subsection (A)(1) to the Department verbally.

B. A landowner shall not destroy a protected native plant until:

1. The landowner receives a written confirmation notice from the Department, and
2. Notice is given to the Department within the following minimum time periods:
   a. Twenty days before the plants are destroyed over an area of less than one acre.
   b. Thirty days before the plants are destroyed over an area of one acre or more but less than 40 acres.
   c. Sixty days before the plants are destroyed over an area of 40 acres or more.

C. The Department shall provide a salvage operator or other interested person with a copy of a notice of intent submitted under this Section upon receipt of the private landowner's name, address, telephone number, and payment of an annual $25 nonrefundable fee.

Historical Note

New Section recodified from R3-4-602 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency

A. A state agency intending to remove or destroy protected native plants shall notify the Department, under A.R.S. § 3-905, and shall propose a method of disposal from the following list:

1. The plants may be sold at a public auction;
2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;
3. The plants may be donated to nonprofit organizations as provided in A.R.S. § 3-916;

4. The plants may be donated to another state agency or political subdivision, without obtaining a permit; or
5. The plants may be salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a permit as provided under A.R.S. § 3-906 or 3-907.

B. If the plants are highly safeguarded native plants, they shall first be made available to the holder of a scientific permit or a noncommercial salvage permit.

Historical Note

New Section recodified from R3-4-603 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees

A. A person shall not collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants unless that person is 18 years of age or older and possesses an appropriate permit.

B. An applicant shall submit the following information to the Department on a form obtained from the Department, as applicable:
1. Name, business name, address, telephone number, Social Security number or tax identification number, and signature of the applicant;
2. Name and number of plants to be removed;
3. Purpose of the plant removal;
4. Whether the applicant has a conviction for a violation of a state or federal statute regarding the protection of native plants within the previous five years;
5. Except for salvage assessed native plants;
   a. Name, address, telephone number, and signature of the landowner;
   b. Location of the permitted site and size of acreage;
   c. Destination address where the plants will be transplanted;
   d. Legal and physical description of the location of the original growing site; and
   e. Parcel identification number for the permitted site or other documents proving land ownership.

C. Permit fees.
1. A person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:
   a. Salvage assessed native plant permit, annual use, $35;
   b. Harvest restricted native plant permit, annual use, $35;
   c. All other native plant permits, one-time use, $7;
   d. Certificate of inspection for interstate shipments, $15.
2. Exemptions. Protected native plants are exempt from fees if:
   a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;
   b. The protected native plants are collected for scientific purposes; or
   c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.

D. Tag and harvesting fees.
1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:
   a. Saguaro, $8 per plant;
   b. Trees cut for firewood and listed in the harvest restricted category, $6 per cord of wood;
   c. Small native plant, $.50 per plant;
   d. Any other protected native plant referenced in A.R.S. § 3-903(B) and (C) and listed in Appendix A, $6 per plant.
2. The fee for harvesting *nolina* or *yucca* parts is $6 per ton. Payment shall be made to the Department in the following manner:
   a. Unprocessed nolina or yucca fiber shall be weighed on a state-certified bonded scale; and
   b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.

E. Seal fees. A person obtaining a seal shall submit a $.15 per plant fee to the Department at the time a seal is obtained.

F. Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.

Historical Note

New Section recodified from R3-4-604 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1105. Scientific Permits; Noncommercial Salvage Permits

A. Scientific Permit
1. A person shall not collect any highly safeguarded or other protected native plants for a research project unless that person holds a scientific permit.
2. An applicant shall submit the following information to the Department on a form obtained from the Department:
   a. Name, address, and telephone number of the company or research facility applying for the permit;
   b. Name, title and experience of the person conducting the research project;
   c. Purpose and intent of the research project;
   d. Controls to be used;
   e. Variables to be considered;
   f. Time-frame for the project;
   g. Anticipated results and plans for publication;
   h. Reports and recordkeeping that will be used to monitor the project;
   i. Project funding source;
   j. Funding of the company or research facility;
   k. Written authorization from the landowner for collection of the plants;
   l. Date of the application;
   m. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests; and
   n. Tax identification number, or if applicant is an individual, a Social Security number.
3. A scientific permit shall be issued if the applicant provides documentation that demonstrates the following:
   a. A plan, pre-approved by the landowner, to restore the removal site to a natural appearance;
   b. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation;

c. The native plants used in the project shall remain accessible to the Department;
d. The ecology of the project site is beneficial to the growth of the specific plants in the project if practical;
e. Arrangements exist for a suitable permanent planting site for the surviving plants after the project's completion; and
f. Description of plant disposition and research hypothesis.

4. A scientific permit is valid for the calendar year in which it is issued.

B. Noncommercial salvage permit:

1. Highly safeguarded native plants may only be collected for conservation by a person holding a noncommercial salvage permit.
2. An applicant shall submit the following information to the Department, on a form obtained from the Department:
   a. Name, address, and telephone number of the applicant applying for the permit;
   b. Proposed relocation site for the plants;
   c. Written authorization from the landowner for collection of the plants;
   d. Date of the application; and
   e. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.
3. A noncommercial salvage permit shall be issued if all of the following conditions are met through documentation provided to the Department:
   a. The native plants used in the project shall be accessible to the Department after transplant, and
   b. The relocation site is beneficial to the growth of the specific plants in the project.
4. A noncommercial salvage permit is valid only for the transportation and the transplantation of the particular native plant.

Historical Note

New Section recodified from R3-4-605 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1106. Protected Native Plant Survey; Fee

A. Upon request, the Department may conduct a native plant survey. Upon completion, the Department shall notify the individual who made the request of:

1. The date the survey was performed;
2. The amount of the survey fee payable to the Department;
3. The name of Department personnel performing the survey;
4. Upon payment, the survey results including the names and numbers of protected native plants.

B. A person who requests a native plant survey shall pay the survey fee to the Department within 30 days from the date of the notification. The survey fee shall be based on time and travel expenses, except that no fee shall be charged for a determination of whether protected species exist on the land.

Historical Note

New Section recodified from R3-4-606 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1107. Movement Permits; Tags, Seals, and Cord Use

A. Any person moving a protected native plant, except a saguaro cactus, previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the plant is being moved shall provide the following information on the permit application:

1. The name, telephone number, and signature of the landowner;
2. The location of the plant;
3. The name, address, and telephone number of the receiver;
4. The name, address, and telephone number of the carrier;
5. The number, species, and description of the plant being removed;
6. The tax parcel identification number; and
7. The date of the application.

B. Any person moving a saguaro cactus over four feet tall previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant.

1. The name, telephone number, and signature of the landowner;
2. The address where the saguaro cactus is located;
3. The name, address, and telephone number of the receiver;
4. The name, address, and telephone number of the carrier;
5. The number, species, and description of the plant being removed;
6. The tax parcel identification number of the property where the saguaro cactus is being moved; and
7. The date of the application.

C. Movement of protected native plants obtained outside Arizona.

1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the agricultural inspection station nearest the port of entry. The Department shall place the protected native plant under "Warning Hold" to the nearest permitting office.
2. If an agricultural station is not in operation at the port of entry, the person shall declare the protected native plant at the nearest permitting office during normal office hours.
3. After the plants have been declared, the permitting office shall issue a Movement Permit and seal.

D. Any person moving protected native plants shall obtain the following seals from the Department and securely attach the appropriate seal to each protected native plant:

1. Protected native plant seals identify protected native plants, except saguaro cacti, that will be moved from locations that are not the original growing sites.
2. Imported seals identify all imported protected native plants.

E. Tag, seal, and cord attachment.

1. A permittee shall attach a tag to each protected native plant taken from its original growing site, using cord provided by the Department, before transport. No other type of rope, string, twine, or wire is allowed.
2. The cord shall be securely tied around the plant, and the tag attached so that it cannot be removed without breaking the seal or cutting the cord.

3. The tag shall be placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed for reuse.
4. The protected native plant seal shall be placed directly over the knot and snapped firmly closed, sealing the knot.
5. The imported seal shall be attached directly to the plant.
6. Upon loading the plant, every effort shall be made to allow visibility of the tag during transport.

Historical Note
New Section recodified from R3-4-607 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants

A. Salvage Assessed Native Plants.
1. A permittee shall maintain a record of each protected native plant removed under an annual permit for two years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include the date salvage restricted protected native plants were removed and the permit and tag numbers.
2. Annually, by January 31, a permittee shall submit to the Department a copy of each transaction record for the prior calendar year.

B. Harvest Restricted Native Plants. A permittee shall submit to the Department by the tenth day of each month the transaction records for the previous month, or a written statement that no transactions were conducted for that month.

Historical Note
New Section recodified from R3-4-608 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1109. Arizona Native Plant Law Education

A. The Department may schedule seminars and training courses on an as-needed basis.

B. In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:
1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of $10 to the Department before attending the class.
2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational class shall pay a nonrefundable fee of $25 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.

Historical Note
New Section recodified from R3-4-609 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1110. Permit Denial

Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.

Historical Note
New Section recodified from R3-4-610 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1111. Repealed

Historical Note
New Section recodified from R3-4-611 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Repealed by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

Appendix A. Protected Native Plants by Category

A. Highly safeguarded native plants as prescribed in A.R.S. § 3-903(B)(1), for which removal is not allowed except as provided in R3-3-1105:

AGAVACEAE Agave Family

Agave arizonica Gentry & Weber–Arizona agave

Agave delamateri Hodgson & Slauson

Agave murpheyi Gibson–Hohokam agave

Agave parviflora Torr.–Santa Cruz striped agave, Small-flowered agave

Agave phillipsiana Hodgson

Agave schottii Engelm. var. *treleasei* (Toumey) Kearney & Peebles

APIACEAE Parsley Family. [= Umbelliferae]

Lilaeopsis schaffneriana (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter–Cienega false rush, Huachuca water umbel.
Syn.: *Lilaeopsis recurva* A. W. Hill

APOCYNACEAE Dogbane Family

Amsonia kearneyana Woods.–Kearney's bluestar

Cycladenia humilis Benth. var. *jonesii* (Eastw.) Welsh & Atwood–Jones' cycladenia

ASCLEPIADACEAE Milkweed Family

Asclepias welshii N. & P. Holmgren–Welsh's milkweed

ASTERACEAE Sunflower Family [= Compositae]

Erigeron lemmonii Gray–Lemmon fleabane

Erigeron rhizomatus Cronquist–Zuni fleabane

Senecio franciscanus Greene–San Francisco Peaks groundsel

Senecio huachucanus Gray–Huachuca groundsel

BURSERACEAE Torch Wood Family

Bursera fagaroides (H.B.K.) Engler–Fragrant bursera

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose–Saguaro: 'Crested' or 'Fan-top' form
Syn.: *Cereus giganteus* Engelm.

Coryphantha recurvata (Engelm.) Britt. & Rose–Golden-chested beehive cactus
Syn.: *Mammillaria recurvata* Engelm.

Coryphantha robbinsorum (W. H. Earle) A. Zimmerman–Cochise pincushion cactus, Robbin's cory cactus.
Syn.: *Cochiseia robbinsorum* W.H. Earle

Coryphantha scheeri (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson–Scheer's strong-spined

cory cactus.
Syn.: *Mammillaria robustispina* Schott

Echinocactus horizonthalonius Lemaire var. *nicholii* L. Benson–Nichol's Turk's head cactus

Echinocereus triglochidiatus Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson–Arizona hedgehog cactus

Echinomastus erectocentrus (Coult.) Britt. & Rose var. *acunensis* (W.T. Marshall) L.Benson–Acuna cactus
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson

Pediocactus bradyi L. Benson–Brady's pincushion cactus

Pediocactus paradinei B. W. Benson–Paradine plains cactus

Pediocactus peeblesianus (Croizat) L. Benson var. *fickeiseniae* L. Benson

Pediocactus peeblesianus (Croizat) L. Benson var. *peeblesianus* Peebles' Navajo cactus, Navajo plains cactus
Syn.: *Navajoa peeblesiana* Croizat

Pediocactus sileri (Engelm.) L. Benson–Siler pincushion cactus
Syn.: *Utahia sileri* (Engelm.) Britt. & Rose

COCHLOSPERMACEAE Cochlospermum Family

Amoreuxia gonzalezii Sprague & Riley

CYPERACEAE Sedge Family

Carex specuicola J. T. Howell–Navajo sedge

FABACEAE Pea Family [=Leguminosae]

Astragalus cremnophylax Barneby var. *cremnophylax* Sentry milk vetch

Astragalus holmgreniorum Barneby–Holmgren milk-vetch

Dalea tentaculoides Gentry–Gentry indigo bush

LENNOACEAE Lennoa Family

Pholisma arenarium Nutt.–Scaly-stemmed sand plant

Pholisma sonorae (Torr. ex Gray) Yatskievych–Sandfood, sandroot
Syn.: *Ammobroma sonorae* Torr. ex Gray

LILIACEAE Lily Family

Allium gooddingii Ownbey–Goodding's onion

ORCHIDACEAE Orchid Family

Cypripedium calceolus L. var. *pubescens* (Willd.) Correll–Yellow lady's slipper

Hexalectris warnockii Ames & Correll–Texas purple spike

Spiranthes delitescens C. Sheviak

POACEAE Grass Family [=Gramineae]

Puccinellia parishii A.S. Hitchc.–Parish alkali grass

POLYGONACEAE Buckwheat Family

Rumex orthoneurus Rech. f.

PSILOTACEAE Psilotum Family

Psilotum nudum (L.) Beauv. Bush Moss, Whisk Fern

RANUNCULACEAE Buttercup Family

Cimicifuga arizonica Wats.–Arizona bugbane

Clematis hirsutissima Pursh var. *arizonica* (Heller) Erickson–Arizona leatherflower

ROSACEAE Rose Family

Purshia subintegra (Kearney) J. Hendrickson–Arizona cliffrose, Burro Creek cliffrose
Syn.: *Cowania subintegra* Kearney

SALICACEAE Willow Family

Salix arizonica Dorn–Arizona willow

SCROPHULARIACEAE Figwort Family

Penstemon discolor Keck–Variegated beardtongue

B. Salvage restricted native plants as prescribed in A.R.S. § 3-903(B)(2) that require a permit for removal. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants:

AGAVACEAE Agave Family

Agave chrysantha Peebles

Agave deserti Engelm. ssp. *simplex* Gentry–Desert agave

Agave mckelveyana Gentry

Agave palmeri Engelm.

Agave parryi Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles

Agave parryi Engelm. var. *huachucensis* (Baker) Little ex L. Benson
Syn.: *Agave huachucensis* Baker

Agave parryi Engelm. var. *parryi*

Agave schottii Engelm. var. *schottii* – Shindigger

Agave toumeyana Trel. ssp. *bella* (Breitung) Gentry

Agave toumeyana Trel. ssp. *toumeyana*

Agave utahensis Engelm. spp. *kaibabensis* (McKelvey) Gentry
Syn.: *Agave kaibabensis* McKelvey

Agave utahensis Engelm. var. *utahensis*

Yucca angustissima Engelm. var. *angustissima*

Yucca angustissima Engelm. var. *kanabensis* (McKelvey) Reveal
Syn.: *Yucca kanabensis* McKelvey

Yucca arizonica McKelvey

Yucca baccata Torr. var. *baccata*–Banana yucca

Yucca baccata Torr. var. *vespertina* McKelvey

Yucca baileyi Woot. & Standl. var. *intermedia* (McKelvey) Reveal
Syn.: *Yucca navajoa* Webber

Yucca brevifolia Engelm. var. *brevifolia*–Joshua tree

Yucca brevifolia Engelm. var. *jaegeriana* McKelvey

Yucca elata Engelm. var. *elata*–Soaptree yucca, palmilla

Yucca elata Engelm var. *utahensis* (McKelvey) Reveal
Syn.: *Yucca utahensis* McKelvey

Yucca elata Engelm. var. *verdiensis* (McKelvey) Reveal
Syn.: *Yucca verdiensis* McKelvey

Yucca harrimaniae Trel.

Yucca schidigera Roezl.–Mohave yucca, Spanish dagger

Yucca schottii Engelm.–Hairy yucca

Yucca thornberi McKelvey
Yucca whipplei Torr. var. *whipplei*–Our Lord's candle
Syn.: *Yucca newberryi* McKelvey

AMARYLLIDACEAE Amaryllis Family
Zephyranthes longifolia Hemsl.–Plains Rain Lily

ANACARDIACEAE Sumac Family
Rhus kearneyi Barkley–Kearney Sumac

ARECACEAE Palm Family [=Palmae]
Washingtonia filifera (Linden ex Andre) H. Wendl–California fan palm

ASTERACEAE Sunflower Family [=Compositae]

Cirsium parryi (Gray) Petrak ssp. *mogollonicum* Schaak

Cirsium virginensis Welsh–Virgin thistle

Erigeron kuschei Eastw.–Chiricahua fleabane

Erigeron piscaticus Nesom–Fish Creek fleabane

Flaveria macdougalii Theroux, Pinkava & Keil

Perityle ajoensis Todson–Ajo rock daisy

Perityle cochisensis (Niles) Powell–Chiricahua rock daisy

Senecio quaerens Greene–Gila groundsel

BURSERACEAE Torch-Wood Family

Bursera microphylla Gray–Elephant tree, torote

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose–Saguaro
Syn.: *Cereus giganteus* Engelm.

Coryphantha missouriensis (Sweet) Britt. & Rose

Coryphantha missouriensis (Sweet) Britt. & Rose var. *marstonii* (Clover) L. Benson

Coryphantha scheeri (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson

Coryphantha strobiliformis (Poselger) var. *orcuttii* (Rose) L. Benson

Coryphantha strobiliformis (Poselger) var. *strobiliformis*

Coryphantha vivipara (Nutt.) Britt. & Rose var. *alversonii* (Coult.) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall
Syn.: *Mammillaria arizonica* Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall
Syn.: *Mammillaria chlorantha* Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. *rosea* (Clokey) L. Benson

Echinocactus polycephalus Engelm. & Bigel. var. *polycephalus*

Echinocactus polycephalus Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coult.
Syn.: *Echinocactus xeranthemoides* Engelm. ex Coult.

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *armatus* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson

Echinocereus engelmannii (Parry ex. Engelm.) Lemaire var. *engelmannii*

Echinocereus engelmannii (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. fasciculatus
Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *bonkerae* (Thornber & Bonker) L. Benson.
Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkerae* Peebles; *Echinocereus fendleri* (Engelm.) Rümpler var. *bonkerae* (Thornber & Bonker) L. Benson

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson
Syn.: *Echinocereus boyce-thompsonii* Orcutt

Echinocereus fendleri (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson

Echinocereus fendleri (Engelm.) Rümpler var. *fendleri*

Echinocereus fendleri (Engelm.) Rümpler var. *rectispinus* (Peebles) L. Benson

Echinocereus ledingii Peebles

Echinocereus nicholii (L. Benson) Parfitt.
Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson

Echinocereus pectinatus (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coult.) L. Benson

Echinocereus polyacanthus Engelm. (1848) var. *polyacanthus*

Echinocereus pseudopectinatus (N. P. Taylor) N. P. Taylor
Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.

Echinocereus rigidissimus (Engelm.) Hort. F. A. Haage.
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler–Rainbow cactus

Echinocereus triglochidiatus Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.

Echinocereus triglochidiatus Engelm. var. *melanacanthus* (Engelm.) L. Benson
Syn.: *Mammillaria aggregata* Engelm.

Echinocereus triglochidiatus Engelm. var. *mojavensis* (Engelm.) L. Benson

Echinocereus triglochidiatus Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.
Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson

Echinocereus triglochidiatus Engelm. var. *triglochidiatus*

Echinomastus erectocentrus (Coult.) Britt. & Rose var. *erectocentrus*
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *erectocentra*

Echinomastus intertextus (Engelm.) Britt. & Rose
Syn.: *Neolloydia intertexta* (Engelg.) L. Benson

Echinomastus johnsonii (Parry) Baxter–Beehive cactus
Syn.: *Neolloydia johnsonii* (Parry) L. Benson

Epithelantha micromeris (Engelm.) Weber ex Britt. & Rose

Ferocactus cylindraceus (Engelm.) Orcutt var. *cylindraceus*–Barrel cactus
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*

Ferocactus cylindraceus (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; Ferocactus eastwoodiae (L. Benson) L. Benson

Ferocactus cylindraceus (Engelm.) Orcutt. var. *lecontei* (Engelm.) H. Bravo
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *leconti* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose

Ferocactus emoryi (Engelm.) Orcutt–Barrel cactus
Syn.: *Ferocactus covillei* Britt. & Rose

Ferocactus wislizenii (Engelm.) Britt. & Rose–Barrel cactus

Lophocereus schottii (Engelm.) Britt. & Rose–Senita

Mammillaria grahamii Engelm. var. *grahamii*

Mammillaria grahamii Engelm. var. *oliviae* (Orcutt) L. Benson
Syn.: *Mammillaria oliviae* Orcutt

Mammillaria heyderi Mühlenpf. var. *heyderi*
Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson

Mammillaria heyderi Mühlenpf. var. *macdougalii* (Rose) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *macdougalii* (Rose) L. Benson; *Mammillaria macdougalii* Rose

Mammillaria heyderi Mühlenpf. var. *meiacantha* (Engelm.) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson

Mammillaria lasiacantha Engelm.

Mammillaria mainiae K. Brand.

Mammillaria microcarpa Engelm.

Mammillaria tetrancistra Engelm.

Mammillaria thornberi Orcutt

Mammillaria viridiflora (Britt. & Rose) Bödeker.
Syn.: *Mammillaria orestra* L. Benson

Mammillaria wrightii Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall
Syn.: *Mammillaria wilcoxii* Toumey

Mammillaria wrightii Engelm. var. *wrightii*

Opuntia acanthocarpa Engelm. & Bigel. var. *acanthocarpa*–Buckhorn cholla

Opuntia acanthocarpa Engelm. & Bigel. var. *coloradensis* L. Benson

Opuntia acanthocarpa Engelm. & Bigel. var. *major* L. Benson
Syn.: *Opuntia acanthocarpa* Engelm. & Bigel var. *ramosa* Peebles

Opuntia acanthocarpa Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson
Syn.: *Opuntia thornberi* Thornber & Bonker

Opuntia arbuscula Engelm.–Pencil cholla

Opuntia basilaris Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall–Yellow beavertail
Syn.: *Opuntia aurea* Baxter

Opuntia basilaris Engelm. & Bigel. var. *basilaris*–Beavertail cactus

Opuntia basilaris Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson

Opuntia basilaris Engelm. & Bigel. var. *treleasei* (Coult.) Toumey

Opuntia bigelovii Engelm.–Teddy-bear cholla

Opuntia campii ined.

Opuntia canada Griffiths (*O. phaeacantha* Engelm. var. *laevis X major* and *O. gilvescens* Griffiths).

Opuntia chlorotica Engelm. & Bigel.–Pancake prickly-pear

Opuntia clavata Engelm.–Club cholla

Opuntia curvospina Griffiths

Opuntia echinocarpa Engelm. & Bigel–Silver cholla

Opuntia emoryi Engelm.–Devil cholla
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*

Opuntia engelmannii Salm-Dyck ex Engelm. var. *engelmannii*–Engelmann's prickly-pear
Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington

Opuntia engelmannii Salm-Dyck ex Engelm. var. *flavospina* (L.Benson) Parfitt & Pinkava
Syn.: *Opuntia phaeacantha* Engelm. var. *flavispina* L. Benson

Opuntia erinacea Engelm. & Bigel. var. *erinacea*–Mohave prickly-pear

Opuntia erinacea Engelm. & Bigel. var. *hystricina* (Engelm. & Bigel.) L. Benson
Syn.: *Opuntia hystricina* Engelm. & Bigel.

Opuntia erinacea Engelm. & Bigel. var. *ursina* (Weber) Parish–Grizzly bear prickly-pear
Syn.: *Opuntia ursina* Weber

Opuntia erinacea Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson
Syn.: *Opuntia rhodantha* Schum.

Opuntia fragilis Nutt. var. *brachyarthra* (Engelm. & Bigel.) Coult.

Opuntia fragilis Nutt. var. *fragilis*–Little prickly-pear

Opuntia fulgida Engelm. var. *fulgida*–Jumping chain-fruit cholla

Opuntia fulgida Engelm. var. *mammillata* (Schott) Coult.

Opuntia imbricata (Haw.) DC.–Tree cholla

Opuntia X kelvinensis V. & K. Grant pro sp.
Syn.:*Opuntia kelvinensis* V. & K. Grant

Opuntia kleiniae DC. var. *tetracantha* (Toumey) W. T. Marshall
Syn.: *Opuntia tetrancistra* Toumey

Opuntia kunzei Rose.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter

Opuntia leptocaulis DC.–Desert Christmas cactus, Pencil cholla

Opuntia littoralis (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington

Opuntia macrocentra Engelm.–Purple prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*

Opuntia macrorhiza Engelm. var. *macrorhiza*–Plains prickly-pear
Syn.: *Opuntia plumbea* Rose

Opuntia macrorhiza Engelm. var. *pottsii* (Salm-Dyck) L. Benson

Opuntia martiniana (L. Benson) Parfitt
Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana L. Benson*

Opuntia nicholii L. Benson–Navajo Bridge prickly-pear

Opuntia parishii Orcutt.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson

Opuntia phaeacantha Engelm. var. *laevis* (Coult.) L. Benson
Syn.: *Opuntia laevis* Coult.

Opuntia phaeacantha Engelm. var. *major* Engelm.

Opuntia phaeacantha Engelm. var. *phaeacantha*

Opuntia phaeacantha Engelm. var. *superbospina* (Griffiths) L. Benson

Opuntia polyacantha Haw. var. *juniperina* (Engelm.) L. Benson

Opuntia polyacantha Haw. var. *rufispina* (Engelm.) L. Benson

Opuntia polyacantha Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson

Opuntia pulchella Engelm.–Sand cholla

Opuntia ramosissima Engelm.–Diamond cholla

Opuntia santa-rita (Griffiths & Hare) Rose–Santa Rita prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson

Opuntia spinosior (Engelm.) Toumey–Cane cholla

Opuntia versicolor Engelm.–Staghorn cholla

Opuntia vivipara Engelm

Opuntia whipplei Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson

Opuntia whipplei Engelm. & Bigel. var. *whipplei*–Whipple cholla

Opuntia wigginsii L. Benson

Pediocactus papyracanthus (Engelm.) L. Benson Grama grass cactus
Syn.: *Toumeya papyracanthus* (Engelm.) Britt. & Rose

Pediocactus simpsonii (Engelm.) Britt & Rose var. *simpsonii*

Peniocereus greggii (Engelm.) Britt. & Rose var. *greggii*–Night-blooming cereus
Syn.: *Cereus greggii* Engelm.

Peniocereus greggii (Engelm.) Britt & Rose var. *transmontanus*–Queen-of-the-Night

Peniocereus striatus (Brandegee) Buxbaum.
Syn.: *Neoevansia striata* (Brandegee) Sanchez-Mejorada; *Cereus striatus* Brandegee; *Wilcoxia diguetii* (Webber) Peebles

Sclerocactus parviflorus Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson
Syn.: *Sclerocactus intermedius* Peebles

Sclerocactus parviflorus Clover & Jotter var. *parviflorus*
Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson

Sclerocactus pubispinus (Engelm.) L. Peebles

Sclerocactus spinosior (Engelm.) Woodruff & L. Benson
Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson

Sclerocactus whipplei (Engelm. & Bigel.) Britt. & Rose

Stenocereus thurberi (Engelm.) F. Buxbaum–Organ pipe cactus
Syn.: *Cereus thurberi* Engelm.; *Lemairocereus thurberi* (Engelm.) Britt. & Rose

CAMPANULACEAE Bellflower Family

Lobelia cardinalis L. ssp. *graminea* (Lam.) McVaugh–Cardinal flower

Lobelia fenestralis Cav.–Leafy lobelia

Lobelia laxiflora H. B. K. var. *angustifolia* A. DC.

CAPPARACEAE Cappar Family [=Capparidaceae]

Cleome multicaulis DC.–Playa spiderflower

CHENOPODIACEAE Goosefoot Family

Atriplex hymenelytra (Torr.) Wats.

CRASSULACEAE Stonecrop Family

Dudleya arizonica (Nutt.) Britt. & Rose
Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey

Dudleya saxosa (M.E. Jones) Britt. & Rose ssp. *collomiae* (Rose) Moran
Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles

Graptopetalum bartramii Rose
Syn.:*Echevaria bartramii* (Rose) K. & P.

Graptopetalum bartramii Rose–Bartram's stonecrop, Bartram's live-forever
Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles

Graptopetalum rusbyi (Greene) Rose
Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.

Sedum cockerellii Britt.

Sedum griffithsii Rose

Sedum lanceolatum Torr.
Syn.: *Sedum stenopetalum* Pursh

Sedum rhodanthum Gray

Sedum stelliforme Wats.

CROSSOSOMATACEAE Crossosoma Family

Apacheria chiricahuensis C. T. Mason–Chiricahua rock flower

CUCURBITACEAE Gourd Family

Tumamoca macdougalii Rose–Tumamoc globeberry

EUPHORBIACEAE Spurge Family

Euphorbia plummerae Wats.–Woodland spurge

Sapium biloculare (Wats.) Pax–Mexican jumping-bean

FABACEAE Pea Family [=Leguminosae]

Astragalus corbrensis Gray var. *maguirei* Kearney

Astragalus cremnophylax Barneby var. *myriorraphis* Barneby–Cliff milk-vetch

Astragalus hypoxylus Wats.–Huachuca milk-vetch

Astragalus nutriosensis Sanderson–Nutrioso milk-vetch

Astragalus xiphoides (Barneby) Barneby–Gladiator milk-vetch

Cercis occidentalis Torr.–California redbud

Errazurizia rotundata (Woot.) Barneby
Syn.: *Parryella rotundata* Woot.

Lysiloma microphylla Benth. var. *thornberi* (Britt. & Rose) Isely–Feather bush
Syn.: *Lysiloma thornberi* Britt. & Rose

Phaseolus supinus Wiggins & Rollins

FOUQUIERIACEAE Ocotillo Family

Fouquieria splendens Engelm.–Ocotillo, coach-whip, monkey-tail

GENTIANACEAE Gentian Family

Gentianella wislizenii (Engelm.) J. Gillett
Syn.: *Gentiana wislizenii* Engelm.

LAMIACEAE Mint Family

Hedeoma diffusum Green–Flagstaff pennyroyal

Salvia dorrii ssp. *mearnsii*

Trichostema micranthum Gray

LILIACEAE Lily Family

Allium acuminatum Hook.

Allium bigelovii Wats.

Allium biseptrum Wats. var. *palmeri* (Wats.) Cronq.
Syn.: *Allium palmeri* Wats.

Allium cernuum Roth. var. *neomexicanum* (Rydb.) Macbr.–Nodding onion

Allium cernuum Roth. var. *obtusum* Ckll.

Allium geyeri Wats. var. *geyeri*

Allium geyeri Wats. var. *tenerum* Jones

Allium kunthii Don

Allium macropetalum Rydb.

Allium nevadense Wats. var. *cristatum* (Wats.) Ownbey

Allium nevadense Wats. var. *nevadense*

Allium parishii Wats.

Allium plummerae Wats.

Allium rhizomatum Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto *sensu* Kearney & Peebles

Androstephium breviflorum Wats.–Funnel-lily

Calochortus ambiguus (Jones) Ownbey

Calochortus aureus Wats.
Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey

Calochortus flexuosus Wats.–Straggling mariposa

Calochortus gunnisonii Wats.

Calochortus kennedyi Porter var. *kennedyi*–Desert mariposa

Calochortus kennedyi Porter var. *munzii* Jeps.

Dichelostemma pulchellum (Salisbi) Heller var. *pauciflorum* (Torr.) Hoover

Disporum trachycarpum (Wats.) Benth. & Hook. var. *subglabrum* Kelso

Disporum trachycarpum (Wats.) Benth. & Hook. var. *trachycarpum*

Echeandia flavescens (Schultes & Schultes) Cruden
Syn.: *Anthericum torreyi* Baker

Eremocrinum albomarginatum Jones

Fritillaria atropurpurea Nutt.

Hesperocallis undulata Gray–Ajo lily

Lilium parryi Wats.–Lemon lily

Lilium umbellatum Pursh

Maianthemum racemosum (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie
Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.

Maianthemum racemosum (L.) Link ssp. *racemosum*–False Solomon's seal
Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*; *Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.

Maianthemum stellatum (L.) Link
Syn.: *Smilacina stellata* (L.) Desf.–Starflower

Milla biflora Cav.–Mexican star

Nothoscordum texanum Jones

Polygonatum cobrense (Woot. & Standl.) Gates

Streptopus amplexifolius (L.) DC.–Twisted stalk

Triteleia lemmonae (Wats.) Greene

Triteleiopsis palmeri (Wats.) Hoover

Veratrum californicum Durand.–False hellebore

Zephyranthes longifolia Hemsl.–Plains rain lily

Zigadenus elegans Pursh–White camas, alkali-grass

Zigadenus paniculatus (Nutt.) Wats.–Sand-corn

Zigadenus virescens (H. B. K.) Macbr.

MALVACEAE Mallow Family

Abutilon parishii Wats.–Tucson Indian mallow

Abutilon thurberi Gray–Baboquivari Indian mallow

NOLINACEAE Nolina

Dasylirion wheeleri Wats.–Sotol, desert spoon

Nolina bigelovii (Torr.)Wats.–Bigelow's nolina

Nolina microcarpa Wats.–Beargrass, sacahuista

Nolina parryi Wats.–Parry's nolina

Nolina texana Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

ONAGRACEAE Evening Primrose Family

Camissonia exilis (Raven) Raven

ORCHIDACEAE Orchid Family

Calypso bulbosa (L.) Oakes var. *americana* (R. Br.) Luer

Coeloglossum viride (L.) Hartmann var. *virescens* (Muhl.) Luer
Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray

Corallorhiza maculata Raf.–Spotted coral root

Corallorhiza striata Lindl.–Striped coral root

Corallorhiza wisteriana Conrad–Spring coral root

Epipactis gigantea Douglas ex Hook.–Giant helleborine

Goodyera oblongifolia Raf.

Goodyera repens (L.) R. Br.

Hexalectris spicata (Walt.) Barnhart–Crested coral root

Listera convallarioides (Swartz) Nutt.–Broad-leaved twayblade

Malaxis corymbosa (S. Wats.) Kuntze

Malaxis ehrenbergii (Reichb. f.) Kuntze

Malaxis macrostachya (Lexarza) Kuntze–Mountain malaxia
Syn.: *Malaxis soulei* L. O. Williams

Malaxis tenuis (S. Wats.) Ames

Platanthera hyperborea (L.) Lindley var. *gracilis* (Lindley) Luer
Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll

Platanthera hyperborea (L.) Lindley var. *hyperborea*–Northern green orchid
Syn.: *Habenaria hyperborea* (L.) R. Br.

Platanthera limosa Lindl.–Thurber's bog orchid
Syn.: *Habenaria limosa* (Lindley) Hemsley

Platanthera sparsiflora (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer

Platanthera sparsiflora (Wats.) var. *laxiflora* (Rydb.) Correll

Platanthera sparsiflora (Wats.) Schlechter var. *sparsiflora*–Sparsely-flowered bog orchid
Syn.: *Habenaria sparsiflora* Wats.

Platanthera stricta Lindl.–Slender bog orchid
Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten

Platanthera viridis (L.) R. Br. var. *bracteata* (Muhl.) Gray–Long-bracted habenaria

Spiranthes michaucana (La Llave & Lex.) Hemsl.

Spiranthes parasitica A. Rich. & Gal.

Spiranthes romanzoffiana Cham.–Hooded ladies tresses

PAPAVERACEAE Poppy Family

Arctomecon californica Torr. & Frém.–Golden-bear poppy, Yellow-flowered desert poppy

PINACEAE Pine Family

Pinus aristata Engelm.–Bristlecone pine

POLYGONACEAE Buckwheat Family

Eriogonum apachense Reveal

Eriogonum capillare Small

Eriogonum mortonianum Reveal–Morton's buckwheat

Eriogonum ripleyi J. T. Howell–Ripley's wild buckwheat, Frazier's Well buckwheat

Eriogonum thompsonae Wats. var. *atwoodii* Reveal–Atwood's buckwheat

PORTULACEAE Purslane Family

Talinum humile Greene–Pinos Altos flame flower

Talinum marginatum Greene

Talinum validulum Greene–Tusayan flame flower

PRIMULACEAE Primrose Family

Dodecatheon alpinum (Gray) Greene ssp. *majus* H. J. Thompson

Dodecatheon dentatum Hook. ssp. *ellisiae* (Standl.) H. J. Thompson

Dodecatheon pulchellum (Raf.) Merrill

Primula hunnewellii Fern.

Primula rusbyi Greene

Primula specuicola Rydb.

RANUNCULACEAE Buttercup Family

Aquilegia caerulea James ssp. *pinetorum* (Tidest.) Payson–Rocky Mountain Columbine

Aquilegia chrysantha Gray

Aquilegia desertorum (Jones) Ckll.–Desert columbine, Mogollon columbine

Aquilegia elegantula Greene

Aquilegia longissima Gray–Long Spur Columbine

Aquilegia micrantha Eastw.

Aquilegia triternata Payson

ROSACEAE Rose Family

Rosa stellata Woot.–ssp. *abyssa* A. Phillips Grand Canyon rose

Vauquelinia californica (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson–Few-flowered Arizona rosewood

SCROPHULARIACEAE Figwort Family

Castilleja mogollonica Pennell

Penstemon albomarginatus Jones

Penstemon bicolor (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck

Penstemon clutei A. Nels.

Penstemon distans N. Holmgren–Mt. Trumbull beardtongue

Penstemon linarioides spp. maguirei

SIMAROUBACEAE Simarouba Family

Castela emoryi (Gray) Moran & Felger–Crucifixion thorn
Syn.: *Holacantha emoryi* Gray

STERCULIACEAE Cacao Family

Fremontodendron californicum (Torr.) Coville–Flannel bush

C. Salvage assessed native plants as prescribed in A.R.S. § 3-903(B)(3) that require a permit for removal:

BIGNONIACEAE Bignonia Family

Chilopsis linearis (Cav.) Sweet var. *arcuata* Fosberg–Desert-willow

Chilopsis linearis (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg

FABACEAE Pea Family [=Leguminosae]

Cercidium floridum Benth.–Blue palo verde

Cercidium microphyllum (Torr.) Rose & Johnst.–Foothill palo verde

Olneya tesota Gray–Desert ironwood

Prosopis glandulosa Torr. var. *glandulosa*–Honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.

Prosopis glandulosa Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

Prosopis pubescens Benth.–Screwbean mesquite

Prosopis velutina Woot.–Velvet mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

Psorothamnus spinosus (Gray) Barneby–Smoke tree.
Syn.: *Dalea spinosa* Gray

D. Harvest restricted native plants as prescribed at A.R.S. § 3-903(B)(4) that require a permit to cut or remove the plants for their by-products, fibers, or wood:

AGAVACEAE Agave Family (including Nolinaceae)

Nolina bigelovii (Torr.) Wats.–Bigelow's nolina

Nolina microcarpa Wats.–Beargrass, sacahuista

Nolina parryi Wats.–Parry's nolina

Nolina texana Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

Yucca baccata Torr. var. *baccata*–Banana yucca

Yucca schidigera Roezl.–Mohave yucca, Spanish dagger

FABACEAE Pea Family [=Leguminosae]

Olneya tesota Gray–Desert ironwood

Prosopis glandulosa Torr. var. *glandulosa*–Honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.

Prosopis glandulosa Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

Prosopis pubescens Benth.–Screwbean mesquite

Prosopis velutina Woot.–Velvet mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

Historical Note

New Section recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

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.

3-264. Enforcement and administrative powers

A. The associate director may refuse to license or may cancel the license of any distributor who violates any provision of this article. The director shall review the associate director's action on request of any person adversely affected by the action.

B. The director may, after an opportunity for a hearing:

1. Determine and publish at least annually the values per unit of weight of nitrogen, phosphorus and potassium in commercial fertilizers in the state for the purpose of assessing penalties on commercial fertilizers under the provisions of section 3-276.

2. Adopt rules that the director deems necessary for the efficient administration and enforcement of this article, including the collection and examination of samples of fertilizer materials, and rules pertaining to composition and use of fertilizer materials, including, without limiting the foregoing general terms, the establishment of tolerances, deficiencies and penalties where not specifically provided for in this article.

3. Prohibit the sale or use in fertilizer materials of any substance proven to be detrimental to agriculture.

4. Provide for incorporating into commercial fertilizers other substances as pesticides and provide for proper labeling of the mixture.

5. Prescribe the information which shall appear on the tag, other than as specifically set forth in this article.

3-343. Enforcement and administrative powers

A. This article shall be administered and its provisions and all rules adopted under this article shall be enforced by the associate director.

B. The director may, after a hearing:

1. Declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles or substances.

2. Determine whether or not pesticides present an unreasonable risk to humans.

3. Determine standards of coloring or discoloring for pesticides, and subject pesticides to the requirements of section 3-352.

C. The director may, after a hearing, make rules concerning safety in the distribution and sale of pesticides or devices.

D. All rules adopted under authority of this article shall be divided into two classes to be known as "technical rules" and "administrative rules", such rules to be filed in the office of the secretary of state and subject to judicial review.

E. The director may adopt administrative and technical rules deemed necessary to effectuate the purposes of this article, but only after a hearing.

3-363. Rules

The director shall adopt rules to regulate pesticides that include provisions to:

1. Administer and implement this article.

2. Prescribe measures to control, monitor, inspect and govern pesticide use.

3. Prohibit or restrict pesticide use.

4. Restrict the areas in which pesticide use may occur.

5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including continuing education requirements, and meet financial responsibility standards.

6. Prescribe appropriate recordkeeping and reporting requirements regarding pesticide use, except that the recordkeeping and reporting requirements for growers and certified private applicators who apply pesticides shall be equivalent to, but not more stringent than, the requirements prescribed under the federal insecticide, fungicide and rodenticide act (61 Stat. 163) and the food, agriculture, conservation and trade act of 1990 (P.L. 101-624; 104 Stat. 3359).

7. Prohibit pesticide use that is inconsistent with the pesticide label as required under the federal insecticide, fungicide and rodenticide act (61 Stat. 163).

8. Exempt from regulation under this article pesticide use that is regulated in chapter 20 of this title.

9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years.

10. Charge and collect the following fees for each permit, license and certification under this article:

(a) Not more than twenty dollars per year for a grower permit.

(b) Not more than one hundred dollars per year for a seller permit.

(c) Not more than one hundred dollars per year for a custom applicator license.

(d) Not more than fifty dollars per year for a pilot license.

(e) Not more than fifty dollars per year for a pest control advisor license.

(f) Not more than twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.

(g) Not more than fifty dollars per year for restricted use certification.

(h) Not more than the amount set by the director by rule for a license or certificate for pesticide use on golf courses.

11. Establish a nonexclusive list of acts and omissions that constitute serious, nonserious and de minimis violations of this article.

12. Establish a system of administrative penalties and fines for violations of this article and any rules adopted under this article. Under this system:

(a) Violators shall be assessed a number of points for each violation, depending on such factors as:

(i) Potential and actual consequences of the violation on public and worker health and safety and the environment.

(ii) The wrongfulness of the conduct.

(iii) The degree of culpability of the violator.

(iv) The duration of the violation.

(v) Prior violations or citations.

(b) Penalties shall be assessed depending on the number of points accrued by the violator.

3-2603. Enforcement and administrative powers

A. The associate director may refuse to license or may cancel the license of any distributor in violation of this article. The director shall review the associate director's action on request of any person adversely affected by the action.

B. The director may, after a hearing:

1. Adopt rules:

(a) Requiring the guarantee of substances and elements when claimed present in a commercial feed, and declare the form in which the guarantee shall appear on the label.

(b) Setting forth acceptable descriptive terms by which ingredients shall be listed on the labeling when used as ingredients of a commercial feed or customer-formula feed.

(c) Requiring a statement of warning and directions for use of commercial feeds and customer-formula feeds containing drugs or chemicals.

(d) Establishing limits of viable weed seeds contained in commercial feed.

(e) Both administrative and technical, which the director deems necessary for the efficient administration of this article.

2. Cooperate with, and enter into agreements with, universities under the jurisdiction of the Arizona board of regents, other agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this article, including the implementation and use of commercial feed trust fund monies to assist the efforts of an ALIRT agreement.

3. Exempt from the definition of commercial feed or from specific provisions of this article commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when those commodities, compounds or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of section 3-2611.

4. Define weights in the metric system.

3-3105. Powers and duties

The assistant director shall:

1. Administer this chapter.

2. Cooperate with the federal government to establish and maintain an agricultural safety and health program.

3. Propose to the director for adoption by the department standards and rules pursuant to section 3-3106, 3-3108 or 3-3109 and other rules that are necessary for the office to function efficiently.

4. Enforce all standards and rules adopted by the department pursuant to the procedures and requirements of this article.

5. Implement an agricultural safety and health program, including the following duties and responsibilities:

(a) Development of a statewide agricultural safety and health education and training program to acquaint employers, supervisors, employees and employee representatives with the most modern and effective techniques of accident prevention and agricultural health control.

(b) Development of training programs for employees of the office and, if necessary, development of certification programs for recognition of competent, trained personnel.

(c) Coordinate training programs with state and federal agencies including the university of Arizona college of agriculture, the United States department of agriculture and vocational education programs.

(d) Planning, organizing, conducting or attending safety and health seminars, conferences and meetings designed for management, supervisory personnel, employees and employee representatives and establishing liaison with other safety and health groups as may be necessary.

(e) Definition and establishment of necessary research projects.

(f) Arrangement and procurement of necessary contractual services and training aids.

(g) Development of specific agricultural safety and health programs for employer and employee representative groups.

6. Collect and analyze agricultural safety and health statistics generated by the industrial commission, the department of health services, the department of environmental quality and any other state or federal agency that produces such information.

7. Coordinate the responsibilities and functions of other administrative units in the department with regard to agricultural safety and health in order to develop a comprehensive statewide program.

3-3106. Pesticides

The department shall adopt rules consistent with this section prescribing safe work practices for employees who mix, load, apply, store or otherwise handle pesticides for agricultural uses and for employees who are exposed to residues of these pesticides after application or persons who are incidentally exposed to pesticides when or after they are applied. The rules shall include, but are not limited to, provisions that relate to:

1. Exposure to pilots, mixers, loaders, flaggers and ground and aerial applicators.

2. Employee training and instruction.

3. Emergency medical care.

4. The times and conditions under which employees may work alone with pesticides.

5. Adequate facilities, equipment and water for changing clothes and washing.

6. Necessary safety equipment and its cleaning.

7. Limiting, as necessary, field reentry after pesticide application.

3-3108. Development of standards and rules

A. Safety and health standards and rules shall be formulated in the following manner:

1. The assistant director shall either propose adoption of national consensus standards or federal standards or draft such rules as he considers necessary after conducting sufficient investigations through the employees of the office and through consultation with the department advisory council, an ad hoc advisory committee if one is appointed and other persons knowledgeable in agriculture for which the standards or rules are being formulated

2. Proposed standards or rules, or both, shall be submitted to the director for his approval. If the director approves the proposed standards or rules, or both, he shall adopt them pursuant to title 41, chapter 6.

B. The assistant director shall not propose standards or rules for products distributed or used in interstate commerce which are different from federal standards for such products unless the standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or rules adopted under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms, appropriate emergency treatment and proper conditions and precautions of safe use or exposure. If appropriate, the standards or rules shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary to protect employees. In addition, if appropriate, any such standards or rules shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or rules adopted pursuant to this section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

D. In case of conflict between standards and rules, the rules take precedence.

E. A person who may be adversely affected by a standard or rule issued under this article at any time before the sixtieth day after the standard or rule is adopted may file a complaint challenging the validity of the standard or rule with the superior court in the county in which the person resides or has his principal place of business for a judicial review of the standard or rule. The filing of a complaint, unless otherwise ordered by the court, does not operate as a stay of the standard or rule. The determinations of the director are conclusive if supported by substantial evidence in the record considered as a whole.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 2

Amend: R3-2-401, R3-2-408, R3-2-409

New Section: R3-2-409.01

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 3, 2024

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

FROM: Council Staff

DATE: December 15, 2023

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 2

Amend: R3-2-401, R3-2-408, R3-2-409

New Section: R3-2-409.01

Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend three (3) rules and add one (1) new rule in Title 3, Chapter 2, Article 4 related to Animal Disease Prevention and Control. Specifically, the Department indicates SB 1194 was enacted by the Legislature in 2023 and was signed by the Governor on May 11, 2023. The Department indicates the new legislation requires the State Veterinarian to adopt rules to govern appointment of certified rabies vaccinators at animal shelters by licensed veterinarians. The Department indicates these proposed rule amendments outline the procedures to effectively execute this statutory mandate.

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 or increase a fee.

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:

The Department of Agriculture (Department) does not anticipate any adverse economic impacts affecting consumers or small business; rather, the proposed rulemaking reduces government expenditures by allowing animals owned by an animal shelter to be vaccinated against rabies by a trained individual who is not a veterinarian. Veterinary positions are very costly. Therefore, this proposed rulemaking reduces the burden on the local government and the taxpayer.

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 costs associated with this rulemaking. The rulemaking will potentially have the community benefit of having a higher proportion of animals adequately vaccinated against rabies which in turn reduces the likelihood of rabies transmission given possible rabid wildlife exposure. This can in turn reduce costs associated with post-exposure prophylaxis for human patients exposed or bitten by unvaccinated or under vaccinated animals.

6. What are the economic impacts on stakeholders?

The rulemaking will eliminate the need for an animal shelter to pay a veterinarian to vaccinate shelter owned animals that they are adopting or transferring to a rescue and will reduce costs for smaller shelters that do not have the budget to cover the cost of a full-time veterinarian. The salary of a full-time veterinarian is currently $70,000-$145,000. While private veterinary clinics could see a reduction in the number of animals which they vaccinate on behalf of local government, the change in gross income will be inconsequential.

7. 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 Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

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

While the Department indicates stakeholders representing animal shelters across the state were informally consulted prior to the docket opening to garner opinions on what a rule like this should encompass and considerations for implementation, the Department indicates it received no public comments related to this rulemaking during the formal public comment period.

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 the proposed amended rules do not require issuance of a regulatory permit or license. The Department indicates participation in the Certified Rabies Vaccinator program is voluntary, and certification is not provided by the State, although the State Veterinarian can monitor performance and compliance of the certificate holder, and may remove the certificate if the certificate holder violates the proposed amended rules.

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

Not applicable. The Department indicates there is no federal law applicable to the subject of the proposed rulemaking.

11. Conclusion

This regular rulemaking from the Department seeks to amend three (3) rules and add one (1) new rule in Title 3, Chapter 2, Article 4 related to Animal Disease Prevention and Control to adopt rules to govern appointment of certified rabies vaccinators at animal shelters by licensed veterinarians.

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 BRIERLEY
Director

Arizona Department of Agriculture

1802 W Jackson St #78, Phoenix, Arizona 85007
(602) 542-4293 FAX (602) 542-4290

17-NOV-2023

Governor's Regulatory Review Council (G.R.C.C.)
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

RE: Notice of rulemaking consideration to G.R.C.C.

Dear Council,

On behalf of the Arizona Department of Agriculture, I hereby request final consideration for creation of rule within 3 A.A.C. 2, Article 4 by the Governor's Regulatory Review Council ("GRRC") pursuant to A.RS. § 41-1039(B). The creation of this new rule will facilitate the requirements of SB1194 that was chaptered 5/11/2023 regarding creation of rules for Certified Rabies Vaccinators. The record for this proposed rulemaking closed 10/10/2023, 2023 following a two-hour public hearing at 1110 W Washington St, Suite 450, Phoenix, AZ 85007 for the Notice of Proposed Rulemaking in Volume 29, Issue 36, page 1995 of the Arizona Administrative Register, dated 9/8/2023. No comments were received during the comment period nor did the oral proceeding garner any public participation or testimony. This request does not relate to a 5-year review report, does not establish a new fee, does not establish a fee increase, and does not request an earlier immediate effective date over the standard process. The preamble accurately discloses that no study was applicable for review relevant to this rule.

Documents Enclosed:
1. Authorization to proceed with rulemaking
2. Notice of Final Rulemaking
3. Economic, Small Business & Consumer Impact Statement
4. National Association of State Public Health Veterinarians (NASPHV) 2016 Compendium of Animal Rabies Prevention and Control
5. NASPHV Form 51 (revised 2007)

Thank you for your consideration in this matter.

Sincerely,

Paul Brierley
Director
Arizona Department of Agriculture

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. ANIMAL SERVICES DIVISION

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R3-2-401	Amend
	R3-2-408	Amend
	R3-2-409	Amend
	R3-2-409.01	New Section

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

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. §§ 11-1002(B); 32-2240.02, as amended or enacted in AZ LEGIS 132 (2023), 2023 Ariz. Legis. Serv. Ch. 132 (S.B. 1194).

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable.

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

Notice of Rulemaking Docket Opening: Volume 29, A.A.R. page 2000; and

Notice of Proposed Rulemaking: Volume 29, A.A.R. page 1995

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

Name: Dr. Ryan Wolker, State Veterinarian

Address: Arizona Department of Agriculture

1802 W Jackson St, #78

Phoenix, AZ 85007

Telephone: (602) 542-4293

Fax: (602) 542-4290

E-mail: rwolker@azda.gov

Web site: agriculture.az.gov

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

SB 1194 was enacted by the Legislature in 2023 and was signed by the Governor on May 11, 2023. The new legislation requires the State Veterinarian to adopt rules to govern appointment by

licensed veterinarians of certified rabies vaccinators at animal shelters. This proposed rule outlines the procedures to be established by the State Veterinarian to effectively execute this statutory mandate.

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. No political subdivision's grant of authority is diminished by implementation of this rule.

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

The Department of Agriculture does not anticipate any adverse economic impacts affecting consumers or small business. The proposed rulemaking reduces government expenditures by allowing animals owned by an animal shelter to be vaccinated against rabies by a trained individual who is not a veterinarian. Veterinary positions are costly and smaller animal shelters do not have the budget for a staff veterinarian. Therefore, this proposed rulemaking reduces the burden on the local government and the taxpayers.

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

Not applicable. The proposed rulemaking and final rulemaking verbiage are identical.

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

No public or stakeholder comments were made during the official open comment period. Stakeholders representing animal shelters across the state were informally consulted prior to the docket opening to garner opinions on what a rule like this should encompass and considerations for implementation.

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 proposed amended rule does not require issuance of a regulatory permit or license. Participation in the Certified Rabies Vaccinator program is voluntary, and certification is not provided by the State, although the State Veterinarian can monitor performance and compliance of the certificate holder, and may remove the certificate if the certificate holder violates the proposed 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:

There is not a federal law applicable to the subject of the proposed rulemaking.

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

No analysis was submitted.

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

The Arizona Department of Agriculture is proposing to incorporate by reference the 2016 edition of the NASPHV Compendium of Animal Rabies Prevention and Control.

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

Not applicable.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. ANIMAL SERVICES DIVISION

ARTICLE 4. Animal Disease Prevention and Control

Section

ARTICLE 4. Animal Disease Prevention and Control

R3-2-401. Definitions

1. "Animal Name" refers to the shelter impound number of the animal.
2. "Anti-Rabies Vaccine" is an active immunizing agent used to prevent infection caused by the rabies virus approved by the State Veterinarian pursuant to A.R.S. § 11-1002.
3. "Approved Rabies Vaccinator Curriculum" means an in-person vaccination training curriculum approved by the State Veterinarian of Arizona and administered by a supervising veterinarian.
4. "Biologics" means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.
5. "Certified Rabies Vaccinator" means an unlicensed individual who is appointed and certified by a supervising veterinarian and authorized under A.R.S. § 32-2240.02 to vaccinate domestic animals against rabies, who is employed by a shelter, as defined herein, and who in the absence of a licensed veterinarian, has agreed to supervise the acquisition, storage, administration, and record keeping of the anti-rabies vaccine.
6. "Compendium of Animal Rabies Prevention and Control" refers to the 2016 edition of the NASPHV Compendium of Animal Rabies Prevention and Control, incorporated by

reference, and does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

7. "Domestic animal" means a mammal, not regulated by title 3, that is kept primarily as a pet or companion or that is bred to be a pet or companion.
8. "Foreign Animal Disease" means a transboundary animal disease or pest, or an aquatic animal disease or pest, not known to exist in the United States.
9. "NASPHV" refers to the National Association of State Public Health Veterinarians.
10. "Rabies Certificate" refers to the NASPHV FORM 51 (revised 2007) or equivalent computer-generated form.
11. "Shelter" means an animal care and control shelter or pound operated by any town, city, county or the state, including privately run animal shelters that are utilized by a town, city, county or the state.
12. "State Veterinarian" means the person appointed as the State Veterinarian under A.R.S. § 3-1211.
13. "Supervising Veterinarian" means a veterinarian licensed by the Arizona Veterinary Medical Examining Board, who is authorized under these rules to designate a Certified Rabies Vaccinator.

R3-2-408. Disposition of Livestock Exposed to Rabies

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the ~~National Association of State Public Health Veterinarians'~~ NASPHV Compendium of Animal Rabies Control~~, 2016 Part I, Section B. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department~~.

R3-2-409. Rabies Vaccines for Animals

A. All animals in Arizona vaccinated against rabies shall be vaccinated as prescribed in the ~~National Association of State Public Health Veterinarians'~~ NASPHV Compendium of Animal Rabies Control~~, 2016 Part I Section A. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department~~.

B. A person who is not a licensed veterinarian may be certified as a rabies vaccinator by a licensed veterinarian after completing the approved rabies-vaccinator curriculum. Initial

certification shall be valid for one year and renewals after the first year shall be valid for two years. Each renewal shall only be granted upon completion of the current rabies-vaccinator curriculum.

C. Anti-rabies vaccines may be administered under the supervision of a licensed veterinarian or by a Certified Rabies Vaccinator to animals on the premises of shelters before release.

D. Duties and responsibilities of the Certified Rabies Vaccinator are to:

1. Abide by all local, state, and federal laws and regulations pertaining to the operation of a shelter, including those laws and regulations governing possession and use of anti-rabies vaccine.
2. Comply with the Compendium of Animal Rabies Prevention and Control, including storage of anti-rabies vaccine at the required temperature, and administration of anti-rabies vaccine in an aseptic manner that meets the current standards of veterinary practice.
3. Refer for appropriate treatment domestic animals that experience an adverse event to a licensed veterinarian; and report the adverse event to the supervising veterinarian and the vaccine manufacturer.
4. Procure anti-rabies vaccine through the state veterinary license number of the supervising veterinarian.
5. A Rabies Certificate must be completed in full for every vaccinated domestic animal, shall include the legible name of the Certified Rabies Vaccinator, and shall be signed by the Certified Rabies Vaccinator or supervising veterinarian.

R3-2-409.01. Requirements of Certified Rabies Vaccinator Approved Curriculum; Recordkeeping; Inspection

A. Approved curriculum training shall include an instructional section and a practical exam showing competency; and shall include, but not be limited to, the following topics:

1. Anatomy.
2. Personnel safety.
3. Acceptable methods of disposal of supplies.
4. Humane methods of handling domestic animals.
5. Proper vaccine storage and handling.
6. Proper vaccine administration.

7. Record keeping.

8. Management and reporting of adverse events.

B. These rules are provided as components of a certified rabies-vaccinator program, and no fee shall be charged by the State Veterinarian, however the State Veterinarian takes no position on establishment of reasonable fees by a supervising veterinarian for implementation of a certified rabies-vaccinator program.

C. The Certified Rabies Vaccinator shall keep records of all vaccination-related activities for three years including, but not limited to:

1. Rabies certificates.

2. Adverse event reports, including reports of human exposure to rabies vaccines.

D. A shelter is subject to periodic random inspection by the Office of the State Veterinarian. Upon request by the Office of the State Veterinarian, the responsible supervising veterinarian or Certified Rabies Vaccinator shall immediately produce requested records.

E. Following an audit or inspection, if evidence exists of noncompliance with the above standards, the State Veterinarian reserves the right to terminate a Certified Rabies Vaccinator's certification.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

1. Identification of the rulemaking:

According to state statute, the state veterinarian shall prescribe the method by which licensed veterinarians may appoint certified rabies vaccinators. This proposed rule outlines the procedures established by the state veterinarian allowing trained individuals working in animal shelters to vaccinate shelter owned animals against rabies.

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

The Department of Agriculture does not anticipate any adverse economic impacts affecting consumers or small business. The proposed rulemaking reduces government expenditures by allowing animals owned by an animal shelter to be vaccinated by a trained individual who is not a veterinarian. Veterinary positions are costly and smaller animal shelters do not have the budget for a staff veterinarian. Therefore, this proposed rulemaking reduces the burden on the local government and the taxpayers.

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: Dr. Ryan Wolker, State Veterinarian
Address: Arizona Department of Agriculture
1802 W Jackson St, #78

Phoenix, AZ 85007
Telephone: (602) 359-1152
Fax: (602) 542-4290
E-mail: rwolker@azda.gov

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

No private persons will financially benefit or bear additional costs secondary to this rulemaking.

5. Cost-benefit analysis:

The rulemaking will eliminate the need for an animal shelter to pay a veterinarian to vaccinate shelter owned animals that they are adopting or transfering to a rescue. The current cost of a full-time veterinarian is currently $70,000-$145,000 annually for salary alone. Many smaller shelters do not have the budget for this expenditure nor can they attract and retain veterinary services in some rural areas.

Costs and benefits to businesses directly affected by the rulemaking:
Private veterinary clinics could see a reduction in the number of animals, which they vaccinate on behalf of local government, but the change in gross income will be inconsequential.

6. Impact on private and public employment:

The rulemaking will have no impact on private employment and it will reduce the employment cost taken on by local government.

7. Impact on small businesses:

No businesses, regardless of size, are subject to the rulemaking.

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

The rulemaking will potentially have the community benefit of having a higher proportion of animals adequately rabies vaccinated which in turn reduces the likelihood of rabies

transmission given possible rabid wildlife exposure. This can in turn reduce costs associated with post-exposure prophylaxis for human patients exposed or bitten by non-vaccinated or under vaccinated animals.

9. Probable effects on state revenues:

There will be no effect on state revenues.

Compendium of Animal Rabies Prevention and Control, 2016

National Association of State Public Health Veterinarians Compendium of Animal Rabies Prevention and Control Committee

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Rabies is a fatal viral zoonosis and serious public health problem.[1] All mammals are believed to be susceptible to the disease, and for the purposes of this document, use of the term animal refers to mammals. The disease is an acute, progressive encephalitis caused by viruses in the genus *Lyssavirus*.[2] Rabies virus is the most important lyssavirus globally. In the United States, multiple rabies virus variants are maintained in wild mammalian reservoir populations such as raccoons, skunks, foxes, and bats. Although the United States has been declared free from transmission of canine rabies virus variants, there is always a risk of reintroduction of these variants.[3-7]

The rabies virus is usually transmitted from animal to animal through bites. The incubation period is highly variable. In domestic animals, it is generally 3 to 12 weeks, but can range from several days to months, rarely exceeding 6 months.[8] Rabies is communicable during the period of salivary shedding of rabies virus. Experimental and historic evidence documents that dogs, cats, and ferrets shed the virus for a few days prior to the onset of clinical signs and during illness. Clinical signs of rabies are variable and include inappetance, dysphagia, cranial nerve deficits, abnormal behavior, ataxia, paralysis, altered vocalization, and seizures. Progression to death is rapid. There are currently no known effective rabies antiviral drugs.

The recommendations in this compendium serve as a basis for animal rabies prevention and control programs throughout the United States and facilitate standardization of procedures among jurisdictions, thereby contributing to an effective national rabies control program. The compendium is reviewed and revised as necessary, with the most current version replacing all previous versions. These recommendations do not supersede state and local laws or requirements. Principles of rabies prevention and control are detailed in Part I, and recommendations for parenteral vaccination procedures are presented in Part II. All animal rabies vaccines licensed by the USDA and marketed in the United States are listed and described in Appendix 1, and contact information for manufacturers of these vaccines is provided in Appendix 2.

Modifications of note in this updated version of the compendium, compared with the previous version,[9] include clarification of language, explicit en-

couragement of an interdisciplinary approach to rabies control, a recommendation to collect and report at the national level additional data elements on rabid domestic animals, changes to the recommended management of dogs and cats exposed to rabies that are either unvaccinated or overdue for booster vaccination, reduction of the recommended 6-month quarantine period for certain species, and updates to the list of marketed animal rabies vaccines.

Part I. Rabies Prevention and Control

A. Principles of rabies prevention and control

1. Case definition. An animal is determined to be rabid after diagnosis by a qualified laboratory as specified (*see* Part I.A. 10. Rabies diagnosis).The national case definition for animal rabies requires laboratory confirmation on the basis of either a positive result for the direct fluorescent antibody test (preferably performed on CNS tissue) or isolation of rabies virus in cell culture or a laboratory animal.[10]

2. Rabies virus exposure. Rabies is transmitted when the virus is introduced into bite wounds, into open cuts in skin, or onto mucous membranes from saliva or other potentially infectious material such as neural tissue.[11] Questions regarding possible exposures should be directed promptly to state or local public health authorities.

3. Interdisciplinary approach. Clear and consistent communication and coordination among relevant animal and human health partners across and within all jurisdictions (including international, national, state, and local) is necessary to most effectively prevent and control rabies. As is the case for the prevention of many zoonotic and emerging infections, rabies prevention requires the cooperation of animal control, law enforcement, and natural resource personnel; veterinarians; diagnosticians; public health professionals; physicians; animal and pet owners; and others. An integrated program must include provisions to promptly respond to situations; humanely restrain, capture, and euthanize animals; administer quarantine, confinement, and observation periods; and prepare samples for submission to a testing laboratory.

4. Awareness and education. Essential components of rabies prevention and control include ongoing public education, responsible pet ownership, routine veterinary care and vaccination, and professional continuing education. Most animal and human exposures to rabies can be prevented by raising awareness concerning rabies transmission routes, the importance of avoiding contact with wildlife, and the need for appropriate veterinary care. Prompt recognition and reporting of possible exposures to medical and veterinary professionals and local public health authorities are critical.

5. Human rabies prevention. Rabies in humans can be prevented by eliminating exposures to rabid animals or by providing exposed persons prompt postexposure prophylaxis consisting of local treatment of wounds in combination with appropriate administration of human rabies immune globulin and vaccine. An exposure assessment should occur before rabies postexposure prophylaxis is initiated and should include discussion between medical providers and public health officials. The rationale for recommending preexposure prophylaxis and details of both preexposure and postexposure prophylaxis administration can be found in the current recommendations of the Advisory Committee on Immunization Practices.[11,12] These recommendations, along with information concerning the current local and regional epidemiology of animal rabies and the availability of human rabies biologics, are available from state health departments.

6. Domestic animal vaccination. Multiple vaccines are licensed for use in domestic animal species. Vaccines available include inactivated and modified-live virus vectored products, products for IM and SC administration, products with durations of immunity for periods of 1 to 3 years, and products with various minimum ages of vaccination. Recommended vaccination procedures are specified in Part II of this compendium; animal rabies vaccines licensed by the USDA and marketed in the United States are specified in Appendix 1. Local governments should initiate and maintain effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove stray and unwanted animals. Such procedures have reduced laboratory-confirmed cases of rabies among dogs in the United States from 6,949 cases in 1947 to 89 cases in 2013.[3] Because more rabies cases are reported annually involving cats (247 in 2013) than dogs, vaccination of cats should be required.[3] Animal shelters and animal control authorities should establish policies to ensure that adopted animals are vaccinated against rabies.

An important tool to optimize public and animal health and enhance domestic animal rabies control is routine or emergency implementation of low-cost or free clinics for rabies vaccination. To facilitate implementation, jurisdictions should work with veterinary medical licensing boards, veterinary associations, the local veterinary community, animal control officials, and animal welfare organizations.

7. Rabies in vaccinated animals. Rabies is rare in vaccinated animals.[13–15] If rabies is suspected in a vaccinated animal, it should be reported to public health officials, the vaccine manufacturer, and the USDA APHIS Center for Veterinary Biologics

(www.aphis.usda.gov; search for "adverse event reporting"). The laboratory diagnosis should be confirmed and the virus variant characterized by the CDC's rabies reference laboratory. A thorough epidemiologic investigation including documentation of the animal's vaccination history and potential rabies exposures should be conducted.

8. Rabies in wildlife. It is difficult to control rabies among wildlife reservoir species.[16] Vaccination of free-ranging wildlife or point infection control is useful in some situations,[17] but the success of such procedures depends on the circumstances surrounding each rabies outbreak (See Part I. C. Prevention and control methods related to wildlife). Because of the risk of rabies in wild animals (especially raccoons, skunks, coyotes, foxes, and bats), the AVMA, American Public Health Association, Council of State and Territorial Epidemiologists, National Animal Care and Control Association, and National Association of State Public Health Veterinarians strongly recommend the enactment and enforcement of state laws prohibiting the importation, distribution, translocation, and private ownership of wild animals.

9. Rabies surveillance. Laboratory-based rabies surveillance and variant typing are essential components of rabies prevention and control programs. A comprehensive surveillance program should not be limited to testing only those animals that have potentially exposed people or domestic animals to rabies. Accurate and timely information and reporting are necessary to guide decisions regarding postexposure prophylaxis in potentially exposed humans, determine appropriate management of potentially exposed animals, aid in the discovery of emerging variants, describe the epidemiology of the disease, and assess the effectiveness of vaccination programs for domestic animals and wildlife. Every animal submitted for rabies testing should be reported to the CDC to evaluate surveillance trends. Public health authorities should implement electronic laboratory reporting and notification systems.[18] Information reported on every animal submitted for rabies testing should include species, point location, vaccination status, rabies virus variant (if rabid), and human or domestic animal exposures. To enhance the ability to make evidence-based recommendations from national surveillance data, additional data should be collected and reported on all rabid domestic animals. In this regard, essential data elements include age, sex, neuter status, ownership status, quarantine dates (if any), date of onset of any clinical signs, and complete vaccination history. Rabid animals with a history of importation into the United States within the past 60 days are immediately notifiable by state health departments to the CDC; for all indigenous cases, standard notification protocols should be followed.[19]

10. Rabies diagnosis.

a) The direct fluorescent antibody test is the gold standard for rabies diagnosis. The test should be performed in accordance with the established national standardized protocol (www.cdc.gov/rabies/pdf/rabiesdfaspv2.pdf) by a qualified laboratory that has been designated by the local or state health department.[20,21] Animals submitted for rabies testing should be euthanized[22,23] in such a way as to maintain the integrity of the brain so that the laboratory can recognize anatomic structures. Except in the case of very small animals, such as bats, only the head or entire brain (including brainstem) should be submitted to the laboratory. To facilitate prompt laboratory testing, submitted specimens should be stored and shipped under refrigeration without delay. The need to thaw frozen specimens will delay testing. Chemical fixation of tissues should be avoided to prevent significant testing delays and because such fixation might preclude reliable testing. Questions about testing of fixed tissues should be directed to the local rabies laboratory or public health department.

b) Rabies testing should be available outside of normal business hours at the discretion of public health officials to expedite exposure management decisions.[20] When confirmatory testing is needed by state health departments (eg, in the event of inconclusive results, unusual species, or mass exposures), the CDC rabies laboratory can provide additional testing and results within 24 hours of sample receipt.[24]

c) Professional associations such as the Association of Public Health Laboratories should advocate for, distribute, and promote the development of guidelines for routinely assessing testing practices within rabies laboratories to ensure maintenance of quality and safety.

d) A direct rapid immunohistochemical test (referred to as dRIT) is being used by trained field personnel in surveillance programs for specimens not involved in human or domestic animal exposures.[25–28] All positive direct rapid immunohistochemical test results need to be confirmed by means of direct fluorescent antibody testing at a qualified laboratory.

e) Currently, there are no commercially available, USDA-licensed rapid test kits for rabies diagnosis. Unlicensed tests should not be used owing to the following concerns: sensitivity and specificity of these tests are not known, the tests have not been validated against current standard methods, the excretion of virus in the saliva is intermittent and the amount varies over time, any unlicensed test result would

need to be confirmed by validated methods such as direct fluorescent antibody testing on brain tissue, and the interpretation of results from unlicensed tests may place exposed animals and persons at risk.

11. Rabies serology. Some jurisdictions require evidence of vaccination and rabies virus antibodies for animal importation purposes. Rabies virus antibody titers are indicative of a response to vaccine or infection. Titers do not directly correlate with protection because other immunologic factors also play a role in preventing rabies and our abilities to measure and interpret those other factors are not well-developed. Therefore, evidence of circulating rabies virus antibodies in animals should not be used as a substitute for current vaccination in managing rabies exposures or determining the need for booster vaccination.[29–32]

12. Rabies research. Information derived from well-designed studies is essential for the development of evidence-based recommendations. Data are needed in several areas, including viral shedding periods for domestic livestock and lagomorphs, potential shedding of virus in milk, the earliest age at which rabies vaccination is effective, protective effect of maternal antibody, duration of immunity, postexposure prophylaxis protocols for domestic animals, models for treatment of clinical rabies, extralabel vaccine use in domestic animals and wildlife rabies reservoir species, host-pathogen adaptations and dynamics, and the ecology of wildlife rabies reservoir species, especially in relation to the use of oral rabies vaccines.

B. Prevention and control methods in domestic and confined animals

1. Preexposure vaccination and management. Adherence to a regular rabies vaccination schedule is critical to protect animals against recognized and unrecognized rabies exposures. Parenteral animal rabies vaccines should be administered only by or under the direct supervision of a licensed veterinarian on premises. Rabies vaccines may be administered under the supervision of a licensed veterinarian to animals held in animal shelters before release.[33,34] The veterinarian signing a rabies vaccination certificate must ensure that the person who administered the vaccine is identified on the certificate and has been appropriately trained in vaccine storage, handling, and administration and in the management of adverse events. This ensures that a qualified and responsible person can be held accountable for properly vaccinating the animal.

Within 28 days after initial vaccination, a peak rabies virus antibody titer is expected, and the animal can be considered immunized.[31,35–37] Regardless of the age of the animal at initial vaccination, a booster vaccination should be administered 1 year later (*see* Part II and Appendix 1). An animal is currently vaccinated and is considered immunized immediately after any booster vaccination.[38,39]

a) Booster vaccination. Following the initial vaccination, booster vaccinations should be given in a manner consistent with the manufacturer's label. If a previously vaccinated animal is overdue for any booster vaccination, including the first booster vaccination due 1 year after initial vaccination, it should be given a booster vaccination. Immediately after this booster vaccination, the animal is considered currently vaccinated and should be placed on a booster vaccination schedule consistent with the label of the vaccine used. There are no laboratory or epidemiological data to support the annual or biennial administration of 3-year vaccines after completion of the initial vaccine series (ie, the initial vaccination and 1-year booster vaccination).

b) Dogs, cats, and ferrets. All dogs, cats, and ferrets should be vaccinated against rabies and revaccinated in accordance with recommendations in this compendium (Appendix 1).

c) Livestock. All horses should be vaccinated against rabies.[40] Livestock, including species for which licensed vaccines are not available, that have frequent contact with humans (eg, in petting zoos, fairs, and other public exhibitions) should be vaccinated against rabies.[41,42] Consideration should also be given to vaccinating livestock that are particularly valuable.

d) Captive wild animals and wild animal hybrids (the offspring of wild animals crossbred to domestic animals).

(1) Wild animals and wild animal hybrids should not be kept as pets.[43,44] No parenteral rabies vaccines are licensed for use in wild animals or wild animal hybrids.[45]

(2) Animals that are farmed (eg, for food, fur, or fiber) or maintained in exhibits or zoological parks and that are not completely excluded from all contact with rabies vectors can become infected.[46] Moreover, wild animals might be incubating rabies when initially captured. Therefore, wild-caught animals susceptible to rabies should be quarantined for a minimum of 6 months.

(3) Employees who work with animals in exhibits or zoological parks should receive preexposure rabies vaccination. The use of preexposure or postexposure rabies vaccination for handlers who work with animals at such facilities might reduce the need for euthanasia of captive animals that expose handlers. Carnivores and bats should be housed in a manner

that precludes direct contact with the public.[41,42] Consideration may be given to vaccinating animals that are particularly valuable (*see* Part II. D. Vaccination of wildlife and wild animal hybrids).

2. Stray animals. Stray dogs, cats, and ferrets should be removed from the community, and mechanisms should be put in place to facilitate voluntary surrender of animals to prevent abandonment. Local health departments and animal control officials can enforce the removal of strays more effectively if owned animals are required to have identification and be confined or kept on leash. Strays should be impounded for at least 3 business days to determine whether human exposure has occurred and to give owners sufficient time to reclaim animals.

Stray and feral cats serve as a significant source of rabies exposure risk.[47] If communities allow maintenance of feral cat colonies despite this risk, they should safeguard the health of the cats and the communities in which they reside by requiring that cats receive initial rabies vaccinations and appropriately scheduled booster vaccinations.

3. Importation and interstate movement of animals.

a) Areas with dog-to-dog rabies transmission. Canine rabies virus variants have been eliminated from the United States[3,7]; however, rabid dogs and a rabid cat have been introduced into the continental United States from areas with dog-to-dog rabies transmission.[4–6,48,49] The movement of dogs for the purposes of adoption or sale from areas with dog-to-dog rabies transmission increases the risk of introducing canine-transmitted rabies to areas where it does not currently exist, and this practice should be prohibited.

b) International importation. Current federal regulations are insufficient to prevent the introduction of rabid animals into the United States and must be strengthened and appropriately enforced.[4–6,48,49] The CDC and USDA APHIS have regulatory authority over the importation of dogs and cats into the United States.[6] Importers of dogs must comply with rabies vaccination requirements.[50,51] These regulations require that dogs from rabies-endemic countries be currently vaccinated against rabies prior to importation. The appropriate health official of the state of destination should be notified by the appropriate federal authorities within 72 hours of the arrival of any unvaccinated imported dog required to be placed in confinement (as defined by the CDC[52]) under these regulations. Failure of the owner to comply with these confinement requirements should be promptly reported to the CDC's Division of Global Migration and Quarantine (CDCAnimalImports@cdc.gov).

All imported dogs and cats are also subject to state and local laws governing rabies and should be currently vaccinated against rabies with USDA-licensed products in accordance with this compendium. Failure of the owner to comply with state or local requirements should be referred to the appropriate state or local official.

c) Interstate movement (including commonwealths and territories). Before interstate movement occurs, dogs, cats, ferrets, and horses should be currently vaccinated against rabies in accordance with this compendium. Animals in transit should be accompanied by a current, valid rabies vaccination certificate such as Form 51 from the National Association of State Public Health Veterinarians.[53] When an interstate health certificate or certificate of veterinary inspection is required, it should contain the same rabies vaccination information as Form 51.

4. Adjunct procedures. Methods or procedures that enhance rabies control include the following[54]:

a) Identification. Dogs, cats, and ferrets should be identified (eg, metal or plastic tags or microchips) to allow for verification of rabies vaccination status.

b) Licensure. Registration or licensure of all dogs, cats, and ferrets is an integral component of an effective rabies control program. A fee is frequently charged for such licensure, and revenues collected are used to maintain rabies or animal control activities. Evidence of current vaccination should be an essential prerequisite to licensure.

c) Canvassing. House-to-house canvassing by animal control officials facilitates enforcement of vaccination and licensure requirements.

d) Citations. Citations are legal summonses issued to owners for violations, including the failure to vaccinate or license their animals. The authority for officers to issue citations should be an integral part of animal control programs.

e) Animal control. All local jurisdictions should incorporate training and continuing education of personnel regarding stray-animal control, leash laws, animal bite prevention, and rabies prevention and control into their programs.

f) Public education. All local jurisdictions should incorporate education covering responsible pet ownership, bite prevention, and appropriate veterinary care into their programs.

5. Postexposure management. This section refers to any animal exposed (*see* Part I. A. 2. Rabies virus exposure) to a confirmed or suspected rabid animal. Wild mammalian carnivores, skunks, and bats that are not available or suitable for testing should be regarded as rabid. The rationale for

observation, confinement, or strict quarantine periods of exposed animals despite previous vaccination is based in part on the potential for overwhelming viral challenge, incomplete vaccine efficacy, improper vaccine administration, variable host immunocompetence, and immune-mediated death (ie, early death phenomenon).[13,55–57]

a) Dogs, cats, and ferrets. Any illness in an exposed animal should be reported immediately to the local health department. If signs suggestive of rabies develop (eg, paralysis or seizures), the animal should be euthanized, and the head or entire brain (including brainstem) should be submitted for testing (*see* Part I.A. 10. Rabies diagnosis).

(1) Dogs, cats, and ferrets that are current on rabies vaccination should immediately receive veterinary medical care for assessment, wound cleansing, and booster vaccination. The animal should be kept under the owner's control and observed for 45 days.

(2) Dogs, cats, and ferrets that have never been vaccinated should be euthanized immediately. There are currently no USDA-licensed biologics for postexposure prophylaxis of previously unvaccinated domestic animals, and there is evidence that the use of vaccine alone will not reliably prevent the disease in these animals.[58] If the owner is unwilling to have the animal euthanized, the animal should be placed in strict quarantine for 4 (dogs and cats) or 6 (ferrets) months. Strict quarantine in this context refers to confinement in an enclosure that precludes direct contact with people and other animals. A rabies vaccine should be administered at the time of entry into quarantine to bring the animal up to current rabies vaccination status. Administration of vaccine should be done as soon as possible. It is recommended that the period from exposure to vaccination not exceed 96 hours.[59,60] If vaccination is delayed, public health officials may consider increasing the quarantine period for dogs and cats from 4 to 6 months, taking into consideration factors such as the severity of exposure, the length of delay in vaccination, current health status, and local rabies epidemiology.

(3) Dogs and cats that are overdue for a booster vaccination and that have appropriate documentation of having received a USDA-licensed rabies vaccine at least once previously should immediately receive veterinary medical care for assessment, wound cleansing, and booster vaccination. The animal should be kept under the owner's control and observed for 45 days.[39] If booster vaccination is delayed, public health officials may consider increasing the observation period for the animal, taking into consideration factors such as the severity of exposure, the length of delay in booster vaccination, current health status, and local rabies epidemiology.

(4) Dogs and cats that are overdue for a booster vaccination and without appropriate documentation of having received a USDA-licensed rabies vaccine at least once previously should immediately receive veterinary medical care for assessment, wound cleansing, and consultation with local public health authorities.

(a) The animal can be treated as unvaccinated, immediately given a booster vaccination, and placed in strict quarantine (*see* Part I. B. 5. a) (2)).

(b) Alternatively, prior to booster vaccination, the attending veterinarian may request guidance from the local public health authorities in the possible use of prospective serologic monitoring. Such monitoring would entail collecting paired blood samples to document prior vaccination by providing evidence of an anamnestic response to booster vaccination. If an adequate anamnestic response is documented, the animal can be considered to be overdue for booster vaccination (*see* Part I. B. 5. a) (3)) and observed for 45 days.[39] If there is inadequate evidence of an anamnestic response, the animal is considered to have never been vaccinated and should be placed in strict quarantine (*see* Part I. B. 5. a) (2)).

(5) Ferrets that are overdue for a booster vaccination should be evaluated on a case-by-case basis, taking into consideration factors such as the severity of exposure, time elapsed since last vaccination, number of previous vaccinations, current health status, and local rabies epidemiology, to determine need for euthanasia or immediate booster vaccination followed by observation or strict quarantine.

b) Livestock. All species of livestock are susceptible to rabies; cattle and horses are the most frequently reported infected species.[3] Any illness in an exposed animal should be reported immediately to the local health department and animal health officials. If signs suggestive of rabies develop, the animal should be euthanized, and the head or entire brain

(including brainstem) should be submitted for testing (*see* Part I.A. 10. Rabies diagnosis).

(1) Livestock that have never been vaccinated should be euthanized immediately. Animals that are not euthanized should be confined and observed on a case-by-case basis for 6 months.

(2) Livestock that are current on rabies vaccination with a USDA-licensed vaccine approved for that species should be given a booster vaccination immediately and observed for 45 days.

(3) Livestock overdue for a booster vaccination should be evaluated on a case-by-case basis, taking into consideration factors such as severity of exposure, time elapsed since last vaccination, number of previous vaccinations, current health status, and local rabies epidemiology, to determine need for euthanasia or immediate booster vaccination followed by observation or strict quarantine.

(4) Multiple rabid animals in a herd and herbivore-to-herbivore transmission of rabies are uncommon.[61] Therefore, restricting the rest of the herd if a single animal has been exposed to or infected with rabies is usually not necessary.

(5) Rabies virus is widely distributed in the tissues of rabid animals.[62–64] Tissues and products from a rabid animal should not be used for human or animal consumption[65,66] or transplantation.[67] However, pasteurization and cooking will inactivate rabies virus.[68] Therefore, inadvertently drinking pasteurized milk or eating thoroughly cooked animal products does not constitute a rabies exposure.

(6) Handling and consumption of uncooked tissues from exposed animals might carry a risk for rabies transmission.[69] Persons handling exposed animals, carcasses, and tissues should use appropriate barrier precautions.[69,70] State and local public health authorities, state meat inspectors, and the USDA Food Safety and Inspection Service should be notified if exposures occur in animals intended for commercial use. Animals should not be presented for slaughter in a USDA-regulated establishment if such animals originate from a quarantine area and have not been approved for release by the proper authority. If an exposed animal is to be custom slaughtered or home slaughtered for consumption, it should be slaughtered immediately after exposure, and all tissues should be cooked thoroughly.

c) Other animals. Other mammals exposed to a rabid animal should be euthanized immediately. Animals maintained in USDA-licensed research facilities or accredited zoological parks should be evaluated on a case-by-case basis in consultation with public health authorities. Management options may include quarantine, observation, or administration of rabies biologics.

6. Management of animals that bite humans.

a) Dogs, cats, and ferrets. Rabies virus is excreted in the saliva of infected dogs, cats, and ferrets during illness and for only a few days before the onset of clinical signs or death.[71–73] Regardless of rabies vaccination status, a healthy dog, cat, or ferret that exposes a person should be confined and observed daily for 10 days from the time of the exposure[74]; administration of rabies vaccine to the animal is not recommended during the observation period to avoid confusing signs of rabies with rare adverse vaccine reactions.[15] Any illness in the animal should be reported immediately to the local health department. Such animals should be evaluated by a veterinarian at the first sign of illness during confinement. If signs suggestive of rabies develop, the animal should be euthanized, and the head or entire brain (including brainstem) should be submitted for testing (*see* Part I.A. 10. Rabies diagnosis). Any stray or unwanted dog, cat, or ferret that exposes a person may be euthanized immediately, and the head or entire brain (including brainstem) should be submitted for testing (*see* Part I.A. 10. Rabies diagnosis).

b) Other animals. Other animals that might have exposed a person to rabies should be reported immediately to the local health department. Management of animals other than dogs, cats, and ferrets depends on the species, the circumstances of the exposure, the epidemiology of rabies in the area, the exposing animal's history and current health status, and the animal's potential for exposure to rabies. The shedding period for rabies virus is undetermined for most species. Previous vaccination of these animals might not preclude the necessity for euthanasia and testing.

7. Outbreak prevention and control. The emergence of new rabies virus variants or the introduction of nonindigenous viruses poses a significant risk to humans, domestic animals, and wildlife.[75–82] A rapid and comprehensive response involves coordination of multiple agencies (*see* Part I.A. 3. Interdisciplinary approach) to accomplish the following outcomes[83]:

- Characterize the virus at the national reference laboratory.
- Identify and control the source of the introduction.

- Enhance laboratory-based surveillance in wild and domestic animals.
- Increase animal rabies vaccination rates.
- Restrict the movement of animals.
- Evaluate the need for wildlife intervention activities (eg, point infection control, trap-vaccinate-release programs, and oral rabies vaccination programs).
- Provide public and professional outreach and education.

8. Disaster response. Animals might be displaced during and after man-made or natural disasters and require emergency sheltering.[84–86] Animal rabies vaccination and exposure histories are often not available for displaced animals, and disaster response can create situations where animal caretakers might lack appropriate training or preexposure vaccination. In such situations, it is critical to implement and coordinate rabies prevention and control measures to reduce the risk of rabies transmission and the need for human postexposure prophylaxis. Such measures include the following actions:

- Coordinate relief efforts of individuals and organizations with the local emergency operations center before deployment.
- Examine each animal at a triage site for possible bite injuries or signs of rabies.
- Isolate animals exhibiting signs of rabies pending evaluation by a veterinarian.
- Ensure that all animals have a unique identifier.
- Administer a rabies vaccine to all dogs, cats, and ferrets unless reliable proof of current vaccination exists.
- Adopt minimum standards for animal caretakers as feasible, including use of personal protective equipment, completion of the preexposure rabies vaccination series prior to deployment, and provision of appropriate training.[87]
- Maintain documentation of animal disposition and location (eg, returned to owner, died or euthanized, adopted, or relocated to another shelter with address of new location).
- Provide facilities to confine and observe animals involved in exposures (*see* Part I. B. 6. Management of animals that bite humans).
- Report human exposures to appropriate public health authorities (*see* Part I. A. 2. Rabies virus exposure).

C. Prevention and control methods related to wildlife

The public should be warned not to handle or feed wild mammals. Wild mammals and wild animal hybrids that expose persons, pets, or livestock should be considered for euthanasia and rabies testing. A person exposed by any wild mammal should immediately wash the wound thoroughly and report the incident to a health-care provider who, in consultation with public health authorities, can evaluate the need for postexposure prophylaxis.[11,12]

Translocating infected wildlife has contributed to the spread of rabies,[75–80,88] and animals that appear healthy can still be rabid. Therefore, translocation (ie, moving live animals from their point of capture and releasing them) of known rabies reservoir species should be prohibited.[89] Whereas state-regulated wildlife rehabilitators and nuisance-wildlife control operators should play a role in a comprehensive rabies control program, minimum standards for these persons who handle wild mammals should include rabies preexposure vaccination, specific rabies prevention and control training, and ongoing continuing education.

1. Carnivores. The use of oral rabies vaccines for mass vaccination of free-ranging wildlife should be considered in selected situations, with the approval of appropriate state and local agencies.[16,90] There have been documented successes using oral rabies vaccines to control rabies in wildlife in North America.[90–93] The currently licensed vaccinia-vectored oral rabies vaccine is labeled for use in raccoons and coyotes. Research to improve existing oral rabies vaccine and baits and to develop and test novel products to determine safety and efficacy must be encouraged. The distribution of oral rabies vaccines should be based on scientific assessments of the target species and followed by timely and appropriate analysis of surveillance data, with results provided to all stakeholders. In addition, parenteral vaccination (trap-vaccinate-release) of wildlife rabies reservoir species may be integrated into coordinated oral rabies vaccine programs to enhance their effectiveness. Continuous and persistent programs for trapping or poisoning wildlife are not effective in reducing populations of wildlife rabies reservoir species on a statewide basis. However, limited population control in high-contact areas (eg, picnic grounds, camps, and suburban areas) might be indicated for the removal of selected high-risk species of wildlife. State agriculture, public health, and wildlife agencies should be consulted for planning, coordination, and evaluation of vaccination or point infection control programs.[16]

2. Bats. From the 1950s to today, indigenous rabid bats have been reported from every state except Hawaii and have caused rabies in at least 54 humans in the United States.[94–103] Bats should be excluded, using appropriate methods, from houses, public buildings, and adjacent structures to prevent direct association with humans.[104,105] Such structures should then be made bat-proof by sealing entrances used by bats. Controlling rabies in bats through programs designed to reduce bat populations is neither feasible nor desirable.

Part II. Recommendations for Parenteral Rabies Vaccination Procedures

A. Vaccine administration

All animal rabies vaccines should be restricted to use by or under the direct supervision of a veterinar-

ian,[106] except as recommended otherwise (*see* Part I. B. 1. Preexposure vaccination and management).

B. Vaccine selection

All vaccines licensed by the USDA and marketed in the United States at the time of publication of this compendium are listed (Appendix 1). Newly approved vaccines and changes in label specifications made subsequent to publication should be considered as part of this list. Any of the listed vaccines can be used for revaccination, even if the product is not the same as the one previously administered. Vaccines used in state and local rabies control programs should have at least a 3-year duration of immunity. This constitutes the most effective method of increasing the proportion of immunized dogs and cats in any population.[107]

C. Adverse events

Currently, no epidemiological association exists between any particular licensed vaccine product and adverse events.[15,34,108–110] Although rare, adverse events such as vomiting, injection site swelling, lethargy, hypersensitivity, and the occurrence of rabies despite previous vaccination of an animal have been reported. Adverse events should be reported to the vaccine manufacturer and to USDA APHIS's Center for Veterinary Biologics (www.aphis.usda.gov; search for "adverse event reporting"). Although ill animals may not have a full immunologic response to vaccination, there is no evidence to suggest that adverse events are more likely to occur with rabies vaccination of ill than healthy animals. A veterinarian choosing to temporarily delay vaccinating an animal with an acute illness or condition should ensure that the animal is vaccinated as soon as possible. Animals with a previous history of anaphylaxis can be medically managed and observed after vaccination.[56] Severe adverse events related to rabies vaccination are extremely rare in animals. Decisions concerning rabies vaccination of animals with well-documented severe adverse events to rabies vaccine must be made within the context of a valid veterinarian-client-patient relationship. Due consideration should be given to the attendant risks and benefits of not vaccinating, including regulatory noncompliance. Animals not currently vaccinated that experience a rabies exposure are at greater risk for infection and death and also put their owners and the community at risk.

D. Vaccination of wildlife and wild animal hybrids

The safety and efficacy of parenteral rabies vaccines in wildlife and wild animal hybrids have not been established, and no rabies vaccines are currently licensed for use in these animals. Thus, any use of rabies vaccines in these animals is considered extralabel use. Zoos or research institutions may establish vaccination programs in an attempt to protect valuable animals, but these should not replace appropriate public health activities that protect humans (*see* Part I. B. 1. d) (3)).

E. Accidental human exposure to rabies vaccines

Human exposure to parenteral animal rabies vaccines listed in Appendix 1 does not constitute a risk for rabies virus infection. Human exposure to vaccinia-vectored oral rabies vaccines should be reported to state health officials.[111,112]

F. Rabies certificates

All agencies and veterinarians should use Form 51, the rabies vaccination certificate recommended by the National Association of State Public Health Veterinarians,[53] or should use an equivalent. The form must be completed in full and signed by the administering or supervising veterinarian. Computer-generated forms containing the same information are also acceptable.

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Appendix 1

Rabies vaccines licensed and marketed in the United States, 2016.

Product name	Produced by	Marketed by	For use in	Dose	Age at primary vaccination*	Booster vaccination	Route of inoculation
Monovalent (inactivated)							
RABVAC 1	Boehringer Ingelheim Vetmedica Inc License No. 124	Boehringer Ingelheim Vetmedica Inc	Dogs and cats	1 mL	3 mo	Annually	IM or SC
RABVAC 3	Boehringer Ingelheim Vetmedica Inc License No. 124	Boehringer Ingelheim Vetmedica Inc	Dogs and cats	1 mL	3 mo	1 year later and triennially	IM or SC
			Horses	2 mL	3 mo	Annually	IM
EQUI-RAB with Havlogen	Merck Animal Health License No. 165A	Merck Animal Health	Horses	1 mL	4 mo	Annually	IM
DEFENSOR 1	Zoetis License No. 190	Zoetis	Dogs	1 mL	3 mo	Annually	IM or SC
			Cats	1 mL	3 mo	Annually	SC
DEFENSOR 3	Zoetis License No. 190	Zoetis	Dogs	1 mL	3 mo	1 year later and triennially	IM or SC
			Cats	1 mL	3 mo	1 year later and triennially	SC
			Sheep and cattle	2 mL	3 mo	Annually	IM
NOBIVAC: 1-Rabies	Zoetis License No. 190	Merck Animal Health	Dogs	1 mL	3 mo	Annually	IM or SC
			Cats	1 mL	3 mo	Annually	SC
NOBIVAC: 3-Rabies and 3-Rabies CA	Zoetis License No. 190	Merck Animal Health	Dogs	1 mL	3 mo	1 year later and triennially	IM or SC
			Cats	1 mL	3 mo	1 year later and triennially	SC
			Sheep and cattle	2 mL	3 mo	Annually	IM
IMRAB 1	Merial Inc License No. 298	Merial Inc	Dogs and cats	1 mL	3 mo	Annually	SC
IMRAB 1 TF	Merial Inc License No. 298	Merial Inc	Dogs and cats	1 mL	3 mo	Annually	SC
IMRAB 3	Merial Inc License No. 298	Merial Inc	Dogs and cats	1 mL	3 mo	1 year later and triennially	IM or SC
			Sheep	2 mL	3 mo	1 year later and triennially	IM or SC
			Cattle and horses	2 mL	3 mo	Annually	IM or SC
			Ferrets	1 mL	3 mo	Annually	SC
IMRAB 3 TF	Merial Inc License No. 298	Merial Inc	Dogs and cats	1 mL	3 mo	1 year later and triennially	IM or SC
			Ferrets	1 mL	3 mo	Annually	SC
IMRAB Large Animal	Merial Inc License No. 298	Merial Inc	Dogs and cats	1 mL	3 mo	1 year later and triennially	IM or SC
			Cattle and horses	2 mL	3 mo	Annually	IM or SC
			Sheep	2 mL	3 mo	1 year later and triennially	IM or SC
Monovalent (rabies glycoprotein; live canary pox vector)							
PUREVAX Feline Rabies	Merial Inc License No. 298	Merial Inc	Cats	1 mL	3 mo	Annually	SC
PUREVAX Feline Rabies 3YR	Merial Inc License No. 298	Merial Inc	Cats	1 mL	3 mo	1 year later and triennially	SC
Combination (inactivated)							
Equine POTOMAVAC + IMRAB	Merial Inc License No. 298	Merial Inc	Horses	1 mL	3 mo	Annually	IM
Combination (rabies glycoprotein; live canary pox vector)							
PUREVAX Feline 3/Rabies	Merial Inc License No. 298	Merial Inc	Cats	1 mL	8 wk	Every 3 to 4 wk until 3 mo and annually	SC
					3 mo	3 to 4 wk later and annually	SC
PUREVAX Feline 4/Rabies	Merial Inc License No. 298	Merial Inc	Cats	1 mL	8 wk	Every 3 to 4 wk until 3 mo and annually	SC
					3 mo	3 to 4 wk later and annually	SC
Oral (rabies glycoprotein; live vaccinia vector)†							
RABORAL V-RG	Merial Inc License No. 298	Merial Inc	Raccoons and coyotes	NA	NA	As determined by local authorities	Oral

*One month = 28 days. †Oral rabies vaccines are restricted for use in federal and state rabies control programs.
NA = Not applicable.
Information is provided by the vaccine manufacturers and USDA APHIS's Center for Veterinary Biologics and is subject to change.

Appendix 2

Rabies vaccine manufacturer contact information

Manufacturer	Phone No.	URL
Boehringer Ingelheim Vetmedica Inc	800–638–2226	www.bi-vetmedica.com
Merck Animal Health Inc	800–521–5767	www.merck-animal-health-usa.com
Merial Inc	888–637–4251	us.merial.com
Zoetis	800–366–5288	www.zoetis.com

Push to Print Form

RABIES VACCINATION CERTIFICATE

NASPHV FORM 51 (revised 2007)

Push to Reset Form

RABIES TAG #

MICROCHIP #

Owner's Name & Address Print Clearly

LAST FIRST M.I.

TELEPHONE #

NO. STREET CITY STATE ZIP

SPECIES
Dog ☐
Cat ☐
Ferret ☐
Other: ☐ _____ (specify)

AGE
_____ Months ☐
_____ Years ☐

SEX ☐ Male
☐ Female
☐ Neutered

SIZE
Under 20 lbs. ☐
20 - 50 lbs. ☐
Over 50 lbs. ☐

PREDOMINANT BREED

ANIMAL NAME

PREDOMINANT COLORS/MARKINGS

Animal Control License ☐ 1 Yr ☐ 3 Yr ☐ Other _____

DATE VACCINATED

_____
Month / Day / Year

Product Name: _____

Manufacturer: (First 3 letters) ☐☐☐

☐ 1 Yr USDA Licensed Vaccine
☐ 3 Yr USDA Licensed Vaccine
☐ 4 Yr USDA Licensed Vaccine

Veterinarian's Name: _____

License Number: _____

_____
Veterinarian's Signature

Address: _____

NEXT VACCINATION DUE BY:

_____
Month / Day / Year

☐ Initial dose ☐ Booster dose

_____
Vaccine Serial (lot) Number

New Section adopted by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

ARTICLE 3. FEEDING OF ANIMALS

R3-2-301. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-301 renumbered from Section R3-9-301 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-302. Permit to Feed Garbage to Swine; Requirements

A swine garbage feeding permit holder or applicant for a permit to feed garbage to swine shall comply with the following requirements:

1. An approved cooker is installed, is in operating condition on the premises, and fenced off from all swine.
2. A concrete slab, trough, or other easily cleanable area, and equipment for feeding garbage is provided.
3. Premises utilized for swine garbage feeding are reasonably clean, free of litter, adequately drained, and provide for removal of animal excrement and garbage not consumed.
4. Individually operated swine garbage feeding premises are separated from other swine premises by a minimum distance of 200 feet in all directions and constructed to prevent the escape of any swine.
5. In addition, all swine garbage feeding permit holders shall follow all federal garbage feeding regulations as outlined in 9 CFR Part 166 as revised on January 1, 2018.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-302 renumbered from Section R3-9-302 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

R3-2-401. Definitions

The following terms apply to this Article:

"Biologics" means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

"Foreign Animal Disease" means a transboundary animal disease or pest, or an aquatic animal disease or pest, not known to exist in the United States.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-401 renumbered from Section R3-9-401 (Supp. 91-4). Former Section R3-2-401 renumbered to R3-2-402; new Section R3-2-401 adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories

A. All veterinarians and laboratories performing diagnostic services on animals shall:

B. Notify the State Veterinarian at (602) 542-4293 and diseasereporting@azda.gov, within four hours of diagnosing or suspecting any disease or clinical signs of disease listed below:

1. African horse sickness
2. African swine fever
3. African trypanosomiasis
4. Anthrax
5. Avian influenza
6. Bovine Babesiosis
7. Bovine spongiform encephalopathy
8. Classical Swine Fever
9. Contagious agalactia
10. Contagious bovine pleuropneumonia
11. Contagious caprine pleuropneumonia
12. Crimean Congo Hemorrhagic Disease
13. Dourine
14. Enterovirus encephalomyelitis
15. Equine infectious anaemia
16. Equine Neurologic Diseases (Eastern, Western, Venezuelan, West Nile Virus, Equine Herpesvirus-1/ Equine Herpesvirus Myeloencephalopathy)
17. Foot and Mouth Disease
18. Glanders
19. Heartwater (Ehrlichia ruminantium)
20. Hemorrhagic septicemia (Pasteurella multocida)
21. Hendra virus (Equine morbillivirus)
22. Infectious haematopoietic necrosis of fish
23. Japanese encephalitis
24. Lumpy skin disease
25. Malignant catarrhal fever
26. Melioidosis (Burkholderia pseudomallei)
27. Nairobi sheep disease
28. Newcastle Disease
29. Nipah
30. Peste des Petits Ruminants
31. Rabies
32. Rabbit Hemorrhagic Disease
33. Rift Valley Fever
34. Rinderpest
35. Schmallenberg virus/Akabane
36. Senecavirus A
37. Screwworm myiasis
38. Sheep and goat pox
39. Surra (Trypanosoma evansi)
40. Swine Vesicular Disease
41. Theileriosis (T. parva or T. annulata)
42. Tuberculosis (Mycobacterium bovis)
43. Tularemia
44. Turkey rhinotracheitis (Avian metapneumovirus)
45. Trypanosomiasis
46. Viral hemorrhagic septicemia of fish
47. Vesicular exanthema of swine virus
48. Vesicular stomatitis

B. Notify the State Veterinarian at (602) 542-4293 and diseasereporting@azda.gov, within 24 hours of diagnosing or suspecting any disease or clinical signs of disease listed below:

1. Brucellosis (Brucella spp.)
2. Chronic Wasting Disease in Cervids
3. Contagious Equine Metritis

4. Epizootic Lymphangitis
5. Equine Piroplasmosis
6. Equine Viral Arteritis
7. Fowl typhoid (Salmonella gallinarum)
8. Ornithosis (Psittacosis, Avian Chlamydiosis, Chlamydophila psittaci)
9. Pigeon Fever (Corynebacterium pseudotuberculosis)
10. Pseudorabies (Aujeszky's disease)
11. Q fever
12. Pullorum disease (Salmonella pullorum)
13. Scrapie
14. Sheep scabies
15. Strangles (Strep equi spp. equi)
16. Swine enteric coronavirus diseases
17. Trichomoniasis (Tritrichomonas foetus)

Aquatic Diseases

1. Crayfish plague
2. Epizootic hematopoietic necrosis disease
3. Epizootic ulcerative syndrome
4. Gyrodactylosis
5. Abalone Viral Ganglioneuritis
6. Bonamiosis (B. exitiosa/ostreae)
7. Marteiliosis (M. refringens)
8. Perkinsosis (P. marinus /olseni)
9. Salmonid alphavirus infection
10. Infection with Xenohaliotis californiensis
11. Infectious hematopoietic necrosis
12. Infectious hypodermal and haematopoietic necrosis
13. Infectious myonecrosis
14. Infectious salmon anemia
15. Koi herpesvirus disease
16. Necrotizing hepatopancreatitis
17. Red sea bream iridoviral disease
18. Spring viremia of carp
19. Taura syndrome
20. Tilapia Lake Virus (TiLV)
21. Viral hemorrhagic septicemia
22. Viral nervous necrosis (VNN)
23. White spot disease
24. White tail disease
25. Yellowhead

C. Notify the State Veterinarian by email at diseasereporting@azda.gov or facsimile at (602) 542-4290 within 30 days after diagnosing any of the diseases listed below:

1. Anaplasmosis
2. Avian infectious bronchitis
3. Avian infectious laryngotracheitis
4. Bluetongue
5. Bovine cysticercosis
6. Bovine genital campylobacteriosis
7. Bovine viral diarrhea
8. Camelpox
9. Caprine arthritis/encephalitis
10. Duck viral hepatitis
11. Echinococcosis/hydatidosis
12. Enzootic abortion of ewes
13. Enzootic bovine leukosis (BLV)
14. Epizootic hemorrhagic disease
15. Equine Herpesvirus - 4
16. Equine influenza
17. Infectious bovine rhinotracheitis
18. Infectious bursal disease
19. Johne's disease
20. Leishmaniasis
21. Leptospirosis
22. Maedi-visna (OPP)
23. Marek's disease
24. Mycoplasma Gallisepticum
25. Mycoplasma Synoviae
26. Myxomatosis in rabbits
27. Porcine cysticercosis
28. Porcine Reproductive and Respiratory Syndrome
29. Paratyphoid abortion in Ewes (Salmonella abortusovis)
30. Swine influenza
31. Trichinellosis (Trichinella spiralis)

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-402 renumbered from Section R3-9-402 (Supp. 91-4). Former Section R3-2-402 renumbered to R3-2-403; new Section R3-2-402 renumbered from R3-2-401 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-403. Quarantine for Diseased Animals

A. A quarantine order shall be issued by the Director or his designee when the presence of a Foreign Animal Disease is suspected or diagnosed.

B. A quarantine order may be issued by the Director or his designee on the advice of the State Veterinarian when the presence of a disease is suspected or diagnosed.

C. The quarantine order may isolate specific animals, premises, counties, districts, or sections of the state and shall restrict the movement of animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-403 renumbered from Section R3-9-403 (Supp. 91-4). Former Section R3-2-403 repealed; new Section R3-2-403 renumbered from Section R3-2-402 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4). New Section made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-404. Importation, Manufacture, Sale, and Distribution of Biologics

A. Any person importing, manufacturing, selling, or distributing any biologic intended for diagnostic or therapeutic treatment of animals shall request, in writing, permission from the State Veterinarian.

B. The State Veterinarian shall not approve the importation, manufacture, sale, or distribution of any biologic that will interfere with the state's animal disease control programs.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-404 renumbered from Section R3-9-404 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-

1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-405. Depopulation of Animals Infected with a Foreign Animal Disease

When a Foreign Animal Disease is diagnosed, the State Veterinarian may order the owner, agent, or feedlot operator to immediately depopulate and dispose of all infected and exposed animals on the premises if necessary to prevent the spread of the disease among animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-405 renumbered from Section R3-9-405 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-406. Disease Control; Designated Feedlots

A. Designated feedlots are subject to the following restrictions:

B. A designated feedlot shall have a restricted feeding pen. A restricted feeding pen shall:
1. Be isolated from all other pens,
2. Have separate loading and unloading chutes, alleys, and handling facilities from all other pens,
3. Not share water or feeding facilities accessible to other areas,
4. Be posted at all corners with permanently affixed signs stating "Restricted Feeding Area,"
5. Have a minimum of eight feet between restricted and other pens and facilities, and
6. Have no common fences or gates with other pens.

C. An operator may place diseased cattle or bison that are under state quarantine into a restricted feeding pen as follows:
1. All cattle or bison, except steers and spayed heifers, shall be branded with an "F" at least two inches in height, adjacent to the tailhead before entering the pen; and
   a. Imported cattle or bison, of any age and from any area shall be transported under seal and shall be accompanied by an entry permit number and a Certificate of Veterinary Inspection or federal restricted movement document; or
   b. Native Arizona cattle or bison shall be accompanied by an Arizona livestock inspection certificate, as approved by the State Veterinarian or designee.

D. An operator may move cattle or bison from a restricted feeding pen to slaughter or to another designated feedlot only by prior written approval of the State Veterinarian or APHIS veterinarian.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-406 renumbered from Section R3-9-406 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-407. Disease Control; Equine Infectious Anemia

A. The Arizona official test for EIA is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS, and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.

B. Disposal of equine testing positive.
1. When an Arizona equine tests positive to EIA, the testing laboratory shall notify the State Veterinarian by telephone at (602) 542-4293 and email at diseasereporting@azda.gov, within four hours.
2. The EIA-positive equine shall be quarantined at its current location, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian within two weeks of the notification.
3. Within 14 days of being notified by the testing laboratory of a positive test conducted under subsection (B)(2), the State Veterinarian or the State Veterinarian's designee shall brand the equine on the left side of its neck with "86A" not less than two inches in height.
4. Within 10 days after being branded, the EIA-positive equine shall be:
   a. Humanely destroyed,
   b. Confined to a screened stall marked "EIA Quarantine" that is at least 200 yards from other equine, or
   c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
5. Offspring of mares testing EIA-positive shall be quarantined, segregated from other equine, and tested for EIA at six months of age. Offspring testing positive shall be handled as prescribed in subsections (B)(3) and (B)(4).
6. If an EIA-positive equine is located on premises other than those of the owner at the time a quarantine under this Section, the State Veterinarian may authorize movement of the EIA-positive equine to the owner's premises if requested by the owner. Movement shall be under the direct supervision of the State Veterinarian or the State Veterinarian's designee. If the owner lives in another state, the owner may move the equine to that state with the permission of the chief livestock health official of the state and APHIS.

C. The State Veterinarian shall require testing of any equine located in the same facility as the EIA-positive equine or any equine considered exposed to the EIA-positive equine. The owner of the equine tested shall pay the expenses for the testing.

D. The owner of any equine found to be EIA-positive shall not be indemnified by the state for any loss caused by the destruction or loss of value of the equine.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-407 renumbered from Section R3-9-407 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January

1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-408. Disposition of Livestock Exposed to Rabies

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 2016 Part I, Section B. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-408 renumbered from Section R3-9-408 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-409. Rabies Vaccines for Animals

All animals in Arizona vaccinated against rabies shall be vaccinated as prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 2016 Part I Section A. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-409 renumbered from Section R3-9-409 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-410. Trichomonas Testing Requirements

A. Definitions. For purposes of this Section, the following definitions shall apply.

"Accredited Veterinarian" means an individual who is currently licensed to practice veterinary medicine in the State of Arizona and is an Accredited Level II by the United States Department of Agriculture, Animal Plant Health Inspection Service.

"Approved Laboratory" means any laboratory designated and approved by the State Veterinarian for examining *T. foetus* samples and reporting all results to the State Veterinarian.

"Bull" means an intact male bovine 12 months of age and older and is not confined to a drylot dairy.

"Change of Ownership" means when a bull is sold, leased, gifted, or exchanged and changes premises for breeding purposes in Arizona.

"Commingle" means cattle of opposite sex in the same enclosure or pasture with a reasonable opportunity for sexual contact.

"Direct to Slaughter" means transporting an animal from site of testing to a sale yard or directly to a slaughter plant without unloading or commingling prior to arrival.

"Official *T. foetus* bull test" means the sampling of a bull by a licensed, accredited veterinarian. Such test must be conducted after at least seven days separation from all female bovine. The bull and sample must be officially and individually identified and documented for laboratory submission. The official laboratory test shall be a polymerase chain reaction (PCR), or other technologies as approved by the State Veterinarian and adopted through a Director's Administrative Order. The test is not considered official until results are reported by the testing laboratory.

"Official *T. foetus* laboratory testing" means the laboratory procedures that shall be approved by the State Veterinarian for identification of *T. foetus*.

"Positive *T. foetus* bull" means a bull that has had a positive official *T. foetus* bull test.

"Tritrichomonas foetus" OR "*T. foetus*" means a protozoan parasite that is the causative agent to the contagious venereal disease Trichomoniasis.

B. Testing requirements for Official *T. foetus*.

1. All Arizona origin bulls sold, leased, gifted, exchanged or otherwise changing possession for breeding purposes in Arizona shall be tested for *T. foetus* via Official *T. foetus* bull test prior to sale or change of ownership in the state, unless going to direct slaughter. *T. foetus* testing shall be performed on bulls prior to change of ownership of that bull.
2. The Official *T. foetus* test shall be collected by an Accredited Veterinarian and performed though an Approved Laboratory.
3. Pooled testing is not an official test.
4. The *T. foetus* negative test is valid for 60 days after the test is performed, providing the bull is kept separated from all female bovine.

C. Positive bull identification.

1. When a positive *T. foetus* bull is identified, the Accredited Veterinarian shall notify the producer upon receipt of the positive test results.
2. Regardless of R3-2-402, the Accredited Veterinarian and Approved Laboratory shall notify the State Veterinarian of a positive *T. foetus* bull within 24 hours of receiving the results. The State Veterinarian's Office, working in coordination with the regional livestock inspection staff, shall to the best of their ability notify the regional bovine producers about the positive test within 14 days upon notification of positive test. The State Veterinarian and/or livestock inspection staff is not required to reveal any details of the test just that there is a positive test in the region.
3. The Accredited Veterinarian that performed the test shall return to place of testing to verify the Official Identification of the positive bull.
4. The Accredited Veterinarian, or a person under direct supervision of the Veterinarian, shall brand the bull with an official "S" brand adjacent to the tailhead on the right hip.
5. If the bull testing positive is not at the premises where the *T. foetus* testing occurred, the Accredited Veterinarian will immediately notify the State Veterinarian's Office.

6. If an Accredited Veterinarian is unable to return to the premises in a time that is reasonable for sale of the bull, the producer shall take the positive *T. foetus* bull directly to the regional livestock sale yard.
   a. The producer shall immediately notify the sale yard of the positive *T. foetus* bull. Failure to notify the sale yard of the positive *T. foetus* bull will result in a violation of this Section and the producer shall be subject to the penalties of A.R.S. § 3-1205(D).
   b. Prior to sale at the sale yard, a Livestock Officer shall verify the official identification of the positive *T. foetus* test bull.
   c. After the official identification is verified, the bull shall be branded with an official "S" brand adjacent to the tailhead on the right hip. The branding shall be done under direct supervision of a Livestock Officer or Livestock Inspector.
7. If a bull arrives at a livestock auction without an Official *T. foetus* bull test, the bull shall be quarantined at the auction and tested at the expense of the owner or shall be branded with an "S" brand and be sold only for slaughter.

D. Disposal of bull testing positive.
1. A bull testing positive for *T. foetus* or branded with the official "S" brand shall go direct to slaughter or shall be placed under State Quarantine and fed in a restricted feeding pen within a designated feedlot according to R3-2-406.
2. The *T. foetus* positive bull shall not be commingled with any other female bovine. The bull shall go from the testing premises to direct slaughter or to the restricted feeding pen within 30 days of the positive *T. foetus* test.
3. All remaining herd bulls shall be under a Trichomonas Herd Management Program overseen by the Herd Veterinarian until two negative *T. foetus* tests are performed and documented.
4. "S" branded bulls purchased at a sale yard shall go direct to a slaughter plant without unloading or commingling prior to arrival.

E. Trespassing or Stray Bulls.
1. In the event of a trespassing or stray bull, the herd owner who locates the bull, may request an Official *T. foetus* bull test for that bull. In the event of a positive Official *T. foetus* bull test, subsections (B) and (C) shall apply.
2. The cost of the veterinary services and Official *T. foetus* bull test shall be the responsibility of the herd owner. In the event of a stray bull, the animal will be subject to A.R.S. §§ 3-1401 et seq.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020; new Section made by final rulemaking at 26 A.A.R. 812, effective June 8, 2020 (Supp. 20-2).

R3-2-411. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-412. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-413. Sheep and Goats; Intrastate Movement

A. Before intrastate movement of a sheep more than 18 months of age, or a sheep or goat of any age not in a slaughter channel, the producer shall identify the animal to the flock of birth using official identification before leaving the flock of birth. A sheep or goat not in a slaughter channel includes an animal not for sale, transfer, or movement to:
1. A slaughter facility,
2. Custom slaughter, or
3. A feeding operation before movement to slaughter.

B. Subsection (A) does not apply if the first point of commingling with animals other than those in the flock of birth is an Arizona auction market that is an approved tagging site.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective January 1, 2003 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

R3-2-501. Tuberculosis Control and Eradication Procedures

A. Procedures for tuberculosis control and eradication in cattle, bison, and goats shall be as prescribed in 9 CFR Part 77 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

B. Procedures for tuberculosis control and eradication in cervidae not listed as restricted live wildlife in A.A.C. R12-4-406 shall be as prescribed in 9 CFR 77 Subpart C as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective October 16, 1986 (Supp. 86-5). Section R3-2-501 renumbered from Section R3-9-501 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-502. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-502 renumbered from Section R3-9-502 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the

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.

11-1002. Powers and duties; state veterinarian; Arizona department of agriculture

A. The state veterinarian, employed pursuant to section 3-1211, shall designate the type or types of antirabies vaccines that may be used for vaccination of animals, the period of time between vaccination and revaccination and the dosage and method of administration of the vaccine.

B. The state veterinarian shall adopt rules to implement section 32-2240.02.

C. The Arizona department of agriculture shall regulate the handling and disposition of animals classed as livestock that have been bitten by a rabid or suspected rabid animal or are showing symptoms suggestive of rabies.

32-2240.02. Certified rabies vaccinators; training; renewal

A. A licensed veterinarian may appoint a person who is not a veterinarian licensed pursuant to section 32-2212 as a certified rabies vaccinator to administer rabies vaccines on the premises of a shelter or animal rescue organization facility that is located in a county with a population of less than four hundred thousand persons or a census county division with less than fifty thousand persons in a county with a population of four hundred thousand persons or more if a licensed veterinarian is not available.

B. The licensed veterinarian who made the appointment shall provide in-person training to each person appointed to administer rabies vaccines pursuant to subsection A of this section. On satisfactory completion of this training, the licensed veterinarian who made the appointment shall certify in writing that the person has demonstrated the knowledge and skills acceptable to administer rabies vaccines.

C. Initial certification of rabies vaccinators under this section is valid for one year. Subsequent certifications under this section are valid for two years and must be renewed as prescribed by the state veterinarian pursuant to section 11-1002.

D. The certified rabies vaccinator shall maintain records of all vaccinations administered for three years and shall notify the veterinarian who made the appointment of any adverse events.

E. A licensed veterinarian who appoints a certified rabies vaccinator is not liable for any action taken by a certified rabies vaccinator in the course of administering a rabies vaccine.

BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY
Title 4, Chapter 22

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 9, 2023**

SUBJECT: **BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**
Title 4, Chapter 22

Summary

This One Year Review Report (1YRR) from the Arizona Board of Osteopathic Examiners in Medicine and Surgery (Board) covers one (1) rule in Title 4, Chapter 22 related to Fees and Charges. The Board issues licenses, permits, and registrations to doctors of osteopathy, investigates complaints against licensees; and provides information to the public. The purpose of the Board is to protect the public from unlawful, incompetent, unqualified, impaired, and unprofessional practitioners of osteopathic medicine.

In April of 2021, the legislature enacted Laws 2021, Chapter 320, as an emergency measure to expand use of telehealth in Arizonans. The statute included a provision allowing a health care provider not licensed in this state to provide telehealth services to individuals in Arizona if the out-of-state health care provider registered with Arizona's applicable regulatory board and paid a fee specified by the regulatory board. The Arizona Board of Osteopathic Examiners was granted a one-time rulemaking exemption to establish a fee for this new law.

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 Board submits this 1YRR for the Council's consideration in compliance with A.R.S. § 41-1095.

Proposed Action

The Board does not believe any rule changes are necessary at this time and does not propose a course of action.

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 because Laws 2021, Chapter 320. Sec. 24 exempted the Board from complying with A.R.S. Title 41. Chapter 6, the Board did not prepare and economic, small business, and consumer impact statement when the rule making was done. The Board indicates that in the year since the rule went into effect, it received 6 applications to register as an out-of-state provider of medical services by telehealth. The Board has approved 5 of the registrations, and one applicant failed to meet the required criteria for registration. The Board states that under R4-22-102(B), the 6 applicants paid $300 each to register. The Board has not received any written criticism of the rule, or the amount charged for registration.

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

The Board indicates that when the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing registration of out-of-state providers to practice osteopathic medicine by telehealth outweigh the costs to the state. The legislature established the paperwork cost when it specified the content of an application that must be submitted and established multiple compliance requirements with A.R.S. § 36-3606(A)(2) through (A)(9), (B), and (C). The Board states that in establishing these paperwork and compliance requirements, the legislature has determined that the requirements imposed the least burden and costs on out-of-state providers practicing osteopathic medicine by telehealth necessary to achieve the underlying regulatory objectives.

R4-22-102(B) establishes the fee the Board charges for an out-of-state health care provider to register to provide telehealth services in Arizona. The Board believes that because this is the only authority provided to the Board and because the legislature determined there is a benefit in allowing out-of-state providers of services by telehealth to register to provide services in Arizona, the Board concludes the benefits of the rule outweigh the costs.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Board indicates that no comments were received for this rule.

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

The Board states the rules are clear, concise, and understandable.

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 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 states the rules are not more stringent than corresponding federal law.

10. Has the agency completed any additional process required by law?

The Board indicates that this question does not apply as no additional processes were 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 Board indicates that the rule does not require issuance of a permit, license, or other authorization as the requirements for registration are established in statute.

12. Conclusion

This One Year Review Report from the Arizona Board of Osteopathic Examiners in Medicine and Surgery covers one rule in Title 4, Chapter 22 related to Fees and Charges. As indicated above, the Department received a one-time exemption from the rulemaking requirements to adopt rules necessary to allow health care providers not licensed in the state to provide telehealth services to individuals in Arizona. Council staff recommends the Council speak to the Board regarding the issue found in the report.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
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Samara Shipon, D.O.
Michael Goodman, J.D.

Executive Director
Justin Bohall

Thursday, June 22, 2023

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

RE: Arizona Board of Osteopathic Examiners in Medicine and Surgery One Year Review Report (R4-22-102)

Dear Chair Sornsin,

Please find enclosed the referenced one-year-review report.

The Board complies with A.R.S.§41-1091.

Please do not hesitate to contact me with any questions at Justin.Bohall@azdo.gov or 602-771-2522.

Kind Regards,

Justin Bohall
Executive Director

ONE-YEAR-REVIEW REPORT

A.A.C. Title 4. Professions and Occupations

Chapter 22. Board of Osteopathic Examiners in Medicine and Surgery

Submitted for September 6, 2023

INTRODUCTION

In April of 2021, the legislature enacted Laws 2021, Chapter 320, as an emergency measure to expand use of telehealth in meeting the health-care needs of Arizonans. The statute (A.R.S. § 36-3606 / HB2454) included a provision allowing a health care provider not licensed in this state to provide telehealth services to individuals in Arizona if the out-of-state health care provider registered with Arizona's applicable regulatory board and paid a fee specified by the regulatory board. The Arizona Board of Osteopathic Examiners was granted a one-time rulemaking exemption to establish a fee for this new law. The Board established the fee for an out-of-state health care provider to register to provide telehealth services in Arizona in a rulemaking that went into effect on March 1, 2022.

The Board of Osteopathic Examiners in Medicine and Surgery, which is established under A.R.S. § 32-1801, issues licenses, permits, and registrations to doctors of osteopathy, investigates complaints against licensees; and provides information to the public. The Board's purpose, as specified under A.R.S. § 32-1803, is to protect the public from unlawful, incompetent, unqualified, impaired, and unprofessional practitioners of osteopathic medicine.

As required under A.R.S. § 41-1095(A), this report focuses on the Board's review of R4-22-102 (B), the provision amended under the exemption provided by Laws 2021, Chapter 320, Sec. 24.

This registration fee was selected based on a time and materials cost analysis of processing the incoming application and issuing the registration.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1803(A)(5)

1. Specific statute authorizing the rule: A.R.S. §§ 36-3606(A)(3) and 41-1073.
2. Objective of the rule:

   R4-22-102. Fees and Charges: The objective of this rule is to establish the fees the Board charges for licenses, certificates, and registrations.

3. Is the rule effective in achieving its objective? Yes

4. Were there written criticisms of the rule, including written analyses questions whether the rule is based on valid scientific of reliable principles or methods? No

5. Is the rule consistent with other rules and statutes? Yes

6. Is the rule enforced as written? Yes

7. Is the rule clear, concise, and understandable? Yes

8. Estimated economic, small business, and consumer impact of the rule:

Because Laws 2021, Chapter 320, Sec. 24, exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement when the rulemaking was done. In the year since the rule went into effect, the Board has received 6 applications to register as an out-of-state provider of medical services by telehealth. The Board has approved 5 of the registrations, and one applicant failed to meet the required criteria for registration. Under R4-22-102(B), the 6 applicants paid $300 each to register. This means that under A.R.S. § 32-1406, the Board deposited $180 into the state's general fund and $1,620 into the Arizona Osteopathic Board of Examiners fund. The Board has not received any written criticism of the rule or the amount charged for registration.

9. Has the agency received any business competitiveness analyses of the rule? No

10. If applicable, whether the agency completed additional process required by law: N/A

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 person regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

When the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing the registration of out-of-state providers to practice osteopathic medicine by telehealth outweigh the costs to the state. The legislature established the paperwork cost when it specified the content of an application that must be submitted and established multiple compliance requirements within A.R.S. § 36-3606(A)(2) through (A)(9), (B), and (C). In establishing these paperwork and compliance requirements, the legislature determined the requirements imposed the least burden and costs on out-of-state providers practicing osteopathic medicine by telehealth necessary to achieve the underlying regulatory objective.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a registration fee. The fee is the only compliance cost established by the Board in the reviewed rules. For this registration fee, the Board is required to evaluate the registration information submitted by the out-of-state provider and

R4-22-102(B) establishes the fee the Board charges for an out-of-state health care provider to register to provide telehealth services in Arizona. The Board is required to supervise compliance of the out-of-state providers and process the annual registration forms without authority to charge a renewal fee. Because this is the only authority provided to the Board and because the legislature determined there is benefit in allowing out-of-state providers of services by telehealth to register to provide the services in Arizona, the Board concludes the benefits of the rule outweigh the costs.

12. Is the rule more stringent than corresponding federal laws? No
13. For a rule that requires issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S.§ 41-1037:

    R4-22-102(B) does not require issuance of a permit, license, or other authorization. The requirements for registration are established in statute. The rule simply specifies the fee required.
14. Proposed Course of Action in accordance with A.R.S.§ 41-1095(A):

    The Board believes that the Rule is effective and working as intended and therefore our proposed course of action is to keep the rule in place with no changes and review it again as part of our 5-year rule review in August of 2024.

Table A

Staff Hourly Rate (Inclusive of partial Employee Related Expenses) [1]	Hours to Process / Review Initial Application [2]	Cost
56.33	3.5	$197.16
Hourly Rate - 7 Board Members	Hours to Process / Review Application	Cost
$250	0.25	$62.50
Database Cost per Record (Annually) [3]	Year Retention	Cost
$12	5	$60.00

Total: $319.66

[1] Includes blended rate for licensing, operations, and IT staff.

[2] Includes staff time of responding to applicant inquiries, review of initial application, downloading of submitted documents, verification of submitted documents, review of completed application, issuing a notice of application deficiency and follow-up, verifying licenses in other states, gathering required reports, entering any missing or different information in the database, issuing a notice of administrative completeness, issuing a notice of approval, adding the name to the agenda and the file to the meeting materials, notification of the registration issuance of denial of registration to the applicant, and notifying the applicants of the annual registration requirements and other state health care requirements. This assumes that the application does not require any investigation or other costs incurred.

[3] The Board has a cloud-based data management system for both document records as well as data associated with the application and registrant. There is a subscription fee based on a per-record formula. This applies to both active and inactive records and denotes the required retention period of 5 years from initial application (On applications with no disciplinary action or history.) This would increase if action were to be taken or if the license continues for more than the initial year of registration.

§ R4-22-102. Fees and Charges

A. Under the specific authority provided by A.R.S. §§32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board's licensing activities:

1. Application for license to practice osteopathic medicine, $400;

2. Application for a temporary license to practice osteopathic medicine, $250;

3. Issuance of initial license, $180 (prorated);

4. Biennial renewal of license, $636 plus the penalty and reimbursement fees specified in A.R.S. §32-1826(B), if applicable;

5. Locum tenens registration, $300;

6. Annual registration of an approved internship, residency, or clinical fellowship program or short-term residency program, $50;

7. Teaching license, $318;

8. Five-day educational teaching permit, $106; and

9. Annual registration to dispense drugs and devices, $240 (initial registration fee is prorated).

B. Under the specific authority provided by A.R.S. §36-3606(A)(3), the Board establishes and shall collect Annual Registration as an out-of-state health care provider of telehealth services, $300.

C. Under the specific authority provided by A.R.S. §32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:

1. Verifying a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, $10;

2. Issuing a duplicate license, $10;

3. Processing fingerprints for a state and federal criminal records check, $50;

4. Providing a list of physicians licensed by the Board, $25.00 if for non-commercial use or $100 if for commercial use;

5. Copying records, documents, letters, minutes, applications, and files, 25¢ per page;

6. Copying an audio tape, $35.00; and

7. Providing information in a digital medium not requiring programming, $100.

D. Except as provided under A.R.S. §41-1077, the fees listed in subsections (A) and (B) are not refundable.

History:

Adopted effective January 24, 1984 (Supp. 84-1). Section R4-22-02 repealed effective June 29, 1987 (Supp. 87-2). New Section R4-22-102 adopted effective August 7, 1992 (Supp. 92-3). Amended by final rulemaking at 20 A.A.R. 2654, effective 11/8/2014. Amended by final rulemaking at 25 A.A.R. 1793, effective 8/31/2019. Amended by final exempt rulemaking at 27 A.A.R. 660, effective 3/1/2022.

Senate Engrossed House Bill

telehealth; health care providers; requirements

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 320

HOUSE BILL 2454

AN ACT

AMENDING SECTIONS 20-841.09, 20-1057.13, 20-1376.05, 20-1406.05, 23-1026, 32-1401, 32-1854, 32-1901.01, 32-2061, 32-3248.01, 32-3251, 36-2272, 36-3601, 36-3602, 36-3603 AND 36-3604, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 36, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-3605, 36-3606, 36-3607 AND 36-3608; REPEALING SECTION 36-3608, ARIZONA REVISED STATUTES; AMENDING SECTIONS 38-672 AND 38-673, ARIZONA REVISED STATUTES; RELATING TO TELEHEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-841.09, Arizona Revised Statutes, is amended to read:

20-841.09. Telehealth; coverage of health care services; definition

A. All contracts issued, delivered or renewed ~~on or after January 1, 2018~~ IN THIS STATE must provide coverage for health care services that are provided through ~~telemedicine~~ TELEHEALTH if the health care service would be covered were it provided through AN in-person ~~consultation~~ ENCOUNTER between the subscriber and a health care provider and provided to a subscriber receiving the service in this state. THE FOLLOWING REQUIREMENTS APPLY TO COVERAGE OF TELEHEALTH SERVICES:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, a corporation may not limit or deny the coverage of health care services provided through ~~telemedicine~~ TELEHEALTH, INCLUDING ANCILLARY SERVICES, and may apply only the same limits or exclusions on a health care service provided through ~~telemedicine~~ TELEHEALTH that are applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service, EXCEPT FOR PROCEDURES OR SERVICES FOR WHICH THE WEIGHT OF EVIDENCE, BASED ON PRACTICE GUIDELINES, PEER-REVIEWED CLINICAL PUBLICATIONS OR RESEARCH OR RECOMMENDATIONS BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607, DETERMINES NOT TO BE APPROPRIATE TO BE PROVIDED THROUGH TELEHEALTH.

2. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, A CORPORATION SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM, WHETHER PROVIDED THROUGH TELEHEALTH USING AN AUDIO-VISUAL FORMAT OR IN-PERSON CARE. A CORPORATION SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT IN-PERSON BEHAVIORAL HEALTH AND SUBSTANCE USE DISORDER SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM IF PROVIDED THROUGH TELEHEALTH USING AN AUDIO-ONLY FORMAT. THIS PARAGRAPH DOES NOT APPLY TO A TELEHEALTH ENCOUNTER PROVIDED THROUGH A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE CORPORATION. A CORPORATION MAY NOT REQUIRE A HEALTH CARE PROVIDER TO USE A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE CORPORATION AS A CONDITION OF NETWORK PARTICIPATION.

3. BEFORE JANUARY 1, 2022, A CORPORATION SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER IF THAT SERVICE IS COVERED BY MEDICARE OR THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM WHEN PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER. BEGINNING JANUARY 1, 2022, A CORPORATION SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER IF THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 RECOMMENDS THAT THE SERVICES MAY APPROPRIATELY BE PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER.

4. A HEALTH CARE PROVIDER SHALL BILL FOR A TELEHEALTH ENCOUNTER USING THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM AND SHALL IDENTIFY WHETHER THE TELEHEALTH ENCOUNTER WAS PROVIDED IN AN AUDIO-ONLY OR AUDIO-VIDEO FORMAT. TO SUBMIT A CLAIM FOR AN AUDIO-ONLY SERVICE, THE HEALTH CARE PROVIDER MUST MAKE TELEHEALTH SERVICES GENERALLY AVAILABLE TO PATIENTS THROUGH THE INTERACTIVE USE OF AUDIO, VIDEO OR OTHER ELECTRONIC MEDIA.

5. AT THE TIME OF THE TELEHEALTH ENCOUNTER, THE HEALTH CARE PROVIDER SHALL ACCESS CLINICAL INFORMATION AND RECORDS, IF AVAILABLE, THAT ARE APPROPRIATE TO EVALUATE THE PATIENT'S CONDITION. THE HEALTH CARE PROVIDER SHALL INFORM THE SUBSCRIBER BEFORE THE TELEHEALTH ENCOUNTER IF THERE IS A CHARGE FOR THE ENCOUNTER.

6. A CORPORATION MAY ESTABLISH REASONABLE REQUIREMENTS AND PARAMETERS FOR TELEHEALTH SERVICES, INCLUDING DOCUMENTATION, FRAUD PREVENTION, IDENTITY VERIFICATION AND RECORDKEEPING, BUT SUCH REQUIREMENTS AND PARAMETERS MAY NOT BE MORE RESTRICTIVE OR LESS FAVORABLE TO HEALTH CARE PROVIDERS OR SUBSCRIBERS THAN ARE REQUIRED FOR HEALTH CARE SERVICES DELIVERED IN PERSON.

7. COVERED TELEHEALTH SERVICES MAY BE PROVIDED REGARDLESS OF WHERE THE SUBSCRIBER IS LOCATED OR THE TYPE OF SITE.

8. EXCEPT IN AN EMERGENCY AS PRESCRIBED IN SECTION 20-2803, the contract may limit the coverage to those health care providers who are members of the corporation's provider network.

B. SUBSECTION A OF THIS SECTION DOES NOT:

1. LIMIT THE ABILITY OF CORPORATIONS TO PROVIDE INCENTIVES TO SUBSCRIBERS THAT ARE DESIGNED TO IMPROVE HEALTH OUTCOMES, INCREASE ADHERENCE TO A COURSE OF TREATMENT OR REDUCE RISK.

2. PREVENT CORPORATIONS FROM OFFERING NETWORK CONTRACTS TO HEALTH CARE PROVIDERS WHO EMPLOY VALUE-BASED PURCHASING OR BUNDLED PAYMENT METHODOLOGIES IF OTHERWISE ALLOWED BY LAW OR PREVENT HEALTH CARE PROVIDERS FROM VOLUNTARILY AGREEING TO ENTER INTO SUCH CONTRACTS WITH A CORPORATION.

C. THIS SECTION DOES NOT RELIEVE A CORPORATION FROM AN OBLIGATION TO PROVIDE ADEQUATE ACCESS TO IN-PERSON HEALTH CARE SERVICES. NETWORK ADEQUACY STANDARDS REQUIRED BY FEDERAL OR STATE LAW MAY NOT BE MET BY A CORPORATION THROUGH THE USE OF CONTRACTED HEALTH CARE PROVIDERS WHO PROVIDE ONLY TELEHEALTH SERVICES AND DO NOT PROVIDE IN-PERSON HEALTH CARE SERVICES IN THIS STATE OR WITHIN FIFTY MILES OF THE BORDER OF THIS STATE.

~~B.~~ D. This section does not prevent a corporation from imposing deductibles~~,~~ OR copayment or coinsurance requirements for a health care service provided through ~~telemedicine~~ TELEHEALTH if the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service. IF THE CORPORATION WAIVES A DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT THAT IMPACTS A HEALTH CARE PROVIDER'S CONTRACTED REIMBURSEMENT RATE, THE CORPORATION SHALL REIMBURSE THE HEALTH

CARE PROVIDER FOR THE COST OF THE DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT TO ENSURE THAT THE HEALTH CARE PROVIDER RECEIVES THE CONTRACTED REIMBURSEMENT RATE IF THE SERVICE IS COVERED AND THE CLAIM MEETS OTHER REQUIREMENTS OF THE NETWORK PARTICIPATION AGREEMENT.

~~C.~~ E. Services provided through ~~telemedicine~~ TELEHEALTH or resulting from a ~~telemedicine consultation~~ TELEHEALTH ENCOUNTER are subject to all of this state's laws and rules that govern prescribing, dispensing and administering prescription pharmaceuticals and devices and shall comply with Arizona licensure requirements and any practice guidelines of THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 OR, IF NOT ADDRESSED, THE PRACTICE GUIDELINES OF a national association of medical professionals promoting access to medical care for consumers via telecommunications technology or other qualified medical professional societies to ensure quality of care.

~~D.~~ F. This section does not apply to limited benefit coverage as defined in section 20-1137.

~~E.~~ G. For the purposes of this section, "~~telemedicine~~ TELEHEALTH":

1. Means the interactive use of audio, video or other electronic media, including asynchronous store-and-forward technologies and remote patient monitoring technologies, for the purpose of diagnosis, consultation or treatment.

2. INCLUDES:

(a) THE USE OF AN AUDIO-ONLY TELEPHONE ENCOUNTER BETWEEN A SUBSCRIBER WHO HAS AN EXISTING RELATIONSHIP WITH A HEALTH CARE PROVIDER OR PROVIDER GROUP IF BOTH OF THE FOLLOWING APPLY:

(i) AN AUDIO-VISUAL TELEHEALTH ENCOUNTER IS NOT REASONABLY AVAILABLE DUE TO THE SUBSCRIBER'S FUNCTIONAL STATUS, THE SUBSCRIBER'S LACK OF TECHNOLOGY OR TELECOMMUNICATIONS INFRASTRUCTURE LIMITS, AS DETERMINED BY THE HEALTH CARE PROVIDER.

(ii) THE TELEHEALTH ENCOUNTER IS INITIATED AT THE REQUEST OF THE SUBSCRIBER OR AUTHORIZED BY THE SUBSCRIBER BEFORE THE TELEHEALTH ENCOUNTER.

(b) THE USE OF AN AUDIO-ONLY ENCOUNTER BETWEEN THE SUBSCRIBER AND A HEALTH CARE PROVIDER, REGARDLESS OF WHETHER THERE IS AN EXISTING RELATIONSHIP WITH THE HEALTH CARE PROVIDER OR PROVIDER GROUP, IF THE TELEHEALTH ENCOUNTER IS FOR A BEHAVIORAL HEALTH OR SUBSTANCE USE DISORDER SERVICE AND BOTH ITEMS OF SUBDIVISION (a) OF THIS PARAGRAPH APPLY.

~~2.~~ 3. Does not include the sole use of ~~an audio-only telephone, a video-only system,~~ a ~~facsimile~~ FAX machine, instant messages, VOICE MAIL or ~~electronic mail~~ EMAIL.

Sec. 2. Section 20-1057.13, Arizona Revised Statutes, is amended to read:

20-1057.13. Telehealth; coverage of health care services; definition

A. An evidence of coverage issued, delivered or renewed by a health care services organization ~~on or after January 1, 2018~~ IN THIS STATE must provide coverage for health care services that are provided through ~~telemedicine~~ TELEHEALTH if the health care service would be covered were it provided through AN in-person ~~consultation~~ ENCOUNTER between the enrollee and a health care provider and provided to an enrollee receiving the service in this state. THE FOLLOWING REQUIREMENTS APPLY TO COVERAGE OF TELEHEALTH SERVICES:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, a health care services organization may not limit or deny the coverage of health care services provided through ~~telemedicine~~ TELEHEALTH, INCLUDING ANCILLARY SERVICES, and may apply only the same limits or exclusions on a health care service provided through ~~telemedicine~~ TELEHEALTH that are applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service, EXCEPT FOR PROCEDURES OR SERVICES AS IDENTIFIED BY THE DIAGNOSTIC AND PROCEDURE CODES, FOR WHICH THE WEIGHT OF EVIDENCE, BASED ON PRACTICE GUIDELINES, PEER-REVIEWED CLINICAL PUBLICATIONS OR RESEARCH OR RECOMMENDATIONS BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607, DETERMINES NOT TO BE APPROPRIATE TO BE PROVIDED THROUGH TELEHEALTH.

2. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, A HEALTH CARE SERVICES ORGANIZATION SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM, WHETHER PROVIDED THROUGH TELEHEALTH USING AN AUDIO-VISUAL FORMAT OR IN-PERSON CARE. A HEALTH CARE SERVICES ORGANIZATION SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT IN-PERSON BEHAVIORAL HEALTH AND SUBSTANCE USE DISORDER SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM IF PROVIDED THROUGH TELEHEALTH USING AN AUDIO-ONLY FORMAT. THIS PARAGRAPH DOES NOT APPLY TO A TELEHEALTH ENCOUNTER PROVIDED THROUGH A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE HEALTH CARE SERVICES ORGANIZATION. A HEALTH CARE SERVICES ORGANIZATION MAY NOT REQUIRE A HEALTH CARE PROVIDER TO USE A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE HEALTH CARE SERVICES ORGANIZATION AS A CONDITION OF NETWORK PARTICIPATION.

3. BEFORE JANUARY 1, 2022, A HEALTH CARE SERVICES ORGANIZATION SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER IF THAT SERVICE IS COVERED BY MEDICARE OR THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM WHEN PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER. BEGINNING JANUARY 1, 2022, A HEALTH CARE SERVICES ORGANIZATION SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER

IF THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 RECOMMENDS THAT THE SERVICES MAY APPROPRIATELY BE PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER.

4. A HEALTH CARE PROVIDER SHALL BILL FOR A TELEHEALTH ENCOUNTER USING THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM AND SHALL IDENTIFY WHETHER THE TELEHEALTH ENCOUNTER WAS PROVIDED IN AN AUDIO-ONLY OR AUDIO-VIDEO FORMAT. TO SUBMIT A CLAIM FOR AN AUDIO-ONLY SERVICE, THE HEALTH CARE PROVIDER MUST MAKE TELEHEALTH SERVICES GENERALLY AVAILABLE TO PATIENTS THROUGH THE INTERACTIVE USE OF AUDIO, VIDEO OR OTHER ELECTRONIC MEDIA.

5. AT THE TIME OF THE TELEHEALTH ENCOUNTER, THE HEALTH CARE PROVIDER SHALL ACCESS CLINICAL INFORMATION AND RECORDS, IF AVAILABLE, THAT ARE APPROPRIATE TO EVALUATE THE PATIENT'S CONDITION. THE HEALTH CARE PROVIDER SHALL INFORM THE ENROLLEE BEFORE THE TELEHEALTH ENCOUNTER IF THERE IS A CHARGE FOR THE ENCOUNTER.

6. A HEALTH CARE SERVICES ORGANIZATION MAY ESTABLISH REASONABLE REQUIREMENTS AND PARAMETERS FOR TELEHEALTH SERVICES, INCLUDING DOCUMENTATION, FRAUD PREVENTION, IDENTITY VERIFICATION AND RECORDKEEPING, BUT SUCH REQUIREMENTS AND PARAMETERS MAY NOT BE MORE RESTRICTIVE OR LESS FAVORABLE TO HEALTH CARE PROVIDERS OR ENROLLEES THAN ARE REQUIRED FOR HEALTH CARE SERVICES DELIVERED IN PERSON.

7. COVERED TELEHEALTH SERVICES MAY BE PROVIDED REGARDLESS OF WHERE THE ENROLLEE IS LOCATED OR THE TYPE OF SITE.

8. EXCEPT IN AN EMERGENCY AS PRESCRIBED IN SECTION 20-2803, the evidence of coverage may limit the coverage to those health care providers who are members of the health care services organization's provider network.

B. SUBSECTION A OF THIS SECTION DOES NOT:

1. LIMIT THE ABILITY OF HEALTH CARE SERVICES ORGANIZATIONS TO PROVIDE INCENTIVES TO ENROLLEES THAT ARE DESIGNED TO IMPROVE HEALTH OUTCOMES, INCREASE ADHERENCE TO A COURSE OF TREATMENT OR REDUCE RISK.

2. PREVENT HEALTH CARE SERVICES ORGANIZATIONS FROM OFFERING NETWORK CONTRACTS TO HEALTH CARE PROVIDERS WHO EMPLOY VALUE-BASED PURCHASING OR BUNDLED PAYMENT METHODOLOGIES IF OTHERWISE ALLOWED BY LAW OR PREVENT HEALTH CARE PROVIDERS FROM VOLUNTARILY AGREEING TO ENTER INTO SUCH CONTRACTS WITH A HEALTH CARE SERVICES ORGANIZATION.

C. THIS SECTION DOES NOT RELIEVE A HEALTH CARE SERVICES ORGANIZATION FROM AN OBLIGATION TO PROVIDE ADEQUATE ACCESS TO IN-PERSON HEALTH CARE SERVICES. NETWORK ADEQUACY STANDARDS REQUIRED BY FEDERAL OR STATE LAW MAY NOT BE MET BY A HEALTH CARE SERVICES ORGANIZATION THROUGH THE USE OF CONTRACTED HEALTH CARE PROVIDERS WHO PROVIDE ONLY TELEHEALTH SERVICES AND DO NOT PROVIDE IN-PERSON HEALTH CARE SERVICES IN THIS STATE OR WITHIN FIFTY MILES OF THE BORDER OF THIS STATE.

~~B.~~ D. This section does not prevent a health care services organization from imposing deductibles~~,~~ OR copayment or coinsurance requirements for a health care service provided through ~~telemedicine~~ TELEHEALTH if the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service. IF THE HEALTH CARE SERVICES ORGANIZATION WAIVES A DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT THAT IMPACTS A HEALTH CARE PROVIDER'S CONTRACTED REIMBURSEMENT RATE, THE HEALTH CARE SERVICES ORGANIZATION SHALL REIMBURSE THE HEALTH CARE PROVIDER FOR THE COST OF THE DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT TO ENSURE THAT THE HEALTH CARE PROVIDER RECEIVES THE CONTRACTED REIMBURSEMENT RATE IF THE SERVICE IS COVERED AND THE CLAIM MEETS OTHER REQUIREMENTS OF THE NETWORK PARTICIPATION AGREEMENT.

~~C.~~ E. Services provided through ~~telemedicine~~ TELEHEALTH or resulting from a ~~telemedicine consultation~~ TELEHEALTH ENCOUNTER are subject to all of this state's laws and rules that govern prescribing, dispensing and administering prescription pharmaceuticals and devices and shall comply with Arizona licensure requirements and any practice guidelines of THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 OR, IF NOT ADDRESSED, THE PRACTICE GUIDELINES OF a national association of medical professionals promoting access to medical care for consumers via telecommunications technology or other qualified medical professional societies to ensure quality of care.

~~D.~~ F. This section does not apply to limited benefit coverage as defined in section 20-1137.

~~E.~~ G. For the purposes of this section, "~~telemedicine~~ TELEHEALTH":

1. Means the interactive use of audio, video or other electronic media, including asynchronous store-and-forward technologies and remote patient monitoring technologies, for the purpose of diagnosis, consultation or treatment.

2. INCLUDES:

(a) THE USE OF AN AUDIO-ONLY TELEPHONE ENCOUNTER BETWEEN AN ENROLLEE WHO HAS AN EXISTING RELATIONSHIP WITH A HEALTH CARE PROVIDER OR PROVIDER GROUP IF BOTH OF THE FOLLOWING APPLY:

(i) AN AUDIO-VISUAL TELEHEALTH ENCOUNTER IS NOT REASONABLY AVAILABLE DUE TO THE ENROLLEE'S FUNCTIONAL STATUS, THE ENROLLEE'S LACK OF TECHNOLOGY OR TELECOMMUNICATIONS INFRASTRUCTURE LIMITS, AS DETERMINED BY THE HEALTH CARE PROVIDER.

(ii) THE TELEHEALTH ENCOUNTER IS INITIATED AT THE REQUEST OF THE ENROLLEE OR AUTHORIZED BY THE ENROLLEE BEFORE THE TELEHEALTH ENCOUNTER.

(b) THE USE OF AN AUDIO-ONLY ENCOUNTER BETWEEN THE ENROLLEE AND A HEALTH CARE PROVIDER, REGARDLESS OF WHETHER THERE IS AN EXISTING RELATIONSHIP WITH THE HEALTH CARE PROVIDER OR PROVIDER GROUP, IF THE

TELEHEALTH ENCOUNTER IS FOR A BEHAVIORAL HEALTH OR SUBSTANCE USE DISORDER SERVICE AND BOTH ITEMS OF SUBDIVISION (a) OF THIS PARAGRAPH APPLY.

~~2.~~ 3. Does not include the sole use of ~~an audio-only telephone, a video-only system,~~ a ~~facsimile~~ FAX machine, instant messages, VOICE MAIL or ~~electronic mail~~ EMAIL.

Sec. 3. Section 20-1376.05, Arizona Revised Statutes, is amended to read:

20-1376.05. Telehealth; coverage of health care services; definition

A. All policies issued, delivered or renewed by a disability insurer ~~on or after January 1, 2018~~ IN THIS STATE must provide coverage for health care services that are provided through ~~telemedicine~~ TELEHEALTH if the health care service would be covered were it provided through AN in-person ~~consultation~~ ENCOUNTER between the insured and a health care provider and provided to an insured receiving the service in this state. THE FOLLOWING REQUIREMENTS APPLY TO COVERAGE OF TELEHEALTH SERVICES:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, a disability insurer may not limit or deny the coverage of health care services provided through ~~telemedicine~~ TELEHEALTH, INCLUDING ANCILLARY SERVICES, and may apply only the same limits or exclusions on a health care service provided through ~~telemedicine~~ TELEHEALTH that are applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service, EXCEPT FOR PROCEDURES OR SERVICES FOR WHICH THE WEIGHT OF EVIDENCE, BASED ON PRACTICE GUIDELINES, PEER-REVIEWED CLINICAL PUBLICATIONS OR RESEARCH OR RECOMMENDATIONS BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607, DETERMINES NOT TO BE APPROPRIATE TO BE PROVIDED THROUGH TELEHEALTH.

2. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, A DISABILITY INSURER SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM, WHETHER PROVIDED THROUGH TELEHEALTH USING AN AUDIO-VISUAL FORMAT OR IN-PERSON CARE. A DISABILITY INSURER SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT IN-PERSON BEHAVIORAL HEALTH AND SUBSTANCE USE DISORDER SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM IF PROVIDED THROUGH TELEHEALTH USING AN AUDIO-ONLY FORMAT. THIS PARAGRAPH DOES NOT APPLY TO A TELEHEALTH ENCOUNTER PROVIDED THROUGH A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE DISABILITY INSURER. A DISABILITY INSURER MAY NOT REQUIRE A HEALTH CARE PROVIDER TO USE A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE DISABILITY INSURER AS A CONDITION OF NETWORK PARTICIPATION.

3. BEFORE JANUARY 1, 2022, A DISABILITY INSURER SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER IF THAT SERVICE IS REIMBURSED BY MEDICARE OR THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM WHEN PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH

ENCOUNTER. BEGINNING JANUARY 1, 2022, A DISABILITY INSURER SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER IF THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 RECOMMENDS THAT THE SERVICES MAY APPROPRIATELY BE PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER.

4. A HEALTH CARE PROVIDER SHALL BILL FOR A TELEHEALTH ENCOUNTER USING THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM AND SHALL IDENTIFY WHETHER THE TELEHEALTH ENCOUNTER WAS PROVIDED IN AN AUDIO-ONLY OR AUDIO-VIDEO FORMAT. TO SUBMIT A CLAIM FOR AN AUDIO-ONLY SERVICE, THE HEALTH CARE PROVIDER MUST MAKE TELEHEALTH SERVICES GENERALLY AVAILABLE TO PATIENTS THROUGH THE INTERACTIVE USE OF AUDIO, VIDEO OR OTHER ELECTRONIC MEDIA.

5. AT THE TIME OF THE TELEHEALTH ENCOUNTER, THE HEALTH CARE PROVIDER SHALL ACCESS CLINICAL INFORMATION AND RECORDS, IF AVAILABLE, THAT ARE APPROPRIATE TO EVALUATE THE PATIENT'S CONDITION. THE HEALTH CARE PROVIDER SHALL INFORM THE INSURED BEFORE THE TELEHEALTH ENCOUNTER IF THERE IS A CHARGE FOR THE ENCOUNTER.

6. A DISABILITY INSURER MAY ESTABLISH REASONABLE REQUIREMENTS AND PARAMETERS FOR TELEHEALTH SERVICES, INCLUDING DOCUMENTATION, FRAUD PREVENTION, IDENTITY VERIFICATION AND RECORDKEEPING, BUT SUCH REQUIREMENTS AND PARAMETERS MAY NOT BE MORE RESTRICTIVE OR LESS FAVORABLE TO HEALTH CARE PROVIDERS OR INSUREDS THAN ARE REQUIRED FOR HEALTH CARE SERVICES DELIVERED IN PERSON.

7. COVERED TELEHEALTH SERVICES MAY BE PROVIDED REGARDLESS OF WHERE THE INSURED IS LOCATED OR THE TYPE OF SITE.

8. EXCEPT IN AN EMERGENCY AS PRESCRIBED IN SECTION 20-2803, the policy may limit the coverage to those health care providers who are members of the disability insurer's provider network.

B. SUBSECTION A OF THIS SECTION DOES NOT:

1. LIMIT THE ABILITY OF DISABILITY INSURERS TO PROVIDE INCENTIVES TO INSUREDS THAT ARE DESIGNED TO IMPROVE HEALTH OUTCOMES, INCREASE ADHERENCE TO A COURSE OF TREATMENT OR REDUCE RISK.

2. PREVENT DISABILITY INSURERS FROM OFFERING NETWORK CONTRACTS TO HEALTH CARE PROVIDERS THAT EMPLOY VALUE-BASED PURCHASING OR BUNDLED PAYMENT METHODOLOGIES IF OTHERWISE ALLOWED BY LAW OR PREVENT HEALTH CARE PROVIDERS FROM VOLUNTARILY AGREEING TO ENTER INTO SUCH CONTRACTS WITH A DISABILITY INSURER.

C. THIS SECTION DOES NOT RELIEVE A DISABILITY INSURER FROM AN OBLIGATION TO PROVIDE ADEQUATE ACCESS TO IN-PERSON HEALTH CARE SERVICES. NETWORK ADEQUACY STANDARDS REQUIRED BY FEDERAL OR STATE LAW MAY NOT BE MET BY A DISABILITY INSURER THROUGH THE USE OF CONTRACTED HEALTH CARE PROVIDERS WHO PROVIDE ONLY TELEHEALTH SERVICES AND DO NOT PROVIDE IN-PERSON HEALTH CARE SERVICES IN THIS STATE OR WITHIN FIFTY MILES OF THE BORDER OF THIS STATE.

~~B.~~ D. This section does not prevent a disability insurer from imposing deductibles~~,~~ OR copayment or coinsurance requirements for a health care service provided through ~~telemedicine~~ TELEHEALTH if the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service. IF THE DISABILITY INSURER WAIVES A DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT THAT IMPACTS A HEALTH CARE PROVIDER'S CONTRACTED REIMBURSEMENT RATE, THE DISABILITY INSURER SHALL REIMBURSE THE HEALTH CARE PROVIDER FOR THE COST OF THE DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT TO ENSURE THAT THE HEALTH CARE PROVIDER RECEIVES THE CONTRACTED REIMBURSEMENT RATE IF THE SERVICE IS COVERED AND THE CLAIM MEETS OTHER REQUIREMENTS OF THE NETWORK PARTICIPATION AGREEMENT.

~~C.~~ E. Services provided through ~~telemedicine~~ TELEHEALTH or resulting from a ~~telemedicine consultation~~ TELEHEALTH ENCOUNTER are subject to all of this state's laws and rules that govern prescribing, dispensing and administering prescription pharmaceuticals and devices and shall comply with Arizona licensure requirements and any practice guidelines of THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 OR, IF NOT ADDRESSED, THE PRACTICE GUIDELINES OF a national association of medical professionals promoting access to medical care for consumers via telecommunications technology or other qualified medical professional societies to ensure quality of care.

~~D.~~ F. This section does not apply to limited benefit coverage as defined in section 20-1137.

~~E.~~ G. For the purposes of this section, "~~telemedicine~~ TELEHEALTH":

1. Means the interactive use of audio, video or other electronic media, including asynchronous store-and-forward technologies and remote patient monitoring technologies, for the purpose of diagnosis, consultation or treatment.

2. INCLUDES:

(a) THE USE OF AN AUDIO-ONLY TELEPHONE ENCOUNTER BETWEEN AN INSURED WHO HAS AN EXISTING RELATIONSHIP WITH A HEALTH CARE PROVIDER OR PROVIDER GROUP IF BOTH OF THE FOLLOWING APPLY:

(i) AN AUDIO-VISUAL TELEHEALTH ENCOUNTER IS NOT REASONABLY AVAILABLE DUE TO THE INSURED'S FUNCTIONAL STATUS, THE INSURED'S LACK OF TECHNOLOGY OR TELECOMMUNICATIONS INFRASTRUCTURE LIMITS, AS DETERMINED BY THE HEALTH CARE PROVIDER.

(ii) THE TELEHEALTH ENCOUNTER IS INITIATED AT THE REQUEST OF THE INSURED OR AUTHORIZED BY THE INSURED BEFORE THE TELEHEALTH ENCOUNTER.

(b) THE USE OF AN AUDIO-ONLY ENCOUNTER BETWEEN THE INSURED AND A HEALTH CARE PROVIDER, REGARDLESS OF WHETHER THERE IS AN EXISTING RELATIONSHIP WITH THE HEALTH CARE PROVIDER OR PROVIDER GROUP, IF THE

TELEHEALTH ENCOUNTER IS FOR A BEHAVIORAL HEALTH OR SUBSTANCE USE DISORDER SERVICE AND BOTH ITEMS OF SUBDIVISION (a) OF THIS PARAGRAPH APPLY.

~~2.~~ 3. Does not include the sole use of ~~an audio-only telephone, a video-only system,~~ a ~~facsimile~~ FAX machine, instant messages, VOICE MAIL or ~~electronic mail~~ EMAIL.

Sec. 4. Section 20-1406.05, Arizona Revised Statutes, is amended to read:

20-1406.05. Telehealth; coverage of health care services; definition

A. All policies issued, delivered or renewed by a group disability insurer or a blanket disability insurer ~~on or after January 1, 2018~~ IN THIS STATE must provide coverage for health care services that are provided through ~~telemedicine~~ TELEHEALTH if the health care service would be covered were it provided through AN in-person ~~consultation~~ ENCOUNTER between the insured and a health care provider and provided to an insured receiving the service in this state. THE FOLLOWING REQUIREMENTS APPLY TO COVERAGE OF TELEHEALTH SERVICES:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, a GROUP OR blanket disability insurer may not limit or deny the coverage of health care services provided through ~~telemedicine~~ TELEHEALTH, INCLUDING ANCILLARY SERVICES, and may apply only the same limits or exclusions on a health care service provided through ~~telemedicine~~ TELEHEALTH that are applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service, EXCEPT FOR PROCEDURES OR SERVICES FOR WHICH THE WEIGHT OF EVIDENCE, BASED ON PRACTICE GUIDELINES, PEER-REVIEWED CLINICAL PUBLICATIONS OR RESEARCH OR RECOMMENDATIONS BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607, DETERMINES NOT TO BE APPROPRIATE TO BE PROVIDED THROUGH TELEHEALTH.

2. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, A GROUP OR BLANKET DISABILITY INSURER SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM, WHETHER PROVIDED THROUGH TELEHEALTH USING AN AUDIO-VISUAL FORMAT OR IN-PERSON CARE. A GROUP OR BLANKET DISABILITY INSURER SHALL REIMBURSE HEALTH CARE PROVIDERS AT THE SAME LEVEL OF PAYMENT FOR EQUIVALENT IN-PERSON BEHAVIORAL HEALTH AND SUBSTANCE USE DISORDER SERVICES AS IDENTIFIED BY THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM IF PROVIDED THROUGH TELEHEALTH USING AN AUDIO-ONLY FORMAT. THIS PARAGRAPH DOES NOT APPLY TO A TELEHEALTH ENCOUNTER PROVIDED THROUGH A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE GROUP OR BLANKET DISABILITY INSURER. A GROUP OR BLANKET DISABILITY INSURER MAY NOT REQUIRE A HEALTH CARE PROVIDER TO USE A TELEHEALTH PLATFORM THAT IS SPONSORED OR PROVIDED BY THE GROUP OR BLANKET DISABILITY INSURER AS A CONDITION OF NETWORK PARTICIPATION.

3. BEFORE JANUARY 1, 2022, A GROUP OR BLANKET DISABILITY INSURER SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER

IF THAT SERVICE IS REIMBURSED BY MEDICARE OR THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM WHEN PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER. BEGINNING JANUARY 1, 2022, A GROUP OR BLANKET DISABILITY INSURER SHALL COVER SERVICES PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER IF THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 RECOMMENDS THAT THE SERVICES MAY APPROPRIATELY BE PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH ENCOUNTER.

4. A HEALTH CARE PROVIDER SHALL BILL FOR A TELEHEALTH ENCOUNTER USING THE HEALTHCARE COMMON PROCEDURE CODING SYSTEM AND SHALL IDENTIFY WHETHER THE TELEHEALTH ENCOUNTER WAS PROVIDED IN AN AUDIO-ONLY OR AUDIO-VIDEO FORMAT. TO SUBMIT A CLAIM FOR AN AUDIO-ONLY SERVICE, THE HEALTH CARE PROVIDER MUST MAKE TELEHEALTH SERVICES GENERALLY AVAILABLE TO PATIENTS THROUGH THE INTERACTIVE USE OF AUDIO, VIDEO OR OTHER ELECTRONIC MEDIA.

5. AT THE TIME OF THE TELEHEALTH ENCOUNTER, THE HEALTH CARE PROVIDER SHALL ACCESS CLINICAL INFORMATION AND RECORDS, IF AVAILABLE, THAT ARE APPROPRIATE TO EVALUATE THE PATIENT'S CONDITION. THE HEALTH CARE PROVIDER SHALL INFORM THE INSURED BEFORE THE TELEHEALTH ENCOUNTER IF THERE IS A CHARGE FOR THE ENCOUNTER.

6. A GROUP OR BLANKET DISABILITY INSURER MAY ESTABLISH REASONABLE REQUIREMENTS AND PARAMETERS FOR TELEHEALTH SERVICES, INCLUDING DOCUMENTATION, FRAUD PREVENTION, IDENTITY VERIFICATION AND RECORDKEEPING, BUT SUCH REQUIREMENTS AND PARAMETERS MAY NOT BE MORE RESTRICTIVE OR LESS FAVORABLE TO HEALTH CARE PROVIDERS OR INSUREDS THAN ARE REQUIRED FOR HEALTH CARE SERVICES DELIVERED IN PERSON.

7. COVERED TELEHEALTH SERVICES MAY BE PROVIDED REGARDLESS OF WHERE THE INSURED IS LOCATED OR THE TYPE OF SITE.

8. EXCEPT IN AN EMERGENCY AS PRESCRIBED IN SECTION 20-2803, the policy may limit the coverage to those health care providers who are members of the insurer's provider network.

B. SUBSECTION A OF THIS SECTION DOES NOT:

1. LIMIT THE ABILITY OF GROUP OR BLANKET DISABILITY INSURERS TO PROVIDE INCENTIVES TO INSUREDS THAT ARE DESIGNED TO IMPROVE HEALTH OUTCOMES, INCREASE ADHERENCE TO A COURSE OF TREATMENT OR REDUCE RISK.

2. PREVENT GROUP OR BLANKET DISABILITY INSURERS FROM OFFERING NETWORK CONTRACTS TO HEALTH CARE PROVIDERS WHO EMPLOY VALUE-BASED PURCHASING OR BUNDLED PAYMENT METHODOLOGIES IF OTHERWISE ALLOWED BY LAW OR PREVENT HEALTH CARE PROVIDERS FROM VOLUNTARILY AGREEING TO ENTER INTO SUCH CONTRACTS WITH A GROUP OR BLANKET DISABILITY INSURER.

C. THIS SECTION DOES NOT RELIEVE A GROUP OR BLANKET DISABILITY INSURER FROM AN OBLIGATION TO PROVIDE ADEQUATE ACCESS TO IN-PERSON HEALTH CARE SERVICES. NETWORK ADEQUACY STANDARDS REQUIRED BY FEDERAL OR STATE LAW MAY NOT BE MET BY A GROUP OR BLANKET DISABILITY INSURER THROUGH THE USE OF CONTRACTED HEALTH CARE PROVIDERS WHO PROVIDE ONLY TELEHEALTH

SERVICES AND DO NOT PROVIDE IN-PERSON HEALTH CARE SERVICES IN THIS STATE OR WITHIN FIFTY MILES OF THE BORDER OF THIS STATE.

~~B.~~ D. This section does not prevent a group or blanket disability insurer from imposing deductibles~~,~~ OR copayment or coinsurance requirements for a health care service provided through ~~telemedicine~~ TELEHEALTH if the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person ~~consultation~~ ENCOUNTER for the same health care service. IF THE GROUP OR BLANKET DISABILITY INSURER WAIVES A DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT THAT IMPACTS A HEALTH CARE PROVIDER'S CONTRACTED REIMBURSEMENT RATE, THE GROUP OR BLANKET DISABILITY INSURER SHALL REIMBURSE THE HEALTH CARE PROVIDER FOR THE COST OF THE DEDUCTIBLE OR COPAYMENT OR COINSURANCE REQUIREMENT TO ENSURE THAT THE HEALTH CARE PROVIDER RECEIVES THE CONTRACTED REIMBURSEMENT RATE IF THE SERVICE IS COVERED AND THE CLAIM MEETS OTHER REQUIREMENTS OF THE NETWORK PARTICIPATION AGREEMENT.

~~C.~~ E. Services provided through ~~telemedicine~~ TELEHEALTH or resulting from a ~~telemedicine consultation~~ TELEHEALTH ENCOUNTER are subject to all of this state's laws and rules that govern prescribing, dispensing and administering prescription pharmaceuticals and devices and shall comply with Arizona licensure requirements and any practice guidelines of THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 OR, IF NOT ADDRESSED, THE PRACTICE GUIDELINES OF a national association of medical professionals promoting access to medical care for consumers via telecommunications technology or other qualified medical professional societies to ensure quality of care.

~~D.~~ F. This section does not apply to limited benefit coverage as defined in section 20-1137.

~~E.~~ G. For the purposes of this section, "~~telemedicine~~ TELEHEALTH":

1. Means the interactive use of audio, video or other electronic media, including asynchronous store-and-forward technologies and remote patient monitoring technologies, for the purpose of diagnosis, consultation or treatment.

2. INCLUDES:

(a) THE USE OF AN AUDIO-ONLY TELEPHONE ENCOUNTER BETWEEN AN INSURED WHO HAS AN EXISTING RELATIONSHIP WITH A HEALTH CARE PROVIDER OR PROVIDER GROUP IF BOTH OF THE FOLLOWING APPLY:

(i) AN AUDIO-VISUAL TELEHEALTH ENCOUNTER IS NOT REASONABLY AVAILABLE DUE TO THE INSURED'S FUNCTIONAL STATUS, THE INSURED'S LACK OF TECHNOLOGY OR TELECOMMUNICATIONS INFRASTRUCTURE LIMITS, AS DETERMINED BY THE HEALTH CARE PROVIDER.

(ii) THE TELEHEALTH ENCOUNTER IS INITIATED AT THE REQUEST OF THE INSURED OR AUTHORIZED BY THE INSURED BEFORE THE TELEHEALTH ENCOUNTER.

(b) THE USE OF AN AUDIO-ONLY ENCOUNTER BETWEEN THE INSURED AND A HEALTH CARE PROVIDER, REGARDLESS OF WHETHER THERE IS AN EXISTING

RELATIONSHIP WITH THE HEALTH CARE PROVIDER OR PROVIDER GROUP, IF THE TELEHEALTH ENCOUNTER IS FOR A BEHAVIORAL HEALTH OR SUBSTANCE USE DISORDER SERVICE AND BOTH ITEMS OF SUBDIVISION (a) OF THIS PARAGRAPH APPLY.

~~2.~~ 3. Does not include the sole use of ~~an audio-only telephone, a video-only system,~~ a ~~facsimile~~ FAX machine, instant messages, VOICE MAIL or ~~electronic mail~~ EMAIL.

Sec. 5. Section 23-1026, Arizona Revised Statutes, is amended to read:

23-1026. Periodic medical examination of employee; effect of refusal or obstruction of examination or treatment

A. An employee who may be entitled to compensation under this chapter shall submit ~~himself~~ THE EMPLOYEE for medical examination from time to time at a place reasonably convenient for the employee, if and when requested by the commission, ~~his~~ THE EMPLOYEE'S employer or the insurance carrier. A place is reasonably convenient even if it is not where the employee resides if it is the place where the employee was injured and the employer or the insurance carrier pays in advance the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable.

B. The request for the medical examination shall fix a time and place having regard to the convenience of the employee, ~~his~~ THE EMPLOYEE'S physical condition and ~~his~~ THE EMPLOYEE'S ability to attend. A MEDICAL EXAMINATION MAY BE CONDUCTED VIA TELEHEALTH AS DEFINED IN SECTION 36-3601 WITH THE CONSENT OF BOTH THE EMPLOYEE AND THE REQUESTING PARTY. The employee may have a physician present at the examination if procured and paid for by the employee.

C. If the employee refuses to submit to the medical examination or obstructs the examination, ~~his~~ THE EMPLOYEE'S right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

D. A physician who makes or is present at the medical examination provided by this section may be required to testify as to the result of the examination. The physician is not subject to a complaint for unprofessional conduct to the physician's licensing board if the complaint is based on a disagreement with the findings and opinions expressed by the physician as a result of the examination.

E. On appropriate application and hearing, the commission may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard ~~his~~ THE EMPLOYEE'S recovery~~,~~ or who refuses to submit to medical or surgical treatment reasonably necessary to promote ~~his~~ THE EMPLOYEE'S recovery.

F. An employee shall be excused from attending a scheduled medical examination if the employee requests a protective order and the administrative law judge finds that the scheduled examination is unnecessary, would be cumulative or could reasonably be timely scheduled

with an appropriate physician where the employee resides. If a protective order is requested, the burden is on the employer or insurance carrier to establish that a medical examination should be scheduled at a place other than where the employee resides. If an employee has left this state and the employer or insurance carrier pays in advance the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable, the employer or insurance carrier is entitled to have the employee return to this state one time a year for examination or one time following the filing of a petition to reopen.

G. If a physician performs an examination under this section and is provided data from the Arizona state board of pharmacy pursuant to title 36, chapter 28, the physician may disclose that data to the employee, employer, insurance carrier and commission.

Sec. 6. Section 32-1401, Arizona Revised Statutes, is amended to read:

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.

2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board

whose function is that of approving hospitals for internship, fellowship or residency training.

5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.

6. "Board" means the Arizona medical board.

7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

18. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) Committing false, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

(f) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.

(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.

(i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513, including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous

obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.

(j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(k) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-1491.

(l) Signing a blank, undated or predated prescription form.

(m) Committing conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(n) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(o) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(p) Having action taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.

(q) Having sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.

(r) Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

(s) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.

(t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

(u) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.

(v) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

(w) Obtaining a fee by fraud, deceit or misrepresentation.

(x) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(y) Committing conduct that is in violation of section 36-2302.

(z) Using experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(aa) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(bb) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(cc) Representing or claiming to be a medical specialist if this is not true.

(dd) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(ee) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ff) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(gg) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(hh) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(ii) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(jj) Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(kk) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(ll) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(mm) Committing conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(nn) Making a representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(oo) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(pp) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(qq) As a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution, failing to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(rr) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(ss) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(tt) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted ~~during a real-time telemedicine encounter with audio and video capability~~ THROUGH TELEHEALTH AS DEFINED IN SECTION 36-3601 WITH A CLINICAL EVALUATION THAT IS APPROPRIATE FOR THE PATIENT AND THE CONDITION WITH WHICH THE PATIENT PRESENTS, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a ~~telemedicine~~ TELEHEALTH program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(uu) Performing office based surgery using sedation in violation of board rules.

(vv) Practicing medicine under a false or assumed name in this state.

Sec. 7. Section 32-1854, Arizona Revised Statutes, is amended to read:

32-1854. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:

1. Knowingly betraying a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from exchanging information with the licensing and disciplinary boards of other states, territories or districts of the United States or with foreign countries or with osteopathic medical organizations located in this state or in any state, district or territory of this country or in any foreign country.

2. Committing a felony or a misdemeanor involving moral turpitude. In either case conviction by any court of competent jurisdiction is conclusive evidence of the commission of the offense.

3. Practicing medicine while under the influence of alcohol, a dangerous drug as defined in section 13-3401, narcotic or hypnotic drugs or any substance that impairs or may impair the licensee's ability to safely and skillfully practice medicine.

4. Being diagnosed by a physician licensed under this chapter or chapter 13 of this title or a psychologist licensed under chapter 19.1 of this title as excessively or illegally using alcohol or a controlled substance.

5. Prescribing, dispensing or administering controlled substances or prescription-only drugs for other than accepted therapeutic purposes.

6. Engaging in the practice of medicine in a manner that harms or may harm a patient or that the board determines falls below the community standard.

7. Impersonating another physician.

8. Acting or assuming to act as a member of the board if this is not true.

9. Procuring, renewing or attempting to procure or renew a license to practice osteopathic medicine by fraud or misrepresentation.

10. Having professional connection with or lending one's name to an illegal practitioner of osteopathic medicine or any of the other healing arts.

11. Representing that a manifestly incurable disease, injury, ailment or infirmity can be permanently cured or that a curable disease, injury, ailment or infirmity can be cured within a stated time, if this is not true.

12. Failing to reasonably disclose and inform the patient or the patient's representative of the method, device or instrumentality the licensee uses to treat the patient's disease, injury, ailment or infirmity.

13. Refusing to divulge to the board on demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity.

14. Charging a fee for services not rendered or dividing a professional fee for patient referrals. This paragraph does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for clinical trial regulated by the United States food and drug administration.

15. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or when applying for or renewing privileges at a health care institution or a health care program.

16. Advertising in a false, deceptive or misleading manner.

17. Representing or claiming to be an osteopathic medical specialist if the physician has not satisfied the applicable requirements of this chapter or board rules.

18. Having a license denied or disciplinary action taken against a license by any other state, territory, district or country, unless it can be shown that this occurred for reasons that did not relate to the person's ability to safely and skillfully practice osteopathic medicine or to any act of unprofessional conduct as provided in this section.

19. Committing any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession.

20. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter.

21. Failing or refusing to establish and maintain adequate records on a patient as follows:

(a) If the patient is an adult, for at least six years after the last date the licensee provided the patient with medical or health care services.

(b) If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the licensee provided that patient with medical or health care services, whichever date occurs later.

22. Using controlled substances or prescription-only drugs unless they are provided by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.

23. Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.

24. Committing nontherapeutic use of injectable amphetamines.

25. Violating a formal order, probation or a stipulation issued by the board under this chapter.

26. Charging or collecting an inappropriate fee. This paragraph does not apply to a fee that is fixed in a written contract between the physician and the patient and entered into before treatment begins.

27. Using experimental forms of therapy without adequate informed patient consent or without conforming to generally accepted criteria and complying with federal and state statutes and regulations governing experimental therapies.

28. Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, physician or homeopathic physician licensed under chapter 7, 8, 13, 14 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent,

the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

29. Failing to allow properly authorized board personnel to have, on presentation of a subpoena, access to any documents, reports or records that are maintained by the physician and that relate to the physician's medical practice or medically related activities pursuant to section 32-1855.01.

30. Signing a blank, undated or predated prescription form.

31. Obtaining a fee by fraud, deceit or misrepresentation.

32. Failing to report to the board an osteopathic physician and surgeon who 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.

33. Referring a patient to a diagnostic or treatment facility or prescribing goods and services without disclosing that the physician has a direct pecuniary interest in the facility, goods or services to which the patient has been referred or prescribed. This paragraph does not apply to a referral by one physician to another physician within a group of physicians practicing together.

34. Exhibiting a lack of or inappropriate direction, collaboration or supervision of a licensed, certified or registered health care provider or office personnel employed by or assigned to the physician in the medical care of patients.

35. Violating a federal law, a state law or a rule applicable to the practice of medicine.

36. Prescribing or dispensing controlled substances or prescription-only medications without establishing and maintaining adequate patient records.

37. Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-1871.

38. Failing to dispense drugs and devices in compliance with article 4 of this chapter.

39. Committing any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

40. Committing any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.

41. With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

42. Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

43. Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this paragraph, "sexual conduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(b) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical conduct of a sexual nature.

44. Committing conduct that is in violation of section 36-2302.

45. Committing conduct that the board determines constitutes gross negligence, repeated negligence or negligence that results in harm or death of a patient.

46. Committing conduct in the practice of medicine that evidences moral unfitness to practice medicine.

47. Engaging in disruptive or abusive behavior in a professional setting.

48. Failing to disclose to a patient that the licensee has a direct financial interest in a prescribed treatment, good or service if the treatment, good or service is available on a competitive basis. This paragraph does not apply to a referral by one licensee to another licensee within a group of licensees who practice together. A licensee meets the disclosure requirements of this paragraph if both of the following are true:

(a) The licensee makes the disclosure on a form prescribed by the board.

(b) The patient or the patient's guardian or parent acknowledges by signing the form that the licensee has disclosed the licensee's direct financial interest.

49. Prescribing, dispensing or furnishing a prescription medication or a prescription-only device to a person if the licensee has not conducted a physical or mental health status examination of that person or has not previously established a physician-patient relationship. The physical or mental health status examination may be conducted ~~during a real-time telemedicine encounter with audio and video capability~~ THROUGH TELEHEALTH AS DEFINED IN SECTION 36-3601 WITH A CLINICAL EVALUATION THAT IS APPROPRIATE FOR THE PATIENT AND THE CONDITION WITH WHICH THE PATIENT PRESENTS, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This paragraph does not apply to:

(a) Emergencies.

(b) A licensee who provides patient care on behalf of the patient's regular treating licensed health care professional or provides a

consultation requested by the patient's regular treating licensed health care professional.

(c) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(d) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(e) Prescriptions written by a licensee through a ~~telemedicine~~ TELEHEALTH program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(f) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

50. If a licensee provides medical care by computer, failing to disclose the licensee's license number and the board's address and telephone number.

Sec. 8. Section 32-1901.01, Arizona Revised Statutes, is amended to read:

32-1901.01. Definition of unethical and unprofessional conduct; permittees; licensees

A. In this chapter, unless the context otherwise requires, for the purposes of disciplining a permittee, "unethical conduct" means the following, whether occurring in this state or elsewhere:

1. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

2. Committing an act that is substantially related to the qualifications, functions or duties of a permittee and that demonstrates either a lack of good moral character or an actual or potential unfitness to hold a permit in light of the public's safety.

3. Working under the influence of alcohol or other drugs.

4. Being addicted to the use of alcohol or other drugs to such a degree as to render the permittee unfit to perform the permittee's employment duties.

5. Violating a federal or state law or administrative rule relating to the manufacture, sale or distribution of drugs, devices, poisons, hazardous substances or precursor chemicals.

6. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals.

7. Violating state or federal reporting or recordkeeping requirements on transactions relating to precursor chemicals.

8. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally 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 pharmacy.

9. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

10. Failing to report in writing to the board any evidence that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties related to manufacturing, selling, distributing or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals or is or may be in violation of this chapter or a rule adopted under this chapter.

11. Intending to sell, transfer or distribute, or to offer for sale, transfer or distribution, or selling, transferring, distributing or dispensing or offering for sale, transfer or distribution an imitation controlled substance, imitation over-the-counter drug or imitation prescription-only drug as defined in section 13-3451.

12. Having the permittee's permit to manufacture, sell, distribute or dispense drugs, devices, poisons, hazardous substances or precursor chemicals denied or disciplined in another jurisdiction.

13. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

14. Obtaining or attempting to obtain a permit or a permit renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

15. Wilfully making a false report or record required by this chapter, required by federal or state laws pertaining to drugs, devices, poisons, hazardous substances or precursor chemicals or required for the payment for drugs, devices, poisons or hazardous substances or precursor chemicals or for services pertaining to such drugs or substances.

16. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

17. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

18. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, this chapter.

19. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

20. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

21. Failing to provide the board or its employees or agents or an authorized federal or state official conducting a site investigation, inspection or audit with access to any place for which a permit has been issued or for which an application for a permit has been submitted.

22. Failing to notify the board of a change of ownership, management or pharmacist in charge.

23. Failing to promptly produce on the request of the official conducting a site investigation, inspection or audit any book, record or document.

24. Overruling or attempting to overrule a pharmacist in matters of pharmacy ethics or interpreting laws pertaining to the practice of pharmacy or the distribution of drugs or devices.

25. Distributing premiums or rebates of any kind in connection with the sale of prescription medication, other than to the prescription medication recipient.

26. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

27. Fraudulently claiming to have performed a service.

28. Fraudulently charging a fee for a service.

29. Advertising drugs or devices, or services pertaining to drugs or devices, in a manner that is untrue or misleading in any particular, and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

B. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacist or pharmacy intern, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Being addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit to practice the profession of pharmacy.

2. Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy.

3. Dispensing a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the orderer, or in the case of a prescription order, the medical practitioner. The conduct prohibited by this paragraph does not apply to substitutions authorized pursuant to section 32-1963.01.

4. Obtaining or attempting to obtain a license to practice pharmacy or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

5. Having the licensee's license to practice pharmacy denied or disciplined in another jurisdiction.

6. Claiming professional superiority in compounding or dispensing prescription orders.

7. Failing to comply with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937 and rules adopted by the board.

8. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

9. Working under the influence of alcohol or other drugs.

10. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.

11. Knowingly dispensing a drug without a valid prescription order as required pursuant to section 32-1968, subsection A.

12. Knowingly dispensing a drug on a prescription order that was issued in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail or the internet, unless the order was any of the following:

(a) Made by a physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(b) Made in an emergency medical situation as defined in section 41-1831.

(c) Written to prepare a patient for a medical examination.

(d) Written or the prescription medications were issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, a public health emergency, an infectious disease outbreak or an act of bioterrorism. For the purposes of this subdivision, "bioterrorism" has the same meaning prescribed in section 36-781.

(e) Written or antimicrobials were dispensed by the prescribing or dispensing physician to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661.

(f) Written or the prescription medications were issued for administration of immunizations or vaccines listed in the United States

centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(g) For epinephrine auto-injectors that are written or dispensed for a school district or charter school and that are to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(h) Written by a licensee through a ~~telemedicine~~ TELEHEALTH program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(i) Written pursuant to a physical or mental health status examination that was conducted ~~during a real-time telemedicine encounter with audio and video capability~~ THROUGH TELEHEALTH AS DEFINED IN SECTION 36-3601 AND CONSISTENT WITH FEDERAL LAW.

(j) For naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration and written or dispensed for use pursuant to section 36-2228 or 36-2266.

13. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally 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 pharmacy.

14. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

15. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be in violation of this chapter or a rule adopted under this chapter.

16. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

17. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

18. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

19. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

20. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

21. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

22. Refusing without just cause to allow authorized agents of the board to examine documents that are required to be kept pursuant to this chapter or title 36.

23. Participating in an arrangement or agreement to allow a prescription order or a prescription medication to be left at, picked up from, accepted by or delivered to a place that is not licensed as a pharmacy. This paragraph does not prohibit a pharmacist or a pharmacy from using an employee or a common carrier to pick up prescription orders at or deliver prescription medications to the office or home of a medical practitioner, the residence of a patient or a patient's hospital.

24. Paying rebates or entering into an agreement for the payment of rebates to a medical practitioner or any other person in the health care field.

25. Providing or causing to be provided to a medical practitioner prescription order blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

26. Fraudulently claiming to have performed a professional service.

27. Fraudulently charging a fee for a professional service.

28. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.

29. Failing to report a change in the licensee's residency status as required by section 32-1926.01.

30. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

C. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacy technician or pharmacy technician trainee, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Being addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit to perform the licensee's employment duties.

2. Violating a federal or state law or administrative rule relating to the manufacture or distribution of drugs or devices.

3. Obtaining or attempting to obtain a pharmacy technician or pharmacy technician trainee license or a pharmacy technician license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

4. Having the licensee's license to practice as a pharmacy technician denied or disciplined in another jurisdiction.

5. Failing to comply with the mandatory continuing professional education requirements of section 32-1925, subsection H and rules adopted by the board.

6. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

7. Working under the influence of alcohol or other drugs.

8. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.

9. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally 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 pharmacy.

10. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

11. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be in violation of this chapter or a rule adopted under this chapter.

12. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

13. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

14. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

15. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

16. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

17. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

18. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.

19. Failing to report a change in the licensee's residency status as required by section 32-1926.01.

Sec. 9. Section 32-2061, Arizona Revised Statutes, is amended to read:

32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.

2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.

3. "Board" means the state board of psychologist examiners.

4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:

(a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.

(b) Issues that the guardian agrees to specifically reserve to the individual.

5. "Committee on behavior analysts" means the committee established by section 32-2091.15.

6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.

7. "Health care institution" means a facility as defined in section 36-401.

8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist 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 psychologist's license.

9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:

(a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.

(b) Issues that the guardian agrees to specifically reserve to the individual.

10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.

11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.

12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of ~~telemedicine~~ TELEHEALTH pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

(l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.

(o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.

(p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.

(q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.

(r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.

(s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.

(u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.

(v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.

(w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x) Engaging in false, deceptive or misleading advertising.

(y) Exploiting a client or patient, a student or a supervisee.

(z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

Sec. 10. Section 32-3248.01, Arizona Revised Statutes, is amended to read:

32-3248.01. Schedule II controlled substances; dosage limit; exceptions; morphine; opioid antagonist

A. A health professional who is authorized under this title to prescribe controlled substances may not issue a new prescription to be filled or dispensed for a patient outside of a health care institution for a schedule II controlled substance that is an opioid that exceeds ninety morphine milligram equivalents per day.

B. The limit prescribed by subsection A of this section does not apply to:

1. A continuation of a prior prescription that was issued within the previous sixty days.

2. An opioid with a maximum approved total daily dose in the labeling as approved by the United States food and drug administration.

3. A prescription that is issued following a surgical procedure and that is limited to not more than a fourteen-day supply.

4. A patient who:

(a) Has an active oncology diagnosis.

(b) Has a traumatic injury, not including a surgical procedure.

(c) Is receiving hospice care.

(d) Is receiving end-of-life care.

(e) Is receiving palliative care.

(f) Is receiving skilled nursing facility care.

(g) Is receiving treatment for burns.

(h) Is receiving medication-assisted treatment for a substance use disorder.

(i) Is hospitalized.

C. If a health professional believes that a patient requires more than ninety morphine milligram equivalents per day and the patient is not exempt from the limit pursuant to subsection B of this section, the health professional shall first consult with a physician who is licensed pursuant to chapter 13 or 17 of this title and who is board-certified in pain, or an opioid assistance and referral call service, if available, that is designated by the department of health services. The consultation may be done by telephone or through ~~telemedicine~~ TELEHEALTH. If the opioid ASSISTANCE AND REFERRAL call service agrees with the higher dose, the health professional may issue a prescription for more than ninety morphine milligram equivalents per day. If the consulting physician agrees with the higher dose, the health professional may issue a prescription for more than ninety morphine milligram equivalents per day. If the consulting physician is not available to consult within forty-eight hours after the request, the health professional may prescribe the amount that the health professional believes the patient requires and subsequently have the consultation. If the health professional is a physician who is licensed pursuant to chapter 13 or 17 of this title and is board-certified in pain, the health professional may issue a prescription for more than ninety morphine milligram equivalents per day without a consultation under this subsection.

D. If a patient is prescribed more than ninety morphine milligram equivalents per day pursuant to subsection B or C of this section, the prescribing health professional shall also prescribe for the patient naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration for the treatment of opioid-related overdoses.

E. A prescription ~~order~~ for a schedule II controlled substance that is an opioid that is written for more than ninety morphine milligram equivalents per day is deemed to meet the requirements of an exemption under this section when the prescription ~~order~~ is presented to the

dispenser. A pharmacist is not required to verify with the prescriber whether the prescription ~~order~~ complies with this section.

Sec. 11. Section 32-3251, Arizona Revised Statutes, is amended to read:

32-3251. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of behavioral health examiners.

2. "Client" means a patient who receives behavioral health services from a person licensed pursuant to this chapter.

3. "Direct client contact" means the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients, INCLUDING THROUGH THE USE OF TELEHEALTH PURSUANT TO TITLE 36, CHAPTER 36, ARTICLE 1.

4. "Equivalent" means comparable in content and quality but not identical.

5. "Indirect client service" means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.

6. "Letter of concern" means a nondisciplinary written document sent by the board to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

7. "Licensee" means a person who is licensed pursuant to this chapter.

8. "Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this chapter.

9. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

10. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:

(a) Facilitate human development and adjustment throughout the human life span.

(b) Assess and facilitate career development.

(c) Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.

(d) Manage symptoms of mental illness.

(e) Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy.

11. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:

(a) Treat mental, behavioral and emotional disorders.

(b) Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.

(c) Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy.

12. "Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

13. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.

14. "Psychotherapy" means a variety of treatment methods developing out of generally accepted theories about human behavior and development.

~~15. "Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between the behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602.~~

15. "TELEHEALTH" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-3601.

16. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Being convicted of a felony. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the conviction.

(b) Using fraud or deceit in connection with rendering services as a licensee or in establishing qualifications pursuant to this chapter.

(c) Making any oral or written misrepresentation of a fact:

(i) To secure or attempt to secure the issuance or renewal of a license.

(ii) In any statements provided during an investigation or disciplinary proceeding by the board.

(iii) Regarding the licensee's skills or the value of any treatment provided or to be provided.

(d) Making any false, fraudulent or deceptive statement connected with the practice of behavioral health, including false or misleading advertising by the licensee or the licensee's staff or a representative compensated by the licensee.

(e) Securing or attempting to secure the issuance or renewal of a license by knowingly taking advantage of the mistake of another person or the board.

(f) Engaging in active habitual intemperance in the use of alcohol or active habitual substance abuse.

(g) Using a controlled substance that is not prescribed for use during a prescribed course of treatment.

(h) Obtaining a fee by fraud, deceit or misrepresentation.

(i) Aiding or abetting a person who is not licensed pursuant to this chapter to purport to be a licensed behavioral health professional in this state.

(j) Engaging in conduct that the board determines is gross negligence or repeated negligence in the licensee's profession.

(k) Engaging in any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger to the health, welfare or safety of a client.

(l) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.

(m) Engaging or offering to engage as a licensee in activities that are not congruent with the licensee's professional education, training or experience.

(n) Failing to comply with or violating, attempting to violate or assisting in or abetting the violation of any provision of this chapter, any rule adopted pursuant to this chapter, any lawful order of the board, or any formal order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(o) Failing to furnish information within a specified time to the board or its investigators or representatives if legally requested by the board.

(p) Failing to conform to minimum practice standards as developed by the board.

(q) Failing or refusing to maintain adequate records of behavioral health services provided to a client.

(r) Providing behavioral health services that are clinically unjustified or unsafe or otherwise engaging in activities as a licensee that are unprofessional by current standards of practice.

(s) Terminating behavioral health services to a client without making an appropriate referral for continuation of care for the client if continuing behavioral health services are indicated.

(t) Disclosing a professional confidence or privileged communication except as may otherwise be required by law or permitted by a legally valid written release.

(u) Failing to allow the board or its investigators on demand to examine and have access to documents, reports and records in any format maintained by the licensee that relate to the licensee's practice of behavioral health.

(v) Engaging in any sexual conduct between a licensee and a client or former client.

(w) Providing behavioral health services to any person with whom the licensee has had sexual contact.

(x) Exploiting a client, former client or supervisee. For the purposes of this subdivision, "exploiting" means taking advantage of a professional relationship with a client, former client or supervisee for the benefit or profit of the licensee.

(y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental.

(z) Engaging in physical contact between a licensee and a client if there is a reasonable possibility of physical or psychological harm to the client as a result of that contact.

(aa) Sexually harassing a client, former client, research subject, supervisee or coworker. For the purposes of this subdivision, "sexually harassing" includes sexual advances, sexual solicitation, requests for sexual favors, unwelcome comments or gestures or any other verbal or physical conduct of a sexual nature.

(bb) Harassing, exploiting or retaliating against a client, former client, research subject, supervisee, coworker or witness or a complainant in a disciplinary investigation or proceeding involving a licensee.

(cc) Failing to take reasonable steps to inform potential victims and appropriate authorities if the licensee becomes aware during the course of providing or supervising behavioral health services that a client's condition indicates a clear and imminent danger to the client or others.

(dd) Failing to comply with the laws of the appropriate licensing or credentialing authority to provide behavioral health services by electronic means in all governmental jurisdictions where the client receiving these services resides.

(ee) Giving or receiving a payment, kickback, rebate, bonus or other remuneration for a referral.

(ff) Failing to report in writing to the board information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. This duty does not extend to information provided by a licensee that is protected by the behavioral health professional-client privilege unless the information indicates a clear and imminent danger to the client or others or is otherwise subject to mandatory reporting requirements pursuant to state or federal law.

(gg) Failing to follow federal and state laws regarding the storage, use and release of confidential information regarding a client's personal identifiable information or care.

(hh) Failing to retain records pursuant to section 12-2297.

(ii) Violating any federal or state law, rule or regulation applicable to the practice of behavioral health.

(jj) Failing to make client records in the licensee's possession available in a timely manner to another health professional or licensee on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.

(kk) Failing to make client records in the licensee's possession promptly available to the client, a minor client's parent, the client's legal guardian or the client's authorized representative on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.

(ll) Being the subject of the revocation, suspension, surrender or any other disciplinary sanction of a professional license, certificate or registration or other adverse action related to a professional license, certificate or registration in another jurisdiction or country, including the failure to report the adverse action to the board. The action taken may include refusing, denying, revoking or suspending a license or certificate, the surrendering of a license or certificate, otherwise limiting, restricting or monitoring a licensee or certificate holder or placing a licensee or certificate holder on probation.

(mm) Engaging in any conduct that results in a sanction imposed by an agency of the federal government that involves restricting, suspending, limiting or removing the licensee's ability to obtain financial remuneration for behavioral health services.

(nn) Violating the security of any licensure examination materials.

(oo) Using fraud or deceit in connection with taking or assisting another person in taking a licensure examination.

Sec. 12. Section 36-2272, Arizona Revised Statutes, is amended to read:

36-2272. Consent of parent required for mental health screening or treatment of minors; exception; violation; classification; definition

A. Except as otherwise provided by law or a court order, no person, corporation, association, organization or state-supported institution, or any individual employed by any of these entities, may procure, solicit to perform, arrange for the performance of or perform mental health screening in a nonclinical setting or mental health treatment on a minor without first obtaining the written or oral consent of a parent or a legal custodian of the minor child. If the parental consent is given through ~~telemedicine~~ TELEHEALTH, the health professional must verify the parent's identity at the site where the consent is given.

B. This section does not apply when an emergency exists that requires a person to perform mental health screening or provide mental health treatment to prevent serious injury to or save the life of a minor child.

C. A person who violates this section is guilty of a class 1 misdemeanor.

D. For the purposes of this section, "parent" means the parent or legal guardian of a minor child.

Sec. 13. Heading change

The chapter heading of title 36, chapter 36, Arizona Revised Statutes, is changed from "TELEMEDICINE" to "TELEHEALTH".

Sec. 14. Section 36-3601, Arizona Revised Statutes, is amended to read:

36-3601. Definitions

For the purposes of this chapter:

1. "Health care decision maker" has the same meaning prescribed in section 12-2801.

2. "Health care provider":

(a) Means a person licensed pursuant to title 32, chapter 7, 8, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, ~~or~~ 33, 34, 35, 39, 41 OR 42, OR CHAPTER 4, ARTICLE 6 OF THIS TITLE, CHAPTER 6, ARTICLE 7 OF THIS TITLE OR CHAPTER 17 OF THIS TITLE.

(b) INCLUDES:

(i) A HEALTH CARE INSTITUTION LICENSED PURSUANT TO CHAPTER 4 OF THIS TITLE.

(ii) A PERSON WHO HOLDS A TRAINING PERMIT PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

~~3. "Telemedicine" means the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data~~

~~through interactive audio, video or data communications that occur in the physical presence of the patient, including audio or video communications sent to a health care provider for diagnostic or treatment consultation.~~

3. "HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY" MEANS A BOARD OR AGENCY THAT REGULATES ONE OR MORE HEALTH CARE PROVIDER PROFESSIONS IN THIS STATE.

4. "TELEHEALTH" MEANS:

(a) THE INTERACTIVE USE OF AUDIO, VIDEO OR OTHER ELECTRONIC MEDIA, INCLUDING ASYNCHRONOUS STORE-AND-FORWARD TECHNOLOGIES AND REMOTE PATIENT MONITORING TECHNOLOGIES, FOR THE PRACTICE OF HEALTH CARE, ASSESSMENT, DIAGNOSIS, CONSULTATION OR TREATMENT AND THE TRANSFER OF MEDICAL DATA.

(b) INCLUDES THE USE OF AN AUDIO-ONLY TELEPHONE ENCOUNTER BETWEEN THE PATIENT OR CLIENT AND HEALTH CARE PROVIDER IF AN AUDIO-VISUAL TELEHEALTH ENCOUNTER IS NOT REASONABLY AVAILABLE DUE TO THE PATIENT'S FUNCTIONAL STATUS, THE PATIENT'S LACK OF TECHNOLOGY OR TELECOMMUNICATIONS INFRASTRUCTURE LIMITS, AS DETERMINED BY THE HEALTH CARE PROVIDER.

(c) DOES NOT INCLUDE THE USE OF A FAX MACHINE, INSTANT MESSAGES, VOICE MAIL OR EMAIL.

Sec. 15. Section 36-3602, Arizona Revised Statutes, is amended to read:

36-3602. Delivery of health care through telehealth; requirements; exceptions

A. Except as provided in subsection ~~E~~ G of this section, before a health care provider delivers health care through ~~telemedicine~~ TELEHEALTH, the treating health care provider shall obtain verbal or written informed consent, INCLUDING BY ELECTRONIC MEANS, from the patient or the patient's health care decision maker. If the informed consent is obtained verbally, the health care provider shall document the consent on the patient's medical record.

B. The patient is entitled to all existing confidentiality protections pursuant to section 12-2292.

C. All medical reports resulting from a ~~telemedicine~~ TELEHEALTH consultation are part of a patient's medical record as defined in section 12-2291.

D. Dissemination of any images or information identifiable to a specific patient for research or educational purposes shall not occur without the patient's consent, unless authorized by state or federal law.

E. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION AND FOR SCHEDULE II DRUGS, A HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY MAY NOT ENFORCE ANY STATUTE, RULE OR POLICY THAT WOULD REQUIRE A HEALTH CARE PROVIDER WHO IS LICENSED BY THAT BOARD OR AGENCY AND WHO IS AUTHORIZED TO WRITE PRESCRIPTIONS OR DISPENSE OR ADMINISTER PRESCRIPTION DRUGS AND DEVICES TO PROVIDE AN IN-PERSON EXAMINATION OF THE PATIENT BEFORE ISSUING A PRESCRIPTION EXCEPT AS SPECIFICALLY PRESCRIBED BY FEDERAL LAW. A PHYSICAL OR MENTAL HEALTH STATUS EXAMINATION MAY BE CONDUCTED DURING A

TELEHEALTH ENCOUNTER. SCHEDULE II DRUGS MAY BE PRESCRIBED ONLY AFTER AN IN-PERSON OR AUDIO-VISUAL EXAMINATION AND ONLY TO THE EXTENT ALLOWED BY FEDERAL AND STATE LAW.

F. SERVICES PROVIDED THROUGH TELEHEALTH ARE SUBJECT TO THIS STATE'S LAWS AND RULES GOVERNING THE HEALTH CARE PROVIDER'S SCOPE OF PRACTICE AND THE PRACTICE GUIDELINES ADOPTED BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607.

~~E.~~ G. The consent requirements of this section do not apply:

1. If the ~~telemedicine~~ TELEHEALTH interaction does not take place in the physical presence of the patient.

2. In an emergency situation in which the patient or the patient's health care decision maker is unable to give informed consent.

3. To the transmission of diagnostic images to a health care provider serving as a consultant or the reporting of diagnostic test results by that consultant.

Sec. 16. Section 36-3603, Arizona Revised Statutes, is amended to read:

36-3603. State jurisdiction; scope

~~The provisions of~~ This article ~~apply~~ APPLIES to the practice of ~~telemedicine~~ TELEHEALTH within ~~the~~ THIS state ~~of Arizona~~. ~~Nothing in~~ This article ~~shall be construed to~~ DOES NOT expand, reduce or otherwise amend the health care provider licensing requirements of title 32.

Sec. 17. Section 36-3604, Arizona Revised Statutes, is amended to read:

36-3604. Use of telehealth for abortion prohibited; penalty; definition

A. A health care provider shall not use ~~telemedicine~~ TELEHEALTH to provide an abortion.

B. A health care provider who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32.

C. For the purposes of this section, "abortion" has the same meaning prescribed in section 36-2151.

Sec. 18. Title 36, chapter 36, article 1, Arizona Revised Statutes, is amended by adding sections 36-3605, 36-3606, 36-3607 and 36-3608, to read:

36-3605. Health care providers; determination of telehealth medium

CONSISTENT WITH THE BEST PRACTICE GUIDELINES ADOPTED BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607, A HEALTH CARE PROVIDER SHALL MAKE A GOOD FAITH EFFORT IN DETERMINING BOTH OF THE FOLLOWING:

1. WHETHER A HEALTH CARE SERVICE SHOULD BE PROVIDED THROUGH TELEHEALTH INSTEAD OF IN PERSON. THE HEALTH CARE PROVIDER SHALL USE THE HEALTH CARE PROVIDER'S CLINICAL JUDGMENT IN CONSIDERING WHETHER THE NATURE

OF THE SERVICES NECESSITATES PHYSICAL INTERVENTIONS AND CLOSE OBSERVATION AND THE CIRCUMSTANCES OF THE PATIENT, INCLUDING DIAGNOSIS, SYMPTOMS, HISTORY, AGE, PHYSICAL LOCATION AND ACCESS TO TELEHEALTH.

2. THE COMMUNICATION MEDIUM OF TELEHEALTH AND, WHENEVER REASONABLY PRACTICABLE, THE TELEHEALTH COMMUNICATION MEDIUM THAT ALLOWS THE HEALTH CARE PROVIDER TO MOST EFFECTIVELY ASSESS, DIAGNOSE AND TREAT THE PATIENT. FACTORS THE HEALTH CARE PROVIDER MAY CONSIDER IN DETERMINING THE COMMUNICATION MEDIUM INCLUDE THE PATIENT'S LACK OF ACCESS TO OR INABILITY TO USE TECHNOLOGY OR LIMITS IN TELECOMMUNICATION INFRASTRUCTURE NECESSARY TO SUPPORT INTERACTIVE TELEHEALTH ENCOUNTERS.

36-3606. Interstate telehealth services; registration; requirements; venue; exceptions

A. A HEALTH CARE PROVIDER WHO IS NOT LICENSED IN THIS STATE MAY PROVIDE TELEHEALTH SERVICES TO A PERSON LOCATED IN THIS STATE IF THE HEALTH CARE PROVIDER COMPLIES WITH ALL OF THE FOLLOWING:

1. REGISTERS WITH THIS STATE'S APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY THAT LICENSES COMPARABLE HEALTH CARE PROVIDERS IN THIS STATE ON AN APPLICATION PRESCRIBED BY THE BOARD OR AGENCY THAT CONTAINS ALL OF THE FOLLOWING:

(a) THE HEALTH CARE PROVIDER'S NAME.

(b) PROOF OF THE HEALTH CARE PROVIDER'S PROFESSIONAL LICENSURE, INCLUDING ALL UNITED STATES JURISDICTIONS IN WHICH THE PROVIDER IS LICENSED AND THE LICENSE NUMBERS. VERIFICATION OF LICENSURE IN ANOTHER STATE SHALL BE MADE THROUGH INFORMATION OBTAINED FROM THE APPLICABLE REGULATORY BOARD'S WEBSITE.

(c) THE HEALTH CARE PROVIDER'S ADDRESS, EMAIL ADDRESS AND TELEPHONE NUMBER, INCLUDING INFORMATION IF THE PROVIDER NEEDS TO BE CONTACTED URGENTLY.

(d) EVIDENCE OF PROFESSIONAL LIABILITY INSURANCE COVERAGE.

(e) DESIGNATION OF A DULY APPOINTED STATUTORY AGENT FOR SERVICE OF PROCESS IN THIS STATE.

2. BEFORE PRESCRIBING A CONTROLLED SUBSTANCE TO A PATIENT IN THIS STATE, REGISTERS WITH THE CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM ESTABLISHED PURSUANT TO CHAPTER 28 OF THIS TITLE.

3. PAYS THE REGISTRATION FEE AS DETERMINED BY THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY.

4. HOLDS A CURRENT, VALID AND UNRESTRICTED LICENSE TO PRACTICE IN ANOTHER STATE THAT IS SUBSTANTIALLY SIMILAR TO A LICENSE ISSUED IN THIS STATE TO A COMPARABLE HEALTH CARE PROVIDER AND IS NOT SUBJECT TO ANY PAST OR PENDING DISCIPLINARY PROCEEDINGS IN ANY JURISDICTION. THE HEALTH CARE PROVIDER SHALL NOTIFY THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY WITHIN FIVE DAYS AFTER ANY RESTRICTION IS PLACED ON THE HEALTH CARE PROVIDER'S LICENSE OR ANY DISCIPLINARY ACTION IS INITIATED OR IMPOSED. THE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY REGISTERING

THE HEALTH CARE PROVIDER MAY USE THE NATIONAL PRACTITIONER DATABANK TO VERIFY THE INFORMATION SUBMITTED PURSUANT TO THIS PARAGRAPH.

5. ACTS IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AND RULES OF THIS STATE, INCLUDING SCOPE OF PRACTICE, LAWS AND RULES GOVERNING PRESCRIBING, DISPENSING AND ADMINISTERING PRESCRIPTION DRUGS AND DEVICES, TELEHEALTH REQUIREMENTS AND THE BEST PRACTICE GUIDELINES ADOPTED BY THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607.

6. COMPLIES WITH ALL EXISTING REQUIREMENTS OF THIS STATE AND ANY OTHER STATE IN WHICH THE HEALTH CARE PROVIDER IS LICENSED REGARDING MAINTAINING PROFESSIONAL LIABILITY INSURANCE, INCLUDING COVERAGE FOR TELEHEALTH SERVICES PROVIDED IN THIS STATE.

7. CONSENTS TO THIS STATE'S JURISDICTION FOR ANY DISCIPLINARY ACTION OR LEGAL PROCEEDING RELATED TO THE HEALTH CARE PROVIDER'S ACTS OR OMISSIONS UNDER THIS ARTICLE.

8. FOLLOWS THIS STATE'S STANDARDS OF CARE FOR THAT PARTICULAR LICENSED HEALTH PROFESSION.

9. ANNUALLY UPDATES THE HEALTH CARE PROVIDER'S REGISTRATION FOR ACCURACY AND SUBMITS TO THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY A REPORT WITH THE NUMBER OF PATIENTS THE PROVIDER SERVED IN THIS STATE AND THE TOTAL NUMBER AND TYPE OF ENCOUNTERS IN THIS STATE FOR THE PRECEDING YEAR.

B. A HEALTH CARE PROVIDER WHO IS REGISTERED PURSUANT TO THIS SECTION MAY NOT:

1. OPEN AN OFFICE IN THIS STATE, EXCEPT AS PART OF A MULTISTATE PROVIDER GROUP THAT INCLUDES AT LEAST ONE HEALTH CARE PROVIDER WHO IS LICENSED IN THIS STATE THROUGH THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY.

2. PROVIDE IN-PERSON HEALTH CARE SERVICES TO PERSONS LOCATED IN THIS STATE WITHOUT FIRST OBTAINING A LICENSE THROUGH THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY.

C. A HEALTH CARE PROVIDER WHO FAILS TO COMPLY WITH THE APPLICABLE LAWS AND RULES OF THIS STATE IS SUBJECT TO INVESTIGATION AND BOTH NONDISCIPLINARY AND DISCIPLINARY ACTION BY THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY IN THIS STATE. FOR THE PURPOSES OF DISCIPLINARY ACTION BY THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY IN THIS STATE, ALL STATUTORY AUTHORITY REGARDING INVESTIGATING, REHABILITATING AND EDUCATING HEALTH CARE PROVIDERS MAY BE USED. IF A HEALTH CARE PROVIDER FAILS TO COMPLY WITH THE APPLICABLE LAWS AND RULES OF THIS STATE, THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY IN THIS STATE MAY REVOKE OR PROHIBIT THE HEALTH CARE PROVIDER'S PRIVILEGES IN THIS STATE, REPORT THE ACTION TO THE NATIONAL PRACTITIONER DATABASE AND REFER THE MATTER TO THE LICENSING AUTHORITY IN THE STATE OR STATES WHERE THE HEALTH CARE PROVIDER POSSESSES A PROFESSIONAL LICENSE. IN ANY MATTER OR PROCEEDING ARISING FROM SUCH A

REFERRAL, THE APPLICABLE HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY IN THIS STATE MAY SHARE ANY RELATED DISCIPLINARY AND INVESTIGATIVE INFORMATION IN ITS POSSESSION WITH ANOTHER STATE LICENSING BOARD.

D. THE VENUE FOR ANY CIVIL OR CRIMINAL ACTION ARISING FROM A VIOLATION OF THIS SECTION IS THE PATIENT'S COUNTY OF RESIDENCE IN THIS STATE.

E. A HEALTH CARE PROVIDER WHO IS NOT LICENSED TO PROVIDE HEALTH CARE SERVICES IN THIS STATE BUT WHO HOLDS AN ACTIVE LICENSE TO PROVIDE HEALTH CARE SERVICES IN ANOTHER JURISDICTION AND WHO PROVIDES TELEHEALTH SERVICES TO A PERSON LOCATED IN THIS STATE IS NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THIS SECTION IF EITHER OF THE FOLLOWING APPLIES:

1. THE SERVICES ARE PROVIDED UNDER ONE OF THE FOLLOWING CIRCUMSTANCES:

(a) IN RESPONSE TO AN EMERGENCY MEDICATION CONDITION.

(b) IN CONSULTATION WITH A HEALTH CARE PROVIDER WHO IS LICENSED IN THIS STATE AND WHO HAS THE ULTIMATE AUTHORITY OVER THE PATIENT'S DIAGNOSIS AND TREATMENT.

(c) TO PROVIDE AFTER-CARE SPECIFICALLY RELATED TO A MEDICAL PROCEDURE THAT WAS DELIVERED IN PERSON IN ANOTHER STATE.

(d) TO A PERSON WHO IS A RESIDENT OF ANOTHER STATE AND THE TELEHEALTH PROVIDER IS THE PRIMARY CARE PROVIDER OR BEHAVIORAL HEALTH PROVIDER LOCATED IN THE PERSON'S STATE OF RESIDENCE.

2. THE HEALTH CARE PROVIDER PROVIDES FEWER THAN TEN TELEHEALTH ENCOUNTERS IN A CALENDAR YEAR.

36-3607. Telehealth advisory committee on telehealth best practices; membership; reports; committee termination

A. THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS WHO ARE APPOINTED BY THE GOVERNOR:

1. ONE PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13.

2. ONE PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 17 AND WHO IS PRACTICING PRIMARY CARE IN THIS STATE.

3. TWO ADVANCED PRACTICE REGISTERED NURSES WHO ARE LICENSED PURSUANT TO TITLE 32, CHAPTER 15.

4. ONE PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 AND WHO SPECIALIZES IN PAIN MANAGEMENT.

5. ONE PSYCHIATRIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

6. ONE PSYCHOLOGIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 19.1.

7. TWO BEHAVIORAL HEALTH PROFESSIONALS WHO ARE LICENSED PURSUANT TO TITLE 32, CHAPTER 33, ONE OF WHOM IS EMPLOYED BY AN OUTPATIENT TREATMENT CENTER.

8. ONE PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 14.

9. ONE HEALTH CARE PROFESSIONAL WHOSE PRIMARY AREA OF FOCUS IS TREATING PERSONS WITH DEVELOPMENTAL DISABILITIES.

10. ONE HEALTH CARE PROFESSIONAL WHOSE PRIMARY AREA OF FOCUS IS INDUSTRIAL INJURIES.

11. ONE SPEECH-LANGUAGE PATHOLOGIST WHO IS LICENSED PURSUANT TO CHAPTER 17 OF THIS TITLE.

12. ONE OCCUPATIONAL THERAPIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 34.

13. ONE HOSPITAL ADMINISTRATOR.

14. ONE PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 25.

15. ONE REPRESENTATIVE OF THE ARIZONA COMMISSION FOR THE DEAF AND THE HARD OF HEARING.

16. TWO REPRESENTATIVES OF HEALTH CARE INSURERS WHO ARE LICENSED HEALTH CARE PROVIDERS.

17. ONE OPTOMETRIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 16.

18. ONE REPRESENTATIVE OF A VERTICALLY INTEGRATED TELEMEDICINE TECHNOLOGY MANUFACTURER OF HARDWARE AND COMPATIBLE SOFTWARE.

19. ONE BEHAVIORAL ANALYST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 19.1.

20. ONE REPRESENTATIVE FROM EACH OF THE FOLLOWING:

(a) THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

(b) THE DEPARTMENT OF HEALTH SERVICES.

(c) THE DEPARTMENT OF ECONOMIC SECURITY.

(d) THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS.

(e) THE INDUSTRIAL COMMISSION OF ARIZONA.

B. THE ADVISORY COMMITTEE:

1. SHALL REVIEW NATIONAL AND OTHER STANDARDS FOR TELEHEALTH BEST PRACTICES AND RELEVANT PEER-REVIEWED LITERATURE.

2. MAY CONDUCT PUBLIC MEETINGS AT WHICH TESTIMONY MAY BE TAKEN REGARDING THE EFFICACY OF VARIOUS COMMUNICATIONS MEDIA AND THE TYPES OF SERVICES AND POPULATIONS FOR WHICH TELEHEALTH IS APPROPRIATE.

3. SHALL ADOPT TELEHEALTH BEST PRACTICE GUIDELINES AND RECOMMENDATIONS REGARDING THE HEALTH CARE SERVICES THAT MAY BE APPROPRIATELY PROVIDED THROUGH AN AUDIO-ONLY TELEHEALTH FORMAT AND MAKE UPDATES, WHEN APPLICABLE. BEFORE MAKING ITS RECOMMENDATIONS, THE ADVISORY COMMITTEE SHALL ANALYZE MEDICAL LITERATURE AND NATIONAL PRACTICE GUIDELINES, CONSIDER THE COMPARATIVE EFFECTIVENESS AND SAFETY AND THE BENEFIT TO THE PATIENT OF PERFORMING A SERVICE THROUGH AN AUDIO-ONLY TELEHEALTH FORMAT INSTEAD OF IN PERSON OR THROUGH AN AUDIO-VISUAL TELEHEALTH FORMAT, AND THE APPROPRIATE FREQUENCY AND DURATION OF AUDIO-ONLY TELEHEALTH ENCOUNTERS.

4. MAY AUTHORIZE SUBCOMMITTEES TO ADDRESS SELECT ISSUES OR SERVICES AND REPORT TO THE ADVISORY COMMITTEE AS DIRECTED.

5. ON OR BEFORE DECEMBER 1, 2021, SHALL SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES WITH THE ADVISORY COMMITTEE'S RECOMMENDATIONS REGARDING THE SPECIFIC HEALTH CARE SERVICES THAT ARE APPROPRIATE TO PROVIDE THROUGH AN AUDIO-ONLY TELEHEALTH FORMAT AS A SUBSTITUTE FOR AN IN-PERSON OR AUDIO-VISUAL TELEHEALTH ENCOUNTER.

6. ON OR BEFORE JUNE 30, 2022, SHALL SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES WITH THE ADVISORY COMMITTEE'S RECOMMENDATIONS REGARDING TELEHEALTH BEST PRACTICE GUIDELINES FOR HEALTH CARE PROVIDERS.

C. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM SHALL STAFF THE ADVISORY COMMITTEE AND PROVIDE MEETING SPACE.

D. THE COMMITTEE ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2029 PURSUANT TO SECTION 41-3102.

36-3608. Health care provider regulatory boards and agencies; out-of-state health care providers; reports

BEGINNING OCTOBER 1, 2021 AND ON OR BEFORE THE FIRST OF EACH MONTH THEREAFTER, EACH HEALTH CARE PROVIDER REGULATORY BOARD OR AGENCY SHALL SUBMIT TO THE TELEHEALTH ADVISORY COMMITTEE ON TELEHEALTH BEST PRACTICES ESTABLISHED BY SECTION 36-3607 A REPORT IDENTIFYING THE NUMBER AND TYPE OF OUT-OF-STATE HEALTH CARE PROVIDERS WHO HAVE APPLIED FOR REGISTRATION PURSUANT TO SECTION 36-3606 AND THE NUMBER AND TYPE OF OUT-OF-STATE HEALTH CARE PROVIDERS WHOSE REGISTRATION PURSUANT TO SECTION 36-3606 HAS BEEN APPROVED.

Sec. 19. Delayed repeal

Section 36-3608, Arizona Revised Statutes, is repealed from and after December 31, 2025.

Sec. 20. Section 38-672, Arizona Revised Statutes, is amended to read:

38-672. Traumatic event counseling for public safety employees; report; exceptions; definitions

A. Notwithstanding any other law, this state or a political subdivision of this state shall establish a program to provide public safety employees who are exposed to any one of the following events while in the course of duty up to twelve visits of licensed counseling, which may be provided ~~via telemedicine~~ THROUGH TELEHEALTH, paid for by the employer:

1. Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.

2. Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children as defined in section 13-705.

3. Requiring rescue in the line of duty where one's life was endangered.

B. Payment by the employer for licensed counseling pursuant to this section does not create a presumption that a claim is compensable under section 23-1043.01, subsection B.

C. For each program established pursuant to this section, this state and each political subdivision of this state shall compile the following data:

1. The total number of public safety employees who have participated in the program.

2. The average number of visits per public safety employee.

3. The average number of months that a public safety employee participated in the program.

4. The average number of days that a public safety employee who participated in the program missed work.

5. The total number of public safety employees who participated in the program and who subsequently filed a workers' compensation claim and the number of those claims that were approved and the number of those claims that were denied.

6. For each employer, the total amount of work missed by public safety employees who participated in the program and how missed work was provided for by the employer or through employee benefits.

D. On or before ~~September 1, 2019 and~~ September 1 of each year ~~thereafter~~, this state and each political subdivision of this state shall submit the data collected pursuant to subsection C of this section to the department of administration. On or before ~~October 1, 2019 and~~ October 1 of each year ~~thereafter~~, the department of administration shall compile the data into a report and submit the report to the governor, the president of the senate, the speaker of the house of representatives, the chairperson of the senate health and human services committee, or its successor committee, the chairperson of the house of representatives health committee, or its successor committee, the chairperson of the senate commerce and public safety committee, or its successor committee, and the chairperson of the house of representatives judiciary and public safety committee, or its successor committee, and shall provide a copy of this report to the secretary of state. Subsection C of this section and this subsection do not authorize this state or a political subdivision of this state to compile and report data that is protected under the health insurance portability and accountability act of 1996 (P.L. 104-191; 110 Stat. 1936).

E. This section does not apply to a state employer that provides a program to its public safety employees that is characterized by all of the following:

1. The program is paid for by the employer.

2. The program provides licensed counseling for any issue. For licensed counseling related to trauma experienced while in the line of duty, the licensed counseling is provided on the request of the public safety employee and is in person.

3. Before July 1, 2017, the program offers at least six visits per year.

4. On or after July 1, 2017, the program offers at least twelve visits per year.

F. For the purposes of this section:

1. "Licensed counseling" means counseling provided by a licensed mental health professional pursuant to title 32, chapter 19.1 or 33 if licensees under title 32, chapter 33 have training and expertise in treating trauma.

2. "Public safety employee":

(a) Means:

(i) Except as prescribed in subdivision (b) of this paragraph, an individual who is a member of the public safety personnel retirement system or the corrections officer retirement plan.

(ii) Except as prescribed in subdivision (b) of this paragraph, a probation officer, surveillance officer or juvenile detention officer who is employed by this state or a political subdivision of this state.

(b) Does not include peace officers or firefighters.

Sec. 21. Section 38-673, Arizona Revised Statutes, is amended to read:

38-673. Traumatic event counseling for peace officers and firefighters; report; exceptions; definitions

A. Notwithstanding any other law, this state or a political subdivision of this state shall establish a program to provide peace officers and firefighters who are exposed to any one of the following events while in the course of duty up to twelve visits of licensed counseling, which may be provided ~~via telemedicine~~ THROUGH TELEHEALTH, paid for by the employer:

1. Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.

2. Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children as defined in section 13-705.

3. Requiring rescue in the line of duty where one's life was endangered.

4. Using deadly force or being subjected to deadly force in the line of duty, regardless of whether the peace officer or firefighter was physically injured.

5. Witnessing the death of another peace officer or firefighter while engaged in the line of duty.

6. Responding to or being directly involved in an investigation regarding the drowning or near drowning of a child.

B. If the licensed mental health professional determines that the peace officer or firefighter needs additional visits of licensed counseling beyond that which the peace officer or firefighter is entitled to under subsection A of this section and that the additional visits are likely to improve the peace officer's or firefighter's condition, the employer shall pay for up to an additional twenty-four visits, if the visits occur within one year after the first visit pursuant to this section.

C. An employer may not require a peace officer or firefighter who is receiving treatment pursuant to this section to use the peace officer's or firefighter's accrued paid vacation LEAVE, personal leave or sick leave if the peace officer or firefighter leaves work to attend a treatment visit pursuant to this section.

D. If the licensed mental health professional determines that the peace officer or firefighter is not fit for duty while the peace officer or firefighter is receiving treatment pursuant to this section, the employer shall ensure that the peace officer or firefighter has no loss of pay and benefits for up to thirty calendar days per incident after the date the licensed mental health professional determines that the employee is not fit for duty if all of the following apply:

1. The peace officer or firefighter is unable to work light duty or the employer does not offer a light duty option.

2. The peace officer or firefighter has exhausted the peace officer's or firefighter's sick leave, vacation leave or other leave that is provided as part of the peace officer's or firefighter's benefits package.

3. If the employer offers short-term disability benefits, the employer offered and the peace officer or firefighter elected short-term disability benefits, but the peace officer or firefighter is not eligible to receive short-term disability benefits.

4. The employer does not have a supplemental program that provides pay and benefits after the occurrence of an injury. For the purposes of this paragraph, supplemental program that provides pay and benefits after the occurrence of an injury does not include a supplemental benefits plan established pursuant to section 38-961.

E. An employer shall allow a peace officer or firefighter to select the peace officer's or firefighter's own licensed mental health professional, except that if a licensed mental health professional declines to provide counseling pursuant to this section, the employer is not required to secure the services of that licensed mental health professional. The employer shall pay the licensed mental health professional pursuant to the schedule of fees that is fixed by the industrial commission of Arizona pursuant to section 23-908.

F. Payment by the employer for licensed counseling pursuant to this section does not create a presumption that a claim is compensable under section 23-1043.01, subsection B.

G. For each program established pursuant to this section, this state and each political subdivision of this state shall compile the following data for peace officers and firefighters:

1. For each category of persons, the total number of persons who have participated in the program.

2. For each category of persons, the average number of visits per person.

3. For each category of persons, the average number of months that a person participated in the program.

4. For each category of persons, the average number of days that a person who participated in the program missed work.

5. For each category of persons, the total number of persons who participated in the program and who subsequently filed a workers' compensation claim and the number of those claims that were approved and the number of those claims that were denied.

6. For each category of persons, of the total number of persons who have participated in the program, the percentage of persons who received additional visits under subsection B of this section.

7. For each category of persons, the total number of persons who were deemed not fit for duty by a licensed mental health professional pursuant to subsection D of this section.

8. For each employer, the total amount of work missed by each category of persons who participated in the program and how missed work was provided for by the employer or through employee benefits.

H. On or before ~~September 1, 2019 and~~ September 1 of each year ~~thereafter~~, this state and each political subdivision of this state shall submit the data collected pursuant to subsection G of this section to the department of administration. On or before ~~October 1, 2019 and~~ October 1 of each year ~~thereafter~~, the department of administration shall compile the data into a report and submit the report to the governor, the president of the senate, the speaker of the house of representatives, the chairperson of the senate health and human services committee, or its successor committee, the chairperson of the house of representatives health committee, or its successor committee, the chairperson of the senate commerce and public safety committee, or its successor committee, and the chairperson of the house of representatives judiciary and public safety committee, or its successor committee, and shall provide a copy of this report to the secretary of state. Subsection G of this section and this subsection do not authorize this state or a political subdivision of this state to compile and report data that is protected under the health insurance portability and accountability act of 1996 (P.L. 104-191; 110 Stat. 1936).

I. This section does not apply to a state employer that provides a program to its peace officers and firefighters that is characterized by all of the following:

1. The program is paid for by the employer.

2. The program provides licensed counseling for any issue. For licensed counseling related to trauma experienced while in the line of duty, the licensed counseling is provided on the request of the peace officer or firefighter and is in person.

3. The program offers at least twelve visits per year and will offer additional visits if the licensed mental health professional determines that additional visits are necessary.

J. For the purposes of this section:

1. "Licensed counseling" means counseling provided by a licensed mental health professional.

2. "Licensed mental health professional" means a psychiatrist or psychologist who is licensed pursuant to title 32, chapter 13, 17 or 19.1.

Sec. 22. Department of health services; acute care services at home; pilot program; delayed repeal

A. On or before the earlier of thirty days after the effective date of this section or September 1, 2021, the department of health services shall develop a three-year pilot program that allows the delivery of acute care services to patients in the patient's home by licensed hospitals in this state. The department may waive rules necessary to implement the requirements of the pilot program. The pilot program shall be designed in a manner and in coordination with the acute care at home program authorized by the centers for medicare and medicaid services.

B. In collaboration with interested hospitals in this state, the department shall determine:

1. The criteria necessary for a licensed hospital to be eligible for the pilot program. Eligible hospitals must demonstrate the required in-person and telehealth equipment necessary to provide acute in-home services.

2. The protocols for eligible hospitals to determine patient eligibility in the program.

3. The protocols for health care services to be provided by or under the direction of eligible hospitals to patients in the program.

C. Hospitals participating in the pilot program may use applicable protocols determined by the department to set:

1. The patient eligibility criteria.

2. The categories of licensed health care providers that may be used.

3. The services that may be outsourced by the hospital.

4. The health care services to be provided by or under the direction of the hospital.

D. The Arizona state board of pharmacy may waive rules necessary to implement the requirements of the pilot program.

E. Hospitals participating in the pilot program shall:

1. Report patient progress and program quality outcomes as required by the department.

2. Comply with any reporting requirements established by the Arizona state board of pharmacy for purposes of the pilot program.

F. This section is repealed on and after December 31, 2024.

Sec. 23. Department of insurance and financial institutions; report

On or before March 31, 2023, the department of insurance and financial institutions shall report to the president of the senate and the speaker of the house of representatives the number of telehealth encounters based on claims data, with all of the personally identifiable health information redacted, received by health insurers and health plans for services provided in this state in the preceding year, including:

1. The overall number of telehealth encounters and the number of audio-only telehealth encounters billed to health care insurers.

2. The number of telehealth encounters in this state involving out-of-state health care providers.

3. The types of services provided through telehealth encounters and through audio-only telehealth encounters.

4. The differential in payment between audio-only telehealth encounters and in-person care or audio-visual telehealth encounters.

Sec. 24. Rulemaking exemptions

Notwithstanding any other law, for the purposes of this act, each health care provider regulatory board or agency as defined in section 36-3601, Arizona Revised Statutes, as amended by this act, is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 25. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR MAY 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 5, 2021.

§ 32-1803. Powers and duties

A. The board shall:

1. Protect the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of osteopathic medicine.

2. Issue licenses, conduct hearings, place physicians on probation, revoke or suspend licenses, enter into stipulated orders, issue letters of concern or decrees of censure and administer and enforce this chapter.

3. Maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses to practice according to this chapter. The board shall delete records of complaints only as follows:

(a) If the board dismisses a complaint, the board shall delete the public record of the complaint five years after the board dismissed the complaint.

(b) If the board has issued a letter of concern but has taken no further action on the complaint, the board shall delete the public record of the complaint five years after the board issued the letter of concern.

(c) If the board has required additional continuing medical education pursuant to section 32-1855 but has not taken further action, the board shall delete the public record of the complaint five years after the person satisfies this requirement.

4. Maintain a public directory of all physicians and surgeons who are or were licensed pursuant to this chapter that includes:

(a) The name of the physician.

(b) The physician's current or last known address of record.

(c) The date and number of the license issued to the physician pursuant to this chapter.

(d) The date the license is scheduled to expire if not renewed or the date the license expired or was revoked, suspended or canceled.

(e) Any disciplinary actions taken against the physician by the board.

(f) Letters of concern, remedial continuing medical education ordered and dismissals of complaints against the physician until deleted from the public record pursuant to paragraph 3 of this subsection.

5. Adopt rules regarding the regulation, qualifications and training of medical assistants. The training requirements for a medical assistant may be satisfied through a training program that meets all of the following:

(a) Is designed and offered by a physician.

(b) Meets or exceeds any of the approved training program requirements specified in rule.

(c) Verifies the entry-level competencies of a medical assistant as prescribed by rule.

(d) Provides written verification to the individual of successful completion of the program.

6. Discipline and rehabilitate osteopathic physicians.

7. Determine 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).

8. Issue registrations to administer general anesthesia and sedation in dental offices and dental clinics pursuant to section 32-1272 to physicians who have completed residency training in anesthesiology.

B. The public records of the board are open to inspection at all times during office hours.

C. The board may:

1. Adopt rules necessary or proper to administer this chapter.

2. Appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

3. Accept and spend federal monies and private grants, gifts, contributions and devises. These monies do not revert to the state general fund at the end of a fiscal year.

4. Develop and publish advisory opinions and standards governing the profession.

D. The board shall adopt and use a seal, the imprint of which, together with the signature of either the president, vice president or executive director, is evidence of its official acts.

E. In conducting investigations pursuant to this chapter, the board may receive and review confidential internal staff reports relating to complaints and malpractice claims.

F. The board may make available to academic and research organizations public records regarding statistical information on doctors of osteopathic medicine and applicants for licensure.

History:

Amended by L. 2023, ch. 200,s. 8, eff. 6/20/2023. Amended by L. 2021, ch. 259,s. 3, eff. 9/29/2021. Amended by L. 2019, ch. 182,s. 2, eff. 8/27/2019. Amended by L. 2015, ch. 135,s. 2, eff. 7/2/2015.

§ 36-3606. Interstate telehealth services; registration; requirements; venue; exceptions

A. A health care provider who is not licensed in this state may provide telehealth services to a person located in this state if the health care provider complies with all of the following:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

(a) The health care provider's name.

(b) Proof of the health care provider's professional licensure, including all United States jurisdictions in which the provider is licensed and the license numbers. Verification of licensure in another state shall be made through information obtained from the applicable regulatory board's website.

(c) The health care provider's address, email address and telephone number, including information if the provider needs to be contacted urgently.

(d) Evidence of professional liability insurance coverage.

(e) Designation of a duly appointed statutory agent for service of process in this state.

2. Before prescribing a controlled substance to a patient in this state, registers with the controlled substances prescription monitoring program established pursuant to chapter 28 of this title.

3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.

4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in this state to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory board or agency registering the health care provider may use the national practitioner databank to verify the information submitted pursuant to this paragraph.

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

6. Complies with all existing requirements of this state and any other state in which the health care provider is licensed regarding maintaining professional liability insurance, including coverage for telehealth services provided in this state.

7. Consents to this state's jurisdiction for any disciplinary action or legal proceeding related to the health care provider's acts or omissions under this article.

8. Follows this state's standards of care for that particular licensed health profession.

9. Annually updates the health care provider's registration for accuracy and submits to the applicable health care provider regulatory board or agency a report with the number of patients the provider served in this state and the total number and type of encounters in this state for the preceding year.

B. A health care provider who is registered pursuant to this section may not:

1. Open an office in this state, except as part of a multistate provider group that includes at least one health care provider who is licensed in this state through the applicable health care provider regulatory board or agency.

2. Provide in-person health care services to persons located in this state without first obtaining a license through the applicable health care provider regulatory board or agency.

C. A health care provider who fails to comply with the applicable laws and rules of this state is subject to investigation and both nondisciplinary and disciplinary action by the applicable health care provider regulatory board or agency in this state. For the purposes of disciplinary action by the applicable health care provider regulatory board or agency in this state, all statutory authority regarding investigating, rehabilitating and educating health care providers may be used. If a health care provider fails to comply with the applicable laws and rules of this state, the applicable health care provider regulatory board or agency in this state may revoke or prohibit the health care provider's privileges in this state, report the action to the national practitioner database and refer the matter to the licensing authority in the state or states where the health care provider possesses a professional

license. In any matter or proceeding arising from such a referral, the applicable health care provider regulatory board or agency in this state may share any related disciplinary and investigative information in its possession with another state licensing board.

D. The venue for any civil or criminal action arising from a violation of this section is the patient's county of residence in this state.

E. A health care provider who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in this state is not subject to the registration requirements of this section if either of the following applies:

1. The services are provided under one of the following circumstances:

(a) In response to an emergency medication condition.

(b) In consultation with a health care provider who is licensed in this state and who has the ultimate authority over the patient's diagnosis and treatment.

(c) To provide after-care specifically related to a medical procedure that was delivered in person in another state.

(d) To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.

2. The health care provider provides fewer than ten telehealth encounters in a calendar year.

History:

Added by L. 2021, ch. 320,s. 18, eff. 5/5/2021.

§ 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.

D-2.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 1, Article 4

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 9, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 1, Article 4

Summary

This One Year Review Report (1YRR) from the Arizona Department of Transportation (Department) or (ADOT) covers five (5) rules in Title 17, Chapter 1, Article 4 related to State Fleet Operations. Laws 2021, Chapter 413, permitted ADOT to consolidate the State's main fleet vehicle inventory and begin managing state fleet vehicles for more than 60 state agencies.The Department's rules provide information for all participating state agencies and employees regarding the implementation of critical standard work in each of these core fleet areas: rate calculations, acquisition, recapitalization, utilization, repair and maintenance, fuel use, and risk management. These rules were designed to mirror, as closely as possible, ADOA rules that were previously in place to govern state-wide fleet vehicle operations and to work in harmony with other applicable state statutes, rules, and policies in effect when the rules were made. With this consolidation, all participating agencies now follow the same uniform guidelines and processes, including purchasing and preventative maintenance, which are designed to maximize resources and improve services while providing greater benefits to taxpayers, customers, and the state.

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 does not believe any rule changes are necessary at this time and does not propose a course of action.

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 of Transportation (Department) states that in FY 2022, they consolidated the state's main fleet vehicle inventory and began managing state fleet vehicles for more than 60 agencies. The Department indicates that state fleet assets in the initial consolidation project included 1,068 over-the-road licensed motorized vehicles and did not include ATV's, golf carts, forklifts, trailers, or heavy off-road equipment. The Department's rules provide information for all participating state agencies and employees regarding the implementation of critical standard work in each of these core fleet areas: rate calculations, acquisition, recapitalization, utilization, repair and maintenance, fuel use, and risk management. In FY 2023, the Department completed the final consolidation process of roughly 300 assets that were considered to be a part of Phase II of the fleet consolidation project. All vehicles within the state fleet have been entered into the state's fleet management database, which is used to track a variety of critical data and includes: cost per mile, total miles driven, preventive maintenance schedules, and important accident data.

The Department indicates that they have experienced a few challenges while managing the state's fleet, which include soaring fuel costs, vehicle repair service cost increases, parts costs and availability, and the overall costs for vehicle replacement. Phase II of the project brought several new challenges, including a large number of vehicles that have no replacement funding mechanism but are in imminent need of replacement.

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

The Department states they routinely adopt the least costly and least burdensome option for all processes and procedures required of any regulated person. They indicate that these rules were designed to mirror, as closely as possible, rules that were previously in place to govern state-wide fleet operations and to work in harmony with other applicable state statutes, rules, and polices in effect when the rules were made. The Department believes that many state agencies and employees view the expanded availability of state motor vehicle fleet services favorably. The

Department believes that the rules impose the least burden and costs to agencies regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives, and provide significant benefit to the public and the state.

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 the rules were adopted.

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

The Department states the rules are clear, concise, and understandable.

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

The Department states the rules are consistent with other rules and statutes.

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

The Department states the rules are effective in achieving its objectives.

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

The Department states they enforce the rules 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 there is no corresponding federal law applicable to these rules.

10. Has the agency completed any additional process required by law?

The Department states there is no additional process required by law.

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

The Department states these rules do not require the issuance of a permit, license, or external agency authorization.

12. Conclusion

This One Year Review Report from the Arizona Department of Transportation covers five rules in Title 17, Chapter 1, Article 4 related to State Fleet Operations. As indicated above,

the Department received a one-time exemption from the rulemaking requirements to adopt rules necessary to consolidate the State's main fleet vehicle inventory and begin managing state fleet vehicles. The Department does not believe any rule changes are necessary at this time and does not propose a course of action. Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1095 and recommends approval of the report.

September 27, 2023

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Arizona Department of Transportation One-year Review Report - 17 A.A.C. 1, Article 4

Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation's One-year Review Report covering rules located under 17 A.A.C. Chapter 1, Article 4, which is due to the Council on September 29, 2023. This document complies with all requirements under A.R.S. § 41-1095 and A.A.C. R1-6-301.

The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure

Arizona Department of Transportation

One-Year-Review Report

Title 17. Transportation

Chapter 1. Department of Transportation - Administration

Article 4. State Fleet Operations

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 28-366

Specific Statutory Authority: A.R.S. §§ 28-332(B)(6) and 28-472

2. The objective of each rule:

Rule	Objective
R17-1-401	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-1-402	To provide information to state agencies regarding the new process for replacing a state vehicle or requesting that an additional state vehicle be assigned to the agency.
R17-1-403	To provide information to state agencies and employees regarding the state vehicle usage and operator responsibilities required by state laws, rules, and policies when operating a state-owned vehicle or personally-owned vehicle in the performance of state business.
R17-1-404	To provide information to state agencies and employees regarding the fleet safety and risk management requirements of state laws, rules, and policies to be followed when operating a state-owned vehicle or personally-owned vehicle in the performance of state business.
R17-1-405	To provide information to all state agencies participating in the state's motor vehicle fleet management program regarding the new process for adding or removing special equipment or accessories to or from a state vehicle and the rates and charges that must be collected by the Department, as provided under A.R.S. § 28-472, for the recovery of all costs incurred while providing fleet operation services to the agency.

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.

The rules are effective in achieving their objectives.

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.

The rules are consistent with other rules and statutes.

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

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

The Department enforces the rules as written.

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.

The rules are clear, concise, and understandable and the Department does not believe any rule changes are necessary.

7. Has the agency received written criticisms of the rules since the rule was adopted? **Yes ___ No _X_**

If yes, please fill out the table below:

The Department has not received any written criticisms of the rules since the rules were adopted.

8. Estimated economic, small business, and consumer impact of the rules:

In FY 2022, ADOT consolidated the state's main fleet vehicle inventory and began managing state fleet vehicles for more than 60 state agencies. The state fleet assets in the initial consolidation project included 1,068 over-the-road licensed motorized vehicles and did not include ATV's, golf carts, fork lifts, trailers, or heavy off-road equipment. The Department's rules provide information for all participating state agencies and employees regarding the implementation of critical standard work in each of these core fleet areas: rate calculations, acquisition, recapitalization, utilization, repair and maintenance, fuel use, and risk management.

During the fleet transfer, vehicles were inspected, titles were transferred and vehicle data was entered into the state's master fleet management database for fleet operational oversight. Global Positioning System (GPS) devices were also installed in hundreds of agency vehicles to monitor utilization for key fleet right-sizing purposes. In addition, ADOT also consolidated the fleet assets of two additional agencies under Intergovernmental Service Agreements (ISA's). Through these ISA's, the Supreme Court and the Arizona School for the Deaf and Blind are now managed in the same way as the rest of the state's fleet, except that the Supreme Court manages its own recapitalization account for vehicle replacement purposes.

As of August 31, 2022, the State Fleet Operations Fund balance was $2,295,940.63. The State Fleet Vehicle Replacement Fund balance was $11,195,140.16, which included monies collected for recapitalization, auction proceeds, and funding for new legislative initiatives. The Arizona Game and Fish Department managed its own recapitalization account, as prescribed by statute, which totaled $227,250.35.

As of August 31, 2023, the State Fleet Operations Fund balance was $3,293,470.24. The State Fleet Vehicle Replacement Fund balance was $11,641,748.73.

In FY 2023, ADOT completed the final consolidation process of roughly 300 assets that were considered to be a part of Phase II of the fleet consolidation project. All vehicles within the state fleet have been entered into the

state's fleet management database, which is used to track a variety of critical data and includes: cost per mile, total miles driven, preventive maintenance schedules, and important accident data.

Not including the Game and Fish Department, only 4 vehicles were replaced in FY 2022. ADOT replaced very few vehicles in FY 2022 due to the need to continually assess the fleet. The main objectives being to ensure the right-sizing of the state's fleet and that all state fleet assets are scheduled for replacement at the most appropriate time. During FY 2021 and into FY 2022 there was a significant drop in vehicle utilization due to the COVID-19 pandemic and agency personnel working remotely. ADOT decided to monitor vehicle utilization further before resuming a normal replacement schedule as agency business needs may have permanently changed. As part of its right-sizing efforts, ADOT reduced the overall fleet vehicle count by 44 assets. In FY 2023, ADOT replaced 20 state fleet vehicles that were in the worst condition.

Part of the consolidation process called for ADOA to transfer their fleet support facility, located at 1501 W. Madison Street, to ADOT. Since then, ADOT has continued to build upon the excellent infrastructure it received. ADOT completed a project which reorganized the entire facility, including updating the motor pool area and bringing the fueling system into regulatory compliance. In addition, ADOT collaborated with ADOA on a federal grant program that enabled the installation of two separate Electric Vehicle (EV) charging stations. The facility is now a top-tier fleet support facility, which includes quick repair, car wash services, fueling, charging of vehicles, and motor pool accommodations.

Global Positioning Systems (GPS) have been installed in over 800 vehicles, and these devices now provide key fleet management statistics so ADOT can better understand where and how state fleet vehicles are operated. Other safety features have become available from the GPS systems, like monitoring seat belt use and obtaining overall speeds from vehicle users. GPS also provides live, up-to-date odometer readings, which populate the fleet management database in real-time. The GPS system is a particularly important tool that allows ADOT to make data-driven decisions, including identifying where first responder and other critical assets are located when emergencies occur.

ADOT's surplus operation cleared a backlog of over 300 vehicles during Phase I of the project. On average, the surplus operation processes vehicles within 30 days, producing 15% to 30% higher revenues compared to wholesale Kelly Blue Book "fair" market value. Standard work improvements for surplus operations included implementation of an online fleet auction system, which allows customers to bid on auctioned items electronically from any location with internet access. A new accounting document was also implemented to provide all participating agencies with real-time information on when their vehicles are sold and for how much.

ADOT has also experienced a few challenges while managing the state's fleet, which include soaring fuel costs, vehicle repair service cost increases, parts costs and availability, and the overall costs for vehicle replacement. Phase II of the project brought a number of new challenges, including a large number of vehicles that have no replacement funding mechanism but are in imminent need of replacement.

9. <u>Has the agency received any business competitiveness analyses of the rules?</u> Yes ___ No _X_

The Department has not received any business competitiveness analyses regarding these rules.

10. Has the agency completed any additional process required by law, including publishing otherwise exempt rules or providing the public an opportunity to comment on the rules?

There is no additional process required by law. These rules concern only the internal management of state agencies participating in the state's motor vehicle fleet management program administered by ADOT and do not directly or substantially affect the procedural or substantive rights or duties of any segment of the public.

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 routinely adopts the least costly and least burdensome option for all processes or procedures required of any regulated person. These rules were designed to mirror, as closely as possible, ADOA rules that were previously in place to govern state-wide fleet vehicle operations and to work in harmony with other applicable state statutes, rules, and policies in effect when the rules were made. ADOT believes that many state agencies and employees view the expanded availability of state motor vehicle fleet services favorably.

The Governor's Office of Strategic Planning and Budgeting (OSPB) currently allocates additional funding to all agencies participating in ADOT's statewide fleet vehicle management program to cover the costs associated with purchasing, maintaining, and replacing all state-owned vehicles. With this consolidation, all participating agencies now follow the same uniform guidelines and processes, including purchasing and preventative maintenance, which are designed to maximize resources and improve services while providing greater benefits to taxpayers, customers, and the state.

Since taking over the management of state fleet vehicles for more than 60 state agencies in FY 2022, ADOT has already realized taxpayer savings of more than $6 million by reducing the size of the state's fleet, ordering replacement vehicles in bulk, and selling surplus vehicles online. To date, this effort has achieved a number of specific results. The Department has:

- Reduced underutilized assets including sedans, minivans, half-ton pickups and SUVs, saving more than $6 million;
- Implemented a minimum vehicle utilization standard;
- Implemented a standardized vehicle replacement system;
- Moved preventative maintenance schedules from 6,000 miles to 8,000 miles while still following all manufacturer guidelines;
- Implemented a cost-saving statewide fleet tire policy;
- Sold more than 1,000 vehicles for state agencies since March 2020 and received on average 15% to 30% above Kelley Blue Book value; and
- Maximized vehicle replacement savings by leveraging the state's vehicle order size.

Therefore, ADOT believes that the rules impose the least burden and costs to agencies regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives, and provide significant benefit to the public and the state.

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 no corresponding federal laws directly applicable to the subject matter of these rules.

13. For rules 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 external agency authorization.

14. Proposed course of action

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

The Department does not believe any rule changes are necessary at this time.

D. The report required by subsection (A) shall be available for inspection by all of the counties. A county may challenge the report made by any other county by filing a challenge in writing with the Assistant Director not later than April 30 of each year. In the case of reports received after April 1 of each year, the challenge must be received by the Assistant Director not later than 30 days after receipt of the report by the Assistant Director. The challenge shall specify the highways and the number of disputed miles being contested.

E. If the Assistant Director receives a challenge to a report, the Assistant Director of the Department of Transportation for Transportation Planning Division shall hold a hearing within 60 days upon receipt to resolve the challenge. The burden of proof at the hearing shall be on the county bringing the challenge. The decision of the Assistant Director of the Department of Transportation for Transportation Planning Division concerning the outcome of the challenge shall be final.

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Renumbered from R17-4-348 (Supp. 92-4).

R17-1-349. Period of applicability
The estimated percentage of use fuel consumed in each county that is calculated annually pursuant to the provisions of this Article shall be used to calculate the distribution pursuant to A.R.S. § 28-1598 commencing with distributions made after June 30 of that year and shall continue to be used until the next succeeding June 30 or until a new estimated percentage of use fuel consumed in each county is calculated in accordance with the provisions of this Article, whichever is later.

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Renumbered from R17-4-349 (Supp. 92-4).

ARTICLE 4. STATE FLEET OPERATIONS

R17-1-401. Definitions
In addition to the definitions provided under A.R.S. § 28-471, the following terms apply to this Article:

"Accident reporting packet" means the automobile loss report form and witness information cards which are located in the glove compartment of each state vehicle.

"ADOT" means the Arizona Department of Transportation.

"ADOT Equipment Services" means the section of ADOT designated by the Director as responsible for facilitating all activities required for the administration and management of vehicles owned, leased, or rented by this state and maintained by the Department as part of the statewide motor vehicle fleet management program, subject to any specific exclusions as prescribed under A.R.S. § 28-472.

"ADOT fueling facility" means a location managed by the Arizona Department of Transportation for use in dispensing fuel to state vehicles.

"Director" means the Director of the Arizona Department of Transportation or the Director's designee.

"Domicile-to-duty" means the assignment of a state vehicle to an individual operator on a continuous 24-hour basis where use of the state vehicle is authorized for travel between the operator's residence and worksite as prescribed under A.R.S. § 38-538.02.

"ESEDRA" means the Arizona State Employee Driver Record Application, which is a web-based application developed by State Risk Management and the Arizona Department of Administration to allow state agency authorized administrators to access and review motor vehicle record information for state employees authorized to drive a vehicle on state business as prescribed under A.A.C. R2-10-207.

"GPS" or "GPS fleet management device" means an electronic system installed by the Department on each state vehicle that captures and reports certain vehicle usage information to the Department as needed to ensure successful fleet asset management.

"Operator" means any state employee, intern, vendor, contractor, consultant, volunteer, customer, or visitor of a state agency who is expressly authorized by an agency director and State Risk Management to drive, operate, or otherwise utilize state vehicles, equipment, or services administered through ADOT Equipment Services.

"SAAM" means the State of Arizona Accounting Manual published by the Arizona Department of Administration, General Accounting Office, at https://gao.az.gov/, which contains several directives commonly referred to as the State Travel Policy to be used by both state employees and non-state employees seeking information on subjects involving state business travel eligibility and authorization.

"State vehicle" means a vehicle owned, leased, or rented by the state of Arizona and that is included in the state's motor vehicle fleet management program administered by ADOT as prescribed under A.R.S. § 28-332, A.R.S. § 28-472, or any other authorizing statute.

"Travel status" means when an operator is more than 50 miles from both the operator's residence and a regular duty post.

"Using agency" means any agency participating in the state's motor vehicle fleet management program administered by ADOT as prescribed under A.R.S. § 28-332, A.R.S. § 28-472, or any other authorizing statute, which is assigned a state vehicle or is otherwise authorized to use fleet operation services provided by ADOT under this Article.

"Using agency director" means any person designated by the using agency as having executive level approval authority.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1). New Section made by exempt rulemaking at 28 A.A.R. 3366 (October 21, 2022), with an immediate effective date of September 29, 2022 (Supp. 22-3).

R17-1-402. Requesting an Additional State Vehicle; Replacing a State Vehicle

A. Requesting an additional state vehicle.

1. Any agency requesting an additional state vehicle shall contact ADOT Equipment Services and complete a vehicle request form as indicated by ADOT on its website at www.azdot.gov.

2. All state vehicle requests are subject to prior review and approval by ADOT Equipment Services.

B. Replacing a state vehicle.

1. ADOT Equipment Services shall coordinate the budget process for fleet vehicle replacement.
2. ADOT Equipment Services shall track fleet data to include mileage, life cycles, utilization, maintenance costs, and other fleet related information to develop a fleet replacement list that prioritizes vehicle replacement needs for submission to the Governor's Office of Strategic Planning and Budgeting.
3. An agency subject to state vehicle fleet operations shall meet with ADOT fleet representatives each year to review the condition and utilization of agency vehicles.
4. An agency subject to state vehicle fleet operations shall not submit a budget request for replacement of any existing state fleet vehicle as prescribed under A.R.S. § 28-472.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1). New Section made by exempt rulemaking at 28 A.A.R. 3366 (October 21, 2022), with an immediate effective date of September 29, 2022 (Supp. 22-3).

R17-1-403. State Vehicle Usage; Operator Responsibilities

A. A state employee shall follow the recommendations for state vehicle usage as provided under Topic 50, Section 15, of the State of Arizona Accounting Manual (SAAM 5015) for the use of individually operated motor vehicles. Use of a state vehicle is always preferable to the use of a personally-owned or in-state commercially-rented vehicle, in most circumstances, and all travel for the state shall be conducted as reasonably and as economically as possible.

1. A state employee who uses a state vehicle, or a vehicle not owned by the state, to conduct state business shall operate that vehicle in accordance with all applicable state laws, rules, and policies.
2. Before commencing travel in a vehicle not owned by the state, a state employee shall check to see if a state vehicle is available for use, and if available, use the state vehicle.
3. Before commencing travel in a vehicle not owned by the state, a state employee shall:
   a. Estimate the total cost of their private vehicle travel expenses, including the total round-trip miles; and
   b. Submit the estimate to the employee's supervisor for approval.
4. Reimbursing a state employee for using a privately-owned vehicle, when a state vehicle is not available within the agency or group, shall be conducted as provided under SAAM 5015.

B. An operator, while on duty or on-call for duty, shall use a state vehicle for state government activities only as prescribed under A.R.S. § 38-538.02.

1. A state vehicle shall be operated only by a state employee. Any exception shall be authorized by the using agency's director or the using agency director's designee.
2. An operator may use a state vehicle only in the performance of state business. Use of a state vehicle for private transportation is a Class 2 misdemeanor and is prohibited as prescribed under A.R.S. § 38-538.04.
3. An operator may take a state vehicle home, while in travel status, when it is more practical to do so and it is in the best interest of the agency. An operator shall obtain prior supervisory approval before taking a state vehicle home.

C. Any state employee holding a valid Arizona driver license may be a state vehicle operator if authorized by the employee's agency.

D. An operator shall possess all licenses and certifications required for the operation of the class of vehicle assigned.

E. Domicile-to-duty assignment.

1. A using agency shall first seek and obtain permission from ADOT Equipment Services before allowing a state vehicle to be dispatched from an operator's home on a continual basis. The using agency may request this type of vehicle assignment by completing a domicile-to-duty request form located on the ADOT website under Equipment Services.
2. A complete domicile-to-duty request form submitted to ADOT Equipment Services shall include:
   a. Clear justification outlining why it is in the best interest of the state for the operator to take the state vehicle home each night; and
   b. Acknowledgement of the using agency director's approval.
3. Having an operator working from home is not an automatically justifiable reason for approving a request.
4. ADOT Equipment Services shall review and either approve or deny each domicile-to-duty request within 10 business days of receiving the request from a using agency.
5. A domicile-to-duty request approved by ADOT Equipment Services shall be:
   a. Vehicle and operator specific;
   b. Authorized for a period of up to one year; and
   c. Renewable on expiration.
6. All using agencies with active domicile-to-duty assignments shall resubmit justifications for renewal to ADOT Equipment Services on an annual basis.
7. ADOT Equipment Services shall review and keep all approved domicile-to-duty requests on file for one year from the time the request is approved.
8. ADOT Equipment Services shall up-fit all domicile-to-duty program vehicles with a GPS fleet management device as part of the state's motor vehicle fleet management program.

F. State vehicle assignment, reassignment, and records.

1. ADOT Equipment Services reserves the right to assign and reassign any state vehicle where needed as determined by the Department.
2. ADOT Equipment Services shall maintain and continuously review all state vehicle assignment records to ensure efficient and effective operation of the state vehicle fleet, which shall include a review of all state vehicles that do not meet the minimum utilization standard of 8,000 miles per rolling 12-month period or 10 trips per week. ADOT Equipment Services may reassign any state vehicle that does not meet the minimum utilization standard.
3. All using agencies shall report to ADOT Equipment Services within three business days of making a change to the address or zip code of any assigned state vehicle to ensure appropriate alignment with state and federal air quality mandates.

G. Prohibited uses of a state vehicle include:
1. Transportation for personal business or convenience; and
2. Transportation of family members, friends, or any other person not essential to accomplishing the purpose for which the vehicle is dispatched.

H. Allowable uses of a state vehicle include:
1. An operator may permit a non-state employee to ride as a passenger only if the passenger is on official state related business, which may include a person who is:
   a. Directly involved in a program sponsored or administered by the agency;
   b. A federal administration employee working in collaboration with the operator;
   c. A city or county employee; or
   d. Temporarily in need of assistance due to a roadside emergency or similar situation.
2. An operator may use a state vehicle for transportation to a job interview with any state agency if approved in advance by the operator's supervisor or as otherwise outlined in the operator's agency employee handbook.

I. Fueling facilities.
1. An operator shall use an ADOT fueling facility when available within five miles of the state vehicle's location. If an ADOT fueling facility is not available, the operator shall use a fueling facility that accepts the state-issued fuel card. Each operator shall verify fueling availability and hours of operation prior to commencing travel.
2. An operator assigned an alternative fuel vehicle shall use alternative fuel when available.
3. An operator shall only use regular unleaded gasoline. Dispensing a medium or premium grade of fuel into a state vehicle is prohibited.

J. Repairs.
1. An operator shall drive a state vehicle safely and obey all state traffic laws to help protect the vehicle's mechanical condition.
   a. Any defect or malfunction shall be immediately reported to the nearest ADOT Equipment Services shop location; and
   b. Any tampering or obvious vehicle abuse by an operator may result in disciplinary action and a direct billing to the operator's agency for reimbursement of damages.
2. An operator shall obtain authorization from ADOT Equipment Services before using a commercial repair shop for servicing or repairing any state vehicle.

K. Care of vehicles.
1. ADOT Equipment Services shall ensure that a state vehicle:
   a. Bears a current state license plate as prescribed under A.R.S. § 28-2511;
   b. Bears an appropriate designation as prescribed under A.R.S. § 38-538, § 38-538.01, or § 38-538.03;
   c. Is registered with the Arizona Department of Transportation, Motor Vehicle Division, as prescribed under A.R.S. § 28-2511; and
   d. Complies with state emissions laws as prescribed under A.R.S. §§ 49-542 and 49-557.
2. An operator shall ensure that:
   a. A state vehicle is kept clean and free of litter;
   b. Any visual defect or known malfunction is promptly reported to ADOT Equipment Services. If ADOT Equipment Services determines that an operator was negligent and failed to safeguard the state vehicle, the cost of any resulting damage shall be billed directly to the using agency;
   c. The vehicle maintenance schedule managed by ADOT Equipment Services is followed at all times. An operator is subject to disciplinary action for damaging state resources when a state vehicle is not turned in on time for scheduled services; and
   d. Smoking, chewing tobacco, or vaping in a state vehicle is not authorized.
      i. If ADOT Equipment Services determines that smoking, chewing tobacco, or vaping has occurred in or caused damage to a state vehicle, the operator's agency shall pay for the cleaning and repair expenses and the operator is subject to disciplinary action for violating state law.
      ii. A subsequent incident of smoking, chewing tobacco, or vaping in a state vehicle shall result in the operator losing the privilege to operate a state vehicle.

L. Prohibited activities.
1. No state vehicle shall be modified or tampered with in any way. Prohibited modification or tampering shall include activities such as disconnecting a GPS fleet management device, modifying a vehicle's markings, or removing a required decal.
2. An operator shall not idle a state vehicle for more than five minutes unless the state vehicle is actively engaged in a work function or idling is required for a safety reason. A state vehicle shall never be left idling unattended or while being fueled.
3. An operator shall not, at any time or under any circumstance, consume or transport any type of alcoholic beverage or a non-prescription controlled substance or drug in a state vehicle. A state vehicle shall not be operated by anyone under the influence of intoxicating liquor, drugs, or other substances.
4. An operator shall not use a state vehicle to transport any items or goods which are not the property of the state, unless such transportation is directly related to official business being conducted by an agency.

M. Parking.
1. An operator shall use discretion on where to park a state vehicle. Non-work-related stops when using a state vehicle are prohibited with the exception of restroom stops and meals when in travel status. Parking at a business where food is the primary service is acceptable when the operator is either:
   a. In travel status as indicated in SAAM 5009, Responsibilities of Travelers and Those Making or Reviewing Travel Arrangements; or
   b. Not in travel status but working away from the operator's work unit and eating nearby would reduce state vehicle mileage and fuel consumption.
2. An operator assigned a state vehicle shall park the vehicle off the street if taken home at night. If garage parking is not available, the operator shall check their local homeowner's association rules prior to parking a state vehicle on the premises. The operator shall remove all state property from the parked vehicle and ensure that the vehicle is locked and secured.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7,

2009 (Supp. 09-1). New Section made by exempt rulemaking at 28 A.A.R. 3366 (October 21, 2022), with an immediate effective date of September 29, 2022 (Supp. 22-3).

R17-1-404. Fleet Safety and Risk Management

A. A using agency shall use the state's ESEDRA program to review the driving record of each employee authorized to operate a state vehicle according to the procedures developed and implemented by the using agency as prescribed under A.A.C. R2-10-207 and the Statewide Motor Vehicle Safety Policy.

B. A state employee shall attend a defensive driver training course, as prescribed under A.A.C. R2-10-207, before being permitted to operate a state vehicle.

C. An operator who drives a state vehicle shall take a defensive driver training refresher course as often as required by the operator's agency. A driver that receives a citation for a traffic violation may be required by the operator's agency to take defensive driver refresher training as prescribed under A.A.C. R2-10-207.

D. An operator required to drive a state vehicle shall immediately notify a supervisor of any suspension, revocation, cancellation, restriction, disqualification or other action affecting the operator's license or certification needed to operate a state vehicle.

E. An operator, whether driving a state vehicle or a privately-owned vehicle on state business, shall not engage in distracted driving as prescribed under A.R.S. § 28-914. An operator is prohibited from using text messaging features on mobile communication devices while operating a vehicle except as permitted under A.R.S. § 28-914.

F. An operator shall ensure that there is evidence of insurance in the state vehicle before operating the vehicle. This certificate is included in the motor vehicle accident reporting packet stored in the glove compartment of each state vehicle. Additional motor vehicle accident reporting instructions are available from all ADOT Equipment Services offices.

G. An operator shall use a safety belt, as prescribed under A.R.S. § 28-909, and ensure that all passengers use a properly fastened safety belt. A state employee not wearing a safety belt may be subject to disciplinary action up to and including dismissal.

H. An operator shall not deactivate a driver or passenger side airbag unless doing so per manufacturer guidelines. All manufacturer's guidelines and those of the National Highway Traffic and Safety Administration (NHTSA) shall be followed when transporting:

1. Infants in rear-facing seats;
2. Children under the age of 12;
3. Adults with medical conditions that place them at specific risk, including people with certain prosthetic devices; and
4. Persons who cannot adjust their seat position to maintain approximately ten inches between the person's breastbone and the airbag.

I. Persons listed under subsection (H) shall be transported in a vehicle equipped with a rear seat or a vehicle not equipped with passenger side front airbags when available and practical. In cases where no other transportation options exist, and where the passenger side airbag has been deactivated to provide transportation to those listed under subsection (H), the operator shall reactivate the passenger side airbag immediately upon the exit of the passengers.

J. An operator, whether driving a state vehicle or a privately-owned vehicle on state business, shall report all vehicle accidents or incidents involving the vehicle that have resulted in damage to any property or injury to any person according to the operator's agency procedures for accident and incident investigations developed under A.A.C. R2-10-207, and notify ADOT Equipment Services as indicated on the Department's website at www.azdot.gov.

1. An operator shall report a state vehicle accident to the police and shall make a written report to the ADOT Equipment Services, Vehicle Risk Management Group, within 24 hours after the accident using the automobile loss report form contained in the accident reporting packet. If the operator is incapacitated, the operator's supervisor shall make the report.
2. The operator and the operator's supervisor shall sign the automobile loss report and forward it to the ADOT Equipment Services, Vehicle Risk Management Group, within 24 hours after the accident. If the police report is not available when the automobile loss report is due, the operator shall submit the police report regarding the accident to the ADOT Equipment Services, Vehicle Risk Management Group, within 10 calendar days after the accident.
3. If other vehicles are involved, or there are witnesses to the accident, the operator shall request all other drivers and witnesses complete a witness information card located in the accident reporting packet. The operator shall obtain the name and telephone number of any witnesses.
4. If no other vehicles are involved, or the police are unable to respond, the operator shall document as much information about the accident or incident as possible and take pictures where possible.

K. An operator may stop a state vehicle at the scene of any crash incident to provide motorist assistance within reason and to the extent of the operator's abilities. The operator is not required to compromise the operator's personal safety or the safety of any passengers. The operator may stop and assist a stranded motorist who is a great distance away from help, especially in bad weather, or may radio or phone the location of the motorist to the ADOT Traffic Operations Center (TOC) or the Department of Public Safety. Under unusual circumstances, an operator may transport a stranded motorist to the nearest place of reasonable safety, but only after calling 911. Children under five years of age or under 40 pounds shall be transported in a child safety seat, as prescribed under A.R.S. § 28-907, if available, or the seat from the stranded motorist's vehicle may be used.

L. Traffic citations.

1. An operator is personally responsible for the prompt payment of any fines imposed for a moving or non-moving traffic violation received while operating a state vehicle unless the citation was issued for mechanical failure. Under no circumstances shall the citation be paid with state or federal funds.
2. An operator who receives a traffic citation for mechanical failure shall, as soon as possible:
   a. Personally take the citation along with the state vehicle to the nearest ADOT Equipment Services shop location; or
   b. Contact the nearest ADOT Equipment Services shop location to receive instruction on the safest way to repair the issue.
3. An operator who receives a traffic citation while operating a state vehicle and fails to resolve the matter within

90 calendar days after the issue date on the citation shall lose the privilege of operating a state vehicle. The operator's privilege shall be reinstated when the operator provides the ADOT Equipment Services, Vehicle Risk Management Group, with verification that the operator:
a. Paid the fine,
b. Contested the traffic citation successfully, or
c. Submitted proof of successful completion of traffic school, and
d. Possesses a valid driver license.

M. An appropriately licensed operator may transport a small amount of explosive material in a state vehicle if required for conducting state business and approved by the ADOT Safety & Health Section with approval in writing by the second-line supervisor. All required placards shall be displayed on the transporting vehicle.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1). New Section made by exempt rulemaking at 28 A.A.R. 3366 (October 21, 2022), with an immediate effective date of September 29, 2022 (Supp. 22-3).

R17-1-405. Special Equipment; Billing Rates

A. A using agency shall obtain approval from ADOT Equipment Services before making any modification to a state vehicle, including the addition or removal of equipment or accessories to or from the state vehicle.

B. A using agency may request specially installed equipment such as two-way radios, sirens, cages, or tanks by submitting a request in writing to ADOT Equipment Services. The using agency shall pay for the equipment, for installation of the equipment, and for restoration expenses or diminution in value caused by modifications made to install special equipment.

C. ADOT Equipment Services shall equip all new state vehicles with a GPS fleet management device, unless the vehicle is dedicated for use in conducting certain law enforcement activities of a confidential nature or otherwise prohibited by the Director. ADOT Equipment Services shall place a decal on the rear of each state vehicle equipped with a GPS fleet management device to inform both the operator and the general public that use of the vehicle is monitored by GPS.

D. Charges for state fleet vehicles are determined by using a certified rate methodology guide for public fleets. Fleet charges consist of a risk management fee, a cost-per-mile fee, a fleet management service fee, an indirect cost allocation plan fee, and a per gallon fuel use fee. Other fees and charges may exist depending on internal or external agency requirements.

E. Fleet management rates are recalculated each year and may vary from one fiscal year to another depending upon the size of the fleet and the cost of new vehicles, maintenance, repairs, overhead, and insurance costs. The ADOT Equipment Services fleet operation is a cost recovery fleet operation as prescribed under A.R.S. § 28-472.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1). New Section made by exempt rulemaking at 28 A.A.R. 3366 (October 21, 2022), with an immediate effective date of September 29, 2022 (Supp. 22-3).

R17-1-406. Repealed

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

R17-1-407. Repealed

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

ARTICLE 5. ADMINISTRATIVE HEARINGS

R17-1-501. Definitions

The following definitions apply to this Article unless otherwise required:

1. "Administrative hearing" means a scheduled Executive Hearing Office proceeding for deciding a dispute based on the evidence presented to an administrative law judge. An administrative hearing includes:
   a. Advance notice to participants of record,
   b. An opportunity for witnesses to testify under oath, and
   c. Presentation of documentary evidence.
2. "Administrative law judge" means a person who conducts a summary review or presides at an administrative hearing, with the powers listed under these rules.
3. "Affidavit" means a declaration or statement of facts made:
   a. In writing, and
   b. Under oath or affirmation.
4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission issued by the Arizona Department of Transportation or the Division.
5. "Attorney" means:
   a. An individual who is an active member in good standing with the State Bar of Arizona,
   b. An individual approved to appear pro hac vice before the Executive Hearing Office pursuant to Rule 38(A) of the Arizona Supreme Court, or
   c. An individual authorized by Rule 31 of the Arizona Supreme Court to appear on behalf of another person or legal entity at a hearing before the Executive Hearing Office.
6. "Business day" means a day other than a Saturday, Sunday, or state holiday.
7. "Deposition" means a witness' testimony:
   a. Given under oath or affirmation,
   b. Brought out by another person's oral or written questions, and
   c. Reduced to writing for a proceeding.
8. "Director" means the Arizona Department of Transportation, Motor Vehicle Division Director.
9. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
10. "Executive Hearing Office" means the branch of the Director's office that conducts an administrative hearing or a summary review.
11. "In writing" means:

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 413

SENATE BILL 1829

AN ACT

AMENDING SECTION 28-332, ARIZONA REVISED STATUTES; REPEALING SECTION 28-414, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6; AMENDING SECTIONS 28-2007, 28-2321, 28-2324, 28-2325, 28-2532, 28-3511, 28-3512, 28-3514, 28-3515, 28-5474, 28-5739, 28-5863 AND 28-5864, ARIZONA REVISED STATUTES; REPEALING SECTION 28-6547, ARIZONA REVISED STATUTES; AMENDING SECTIONS 28-6991 AND 28-6993, ARIZONA REVISED STATUTES; REPEALING TITLE 28, CHAPTER 29, ARIZONA REVISED STATUTES; REPEALING SECTIONS 41-803 AND 41-804, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-805, 41-1504, 41-1752 AND 49-555, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO TRANSPORTATION RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-332, Arizona Revised Statutes, is amended to read:

28-332. Department of transportation jurisdiction; duties

A. The exclusive control and jurisdiction over state highways, state routes, ~~state owned~~ STATE-OWNED airports and all ~~state owned~~ STATE-OWNED transportation systems or modes are vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes and perform related functions.

2. Do multimodal state transportation planning, cooperate and coordinate transportation planning with local governments and establish an annually updated priority program of capital improvements for all transportation modes.

3. Design and construct transportation facilities in accordance with a priority plan and maintain and operate state highways, ~~state owned~~ STATE-OWNED airports and state public transportation systems.

4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.

5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

6. EXCEPT AS PROVIDED IN SECTION 28-472, SUBSECTION F, OPERATE A STATE MOTOR VEHICLE FLEET FOR ALL MOTOR VEHICLES THAT ARE OWNED, LEASED OR RENTED BY THIS STATE.

C. In order to carry out the responsibilities enumerated in subsection B of this section, the department is organized into the following divisions:

1. Motor vehicle.
2. Transportation planning.
3. Highways.
4. Aeronautics.
5. Public transit.
6. Administrative services.

D. The director may do any of the following:

1. Establish divisions in addition to those prescribed in subsection C of this section.
2. Reorganize the department.
3. Consolidate the department.

Sec. 2. Repeal

Section 28-414, Arizona Revised Statutes, is repealed.

Sec. 3. Title 28, chapter 2, Arizona Revised Statutes, is amended by adding article 6, to read:

ARTICLE 6. STATE MOTOR VEHICLE FLEET

28-471. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGENCY":

(a) MEANS A DEPARTMENT, BOARD, OFFICE, AUTHORITY, COMMISSION OR OTHER GOVERNMENTAL BUDGET UNIT OF THIS STATE, INCLUDING A GOVERNMENTAL BUDGET UNIT OF THIS STATE THAT IS UNDER DIRECT ADMINISTRATIVE CONTROL OF AN ELECTED OFFICIAL.

(b) DOES NOT INCLUDE THE LEGISLATIVE OR JUDICIAL BRANCHES OF STATE GOVERNMENT.

2. "FLEET OPERATION SERVICES" MEANS ANY OF THE FOLLOWING THAT THE DEPARTMENT PROVIDES TO AN AGENCY:

(a) MOTOR VEHICLES THAT ARE OWNED, LEASED OR RENTED BY THIS STATE AND THAT THE DEPARTMENT PROVIDES FOR TRANSPORTING STATE OFFICERS AND EMPLOYEES.

(b) FUEL SERVICES FOR MOTOR VEHICLES THAT ARE OWNED, LEASED OR RENTED BY THIS STATE.

(c) MAINTENANCE SERVICES FOR MOTOR VEHICLES THAT ARE OWNED, LEASED OR RENTED BY THIS STATE.

(d) ADMINISTRATIVE SERVICES RELATED TO FLEET MANAGEMENT.

3. "NEW MOTOR VEHICLE" MEANS AN ORIGINAL EQUIPMENT MANUFACTURED VEHICLE, A CONVERTED ORIGINAL EQUIPMENT MANUFACTURED VEHICLE OR AN ORIGINAL EQUIPMENT MANUFACTURED VEHICLE THAT WILL BE CONVERTED.

28-472. Fleet operation services; records; rules; vehicle replacement rate; participating agencies; coordinator; public service announcements; annual report

A. THE DIRECTOR SHALL OPERATE THE STATE MOTOR VEHICLE FLEET FOR THE PURPOSE OF PROVIDING FLEET OPERATION SERVICES TO AGENCIES. THE DIRECTOR SHALL MAKE FLEET OPERATION SERVICES AVAILABLE TO AN AGENCY ON THE REQUEST OF THE CHOSEN REPRESENTATIVE FOR THAT AGENCY.

B. THE DIRECTOR IS RESPONSIBLE FOR ADMINISTERING THE STATE MOTOR VEHICLE FLEET, INCLUDING:

1. PROCURING MOTOR VEHICLES FOR THE STATE MOTOR VEHICLE FLEET.

2. NOTWITHSTANDING TITLE 41, CHAPTER 23, ARTICLE 8, ADMINISTERING THE SURPLUS AND SALE OF MOTOR VEHICLES IN THE STATE MOTOR VEHICLE FLEET.

C. THE DIRECTOR SHALL PROVIDE FOR DETAILED COST, OPERATION, MAINTENANCE, MILEAGE AND CUSTODY RECORDS FOR EACH STATE-OWNED MOTOR VEHICLE.

D. THE DIRECTOR MAY ADOPT RULES NECESSARY TO ADMINISTER THIS ARTICLE.

E. THE DEPARTMENT SHALL RECOVER ALL COSTS FOR FLEET OPERATION SERVICES THAT ARE PROVIDED TO AN AGENCY. EACH AGENCY SHALL PAY FROM AVAILABLE MONIES THE COST OF FLEET OPERATION SERVICES RECEIVED FROM THE DEPARTMENT AT A RATE DETERMINED BY THE DIRECTOR, INCLUDING A SEPARATE VEHICLE REPLACEMENT RATE FOR MOTOR VEHICLE REPLACEMENTS. THE DIRECTOR SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, MONIES RECEIVED FOR FLEET OPERATION SERVICES IN THE STATE FLEET OPERATIONS FUND ESTABLISHED BY SECTION 28-475. THE DIRECTOR SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, MONIES RECEIVED TO PAY THE VEHICLE REPLACEMENT RATE IN THE STATE VEHICLE REPLACEMENT FUND ESTABLISHED BY SECTION 28-476.

F. THE FOLLOWING AGENCIES ARE EXCLUDED FROM PARTICIPATION IN THE STATE MOTOR VEHICLE FLEET:

1. THE DEPARTMENT OF PUBLIC SAFETY.
2. THE DEPARTMENT OF ECONOMIC SECURITY.
3. THE STATE DEPARTMENT OF CORRECTIONS.
4. UNIVERSITIES AND COMMUNITY COLLEGES.
5. THE ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND.
6. THE COTTON RESEARCH AND PROTECTION COUNCIL.
7. THE ARIZONA COMMERCE AUTHORITY.
8. THE DEPARTMENT OF CHILD SAFETY.

G. THE DIRECTOR SHALL APPOINT A STATE MOTOR VEHICLE FLEET COORDINATOR.

H. AN AGENCY MAY NOT PURCHASE, LEASE OR RENT A MOTOR VEHICLE UNLESS THE AGENCY IS EXCLUDED FROM PARTICIPATION IN THE STATE MOTOR VEHICLE FLEET BY SUBSECTION F OF THIS SECTION. THE DIRECTOR MAY WITHHOLD REGISTRATION FOR ANY MOTOR VEHICLE THAT IS PURCHASED, LEASED OR RENTED IN VIOLATION OF THIS SUBSECTION.

I. NOTWITHSTANDING SUBSECTION H OF THIS SECTION, AN AGENCY THAT ADMINISTERS A SEPARATE ACCOUNT PURSUANT TO SECTION 28-476, SUBSECTION C SHALL CONTROL THE PURCHASE, LEASE OR RENTAL OF MOTOR VEHICLES. VEHICLES PURCHASED, LEASED OR RENTED UNDER THIS SUBSECTION SHALL BE USED BY THE AGENCY ONLY FOR THE AGENCY'S PURPOSES.

J. AN AGENCY LISTED IN SUBSECTION F OF THIS SECTION MAY ELECT TO PARTICIPATE IN THE STATE MOTOR VEHICLE FLEET BY EXECUTING AN INTERAGENCY SERVICE AGREEMENT BETWEEN THE AGENCY AND THE DEPARTMENT.

K. A GOVERNMENTAL BUDGET UNIT OF THIS STATE THAT IS NOT AN AGENCY MAY ELECT TO PARTICIPATE IN THE STATE MOTOR VEHICLE FLEET BY ENTERING INTO AN INTERAGENCY SERVICE AGREEMENT WITH THE DEPARTMENT.

L. AN AGENCY, INCLUDING AN AGENCY LISTED IN SUBSECTION F OF THIS SECTION, MAY ACCEPT COMPENSATION FOR PLACING PUBLIC SERVICE ANNOUNCEMENTS ON STATE-OWNED MOTOR VEHICLES, AND MONIES RECEIVED SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND. THE AGENCY DIRECTOR SHALL DETERMINE THE APPROPRIATENESS OF THE ANNOUNCEMENTS, MAY EXEMPT ANY MOTOR VEHICLES THAT ARE NOT SUITABLE FOR ADVERTISING AND MAY CONTRACT WITH PRIVATE PARTIES TO DESIGN AND PLACE THE ANNOUNCEMENTS.

M. ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE DEPARTMENT SHALL SUBMIT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING A REPORT THAT ACCOUNTS FOR ALL MONIES DEPOSITED IN THE STATE FLEET OPERATIONS FUND ESTABLISHED BY SECTION 28-475 AND THE STATE VEHICLE REPLACEMENT FUND ESTABLISHED BY SECTION 28-476, INCLUDING ANY MONIES ALLOCATED TO SEPARATE AGENCY ACCOUNTS. THE REPORT SHALL ALSO INCLUDE THE NUMBER OF MOTOR VEHICLES THAT WERE REPLACED IN THE PRIOR FISCAL YEAR, THE NUMBER OF MOTOR VEHICLES AT EACH AGENCY, THE REPLACEMENT LIFE CYCLE FOR EACH MOTOR VEHICLE AND THE NUMBER OF MOTOR VEHICLES THE DEPARTMENT IDENTIFIES AS NOT REQUIRING REPLACEMENT.

28-473. Agency requests for motor vehicles; neighborhood electric vehicles

A. BEFORE MAKING A NEW MOTOR VEHICLE PURCHASE, THE DEPARTMENT SHALL CONSIDER PURCHASING A NEIGHBORHOOD ELECTRIC VEHICLE.

B. IF AN AGENCY REQUESTS A MOTOR VEHICLE FROM THE STATE MOTOR VEHICLE FLEET, THE AGENCY SHALL BE ASSIGNED A NEIGHBORHOOD ELECTRIC VEHICLE UNLESS THE AGENCY DEMONSTRATES TO THE DEPARTMENT THAT THE NEIGHBORHOOD ELECTRIC VEHICLE WILL NOT MEET THE NEEDS OF THE AGENCY BECAUSE THE NEW MOTOR VEHICLE WILL BE DOING ANY OF THE FOLLOWING:

1. OPERATING ON A STREET WITH A POSTED SPEED LIMIT THAT EXCEEDS THIRTY-FIVE MILES PER HOUR.

2. CARRYING A LOAD THAT EXCEEDS ONE THOUSAND FIVE HUNDRED POUNDS.

3. TRANSPORTING MORE THAN SIX PERSONS.

28-474. Statewide alternative fuels plan; coordinator; energy conservation; alternative and clean burning fuels requirements

A. THE STATE MOTOR VEHICLE FLEET COORDINATOR SHALL DEVELOP, IMPLEMENT, DOCUMENT, MONITOR AND MODIFY AS NECESSARY A STATEWIDE ALTERNATIVE FUELS PLAN IN CONSULTATION WITH ALL AGENCIES THAT ARE SUBJECT TO THE ALTERNATIVE FUEL AND CLEAN BURNING FUEL REQUIREMENTS PRESCRIBED IN THIS SECTION OR ANY OTHER LAW. THE COORDINATOR SHALL APPROVE ALL MOTOR VEHICLE ACQUISITIONS PURSUANT TO THIS SECTION, EXCEPT FOR ACQUISITIONS BY COMMUNITY COLLEGE DISTRICTS.

B. MOTOR VEHICLES PURCHASED FOR THE STATE MOTOR VEHICLE FLEET SHALL COMPLY WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY STANDARDS FOR LOW-EMISSION VEHICLES PURSUANT TO 40 CODE OF FEDERAL REGULATIONS SECTION 88.104-94 OR 88.105-94.

C. THE COORDINATOR SHALL IDENTIFY SPECIFIC MOTOR VEHICLE MODELS WITHIN EACH VEHICLE CLASS THAT MEET THE DEMANDS OF EACH AGENCY AND THAT DEMONSTRATE A HIGH DEGREE OF FUEL ECONOMY.

D. SUBSECTIONS B AND C OF THIS SECTION DO NOT APPLY TO THE PURCHASE OR LEASE OF THE FOLLOWING:

1. A MOTOR VEHICLE TO BE USED PRIMARILY FOR CRIMINAL LAW ENFORCEMENT.

2. A MOTORCYCLE.

3. AN ALL-TERRAIN VEHICLE.
4. AN AMBULANCE.
5. A FIRE TRUCK, A FIRE ENGINE OR ANY OTHER FIRE-SUPPRESSION APPARATUS.

E. AN AGENCY THAT IS EXCLUDED FROM PARTICIPATION IN THE STATE MOTOR VEHICLE FLEET PURSUANT TO SECTION 28-472, SUBSECTION F SHALL DEVELOP AND IMPLEMENT A PLAN FOR ALTERNATIVE FUELS AND CLEAN BURNING FUELS AND FUEL ECONOMY FOR THE AGENCY'S MOTOR VEHICLE FLEET THAT IS SUBSTANTIALLY SIMILAR TO THE STANDARDS SET FORTH IN THIS SECTION. THE AGENCY SHALL SUBMIT THE PLAN TO THE COORDINATOR FOR REVIEW.

F. ALL AGENCIES, INCLUDING THOSE LISTED IN SECTION 28-472, SUBSECTION F, SHALL COMPLY WITH THE STATEWIDE ALTERNATIVE FUELS PLAN THAT IS DEVELOPED AND IMPLEMENTED BY THE COORDINATOR PURSUANT TO SUBSECTION A OF THIS SECTION.

G. THE DEPARTMENT MAY NOT REGISTER A MOTOR VEHICLE THAT IS OPERATED BY AN AGENCY LISTED IN SECTION 28-472, SUBSECTION F IF THE AGENCY IS NOT IN COMPLIANCE WITH THIS SECTION.

28-475. State fleet operations fund; exemption

A. THE STATE FLEET OPERATIONS FUND IS ESTABLISHED CONSISTING OF MONIES RECEIVED FROM AGENCIES TO PAY THE COSTS OF FLEET OPERATION SERVICES PURSUANT TO SECTION 28-472 AND FROM LEGISLATIVE APPROPRIATIONS.

B. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE DEPARTMENT, 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.

28-476. State vehicle replacement fund; exemption

A. THE STATE VEHICLE REPLACEMENT FUND IS ESTABLISHED CONSISTING OF PAYMENTS RECEIVED FROM AGENCIES FOR THE VEHICLE REPLACEMENT RATE PURSUANT TO SECTION 28-472, SUBSECTION E, PROCEEDS FROM THE SALE OF SURPLUS MOTOR VEHICLES AND LEGISLATIVE APPROPRIATIONS. THE DEPARTMENT MAY SEPARATELY ACCOUNT FOR EACH AGENCY THAT PAYS A VEHICLE REPLACEMENT RATE PURSUANT TO SECTION 28-472, SUBSECTION E.

B. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE DEPARTMENT, 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.

C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, IF AN AGENCY'S SEPARATE ACCOUNT INCLUDES MONIES THAT ARE RESTRICTED IN PURPOSE BY STATE OR FEDERAL LAW, THE AGENCY SHALL ADMINISTER THE SEPARATE ACCOUNT.

Sec. 4. Section 28-2007, Arizona Revised Statutes, is amended to read:

28-2007. Highway safety fee; refund

A. At the time of application for and before registration each year of a vehicle, the registering officer shall collect a highway safety fee in an amount to be determined by the director. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected pursuant to this section in the Arizona highway patrol fund established by section 41-1752.

B. Notwithstanding subsection A of this section, beginning from and after June 30, 2021, the registering officer may not collect a highway safety fee. THE REGISTERING OFFICER MAY NOT COLLECT A HIGHWAY SAFETY FEE FOR REGISTRATIONS THAT EXPIRE ON JUNE 30, 2021. FOR ANY REGISTRATION THAT EXPIRES ON JUNE 30, 2021 FOR WHICH THE REGISTERING OFFICER COLLECTED A HIGHWAY SAFETY FEE, THE DEPARTMENT SHALL REFUND THE HIGHWAY SAFETY FEE COLLECTED.

Sec. 5. Section 28-2321, Arizona Revised Statutes, is amended to read:

28-2321. Registration requirement for nonresident's vehicle

A. Except as otherwise provided in this article, every foreign motor vehicle owned by a nonresident and operated in this state shall be registered and licensed in the same manner as a motor vehicle that has not been registered or licensed if the motor vehicle is operated in this state either:

1. For the transportation of passengers or property for compensation.

2. In the business of a nonresident carried on in this state.

3. For the transportation of property.

4. In the furtherance of a commercial enterprise and is a passenger-carrying motor vehicle designed to seat twelve or more persons.

B. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected pursuant to this section at ports of entry on the border between this state and Mexico ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

C. Sections 28-2322, 28-2323 and 28-2324 and this section do not apply to:

1. A foreign motor vehicle that is owned by a nonresident and that would be exempt from payment of gross weight fees under section 28-5432 if the motor vehicle were owned by a resident of this state.

2. A foreign motor vehicle that is owned by a nonresident and operated in this state for the transportation of property in the furtherance of a commercial enterprise and that is either:

(a) Commonly referred to as a passenger car or station wagon.

(b) Commonly known and referred to by manufacturer's rating as a three-quarter ton or less pickup truck or three-quarter ton or less van.

Sec. 6. Section 28-2324, Arizona Revised Statutes, is amended to read:

28-2324. Limited registration; fees; violation

A. If a person desires to operate a motor vehicle that is required to be registered by section 28-2321 for a period of less than the full registration year and the motor vehicle is registered and licensed under the laws of another state or country, the owner may apply to the department in the manner and form prescribed for the registration of the motor vehicle for either thirty, sixty or ninety day periods. The person shall pay the following percentages of the full annual registration, use and gross weight fees that are applicable to the applicant's motor vehicle as prescribed by sections 28-2003, 28-5433 and 28-5471, or ~~twelve dollars~~ $12, whichever is more:

1. For thirty days, twenty ~~per cent~~ PERCENT.

2. For sixty days, thirty-five ~~per cent~~ PERCENT.

3. For ninety days, fifty ~~per cent~~ PERCENT.

B. The department shall not accept an application for a fraction of any of the periods prescribed in subsection A of this section. The department may issue registrations without restriction as to number or sequence.

C. The director shall deposit, pursuant to sections 35-146 and 35-147, ~~all~~ fees collected pursuant to subsection A of this section at ports of entry on the border between this state and Mexico ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

D. If satisfied as to the facts stated in the application, the department shall register and license the motor vehicle for the period prescribed in subsection A of this section and shall assign an appropriate certificate or license. The operator shall display the certificate or license on the motor vehicle in the manner prescribed by the department when the motor vehicle is operated or driven on a highway of this state.

E. If a nonresident owner of a foreign motor vehicle is apprehended while operating the vehicle beyond the period specified in the owner's certificate or license and the owner has not applied for renewal of the certificate or license:

1. The department shall not issue another thirty, sixty or ninety day certificate or license to the owner during the registration year in which the violation occurred.

2. The nonresident owner shall register the motor vehicle and pay the fees for the registration year.

Sec. 7. Section 28-2325, Arizona Revised Statutes, is amended to read:

28-2325. Single trip permit; fees

A. An owner or operator of a vehicle that is required to be registered pursuant to section 28-2321 may apply to the department for a single trip permit. The single trip permit authorizes the interstate operation of the vehicle:

1. For a single trip through this state.

2. From any point on the Arizona border to a point within this state and back to the border.

3. From a railhead within this state and return to a railhead.

4. From a point within this state to the border of this state.

B. In order to obtain a single trip permit pursuant to this section, the owner or operator shall provide evidence of each of the following to the department:

1. An insurance policy that satisfies all of the following:

(a) Meets the financial responsibility requirements prescribed in chapter 9 of this title.

(b) Is issued by an insurer that has been issued a certificate of authority or that has been permitted to transact surplus lines insurance by the public official that supervises insurance in a state of the United States or the District of Columbia.

(c) Provides valid insurance coverage in this state.

2. A current driver license of a class and type recognized by the department as valid in the United States.

3. Current compliance with vehicle safety inspection requirements prescribed in 49 Code of Federal Regulations sections 396.17 through 396.23.

C. If satisfied as to the facts stated in the application and the evidence provided pursuant to subsection B of this section, the department shall register the vehicle by issuing a single trip permit on payment by the owner or operator of the following fees:

1. For a one or two axle vehicle, ~~two dollars~~ $2 for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

2. For a three axle vehicle or combination of vehicles with not more than three axles, ~~three dollars~~ $3 for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

3. For a vehicle or combination of vehicles with four axles, ~~four dollars~~ $4 for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

4. For a vehicle or combination of vehicles with five axles, ~~five dollars~~ $5 for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

5. For a vehicle or combination of vehicles with six axles, ~~six dollars~~ $6 for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

6. For a vehicle or combination of vehicles with more than six axles, ~~seven dollars~~ $7 for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

D. The director shall deposit, pursuant to sections 35-146 and 35-147, ~~all~~ fees collected pursuant to subsection C of this section at ports of entry on the border between this state and Mexico ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

E. The application for a single trip permit to the department does not qualify the applicant for eligibility in an assigned risk plan approved pursuant to section 28-4008.

F. The single trip permit shall contain information, be in the form and be issued and displayed in or on the vehicle as prescribed by department rules.

G. A single trip permit expires on completion of the specific trip for which the permit is issued and shall not exceed a period of ninety-six hours from the time of issuance unless an extension of time is authorized in writing by the department.

H. If a person operates a vehicle for which a single trip permit has been issued otherwise than as authorized in the permit, the owner or operator shall apply for and obtain annual registration of the vehicle and shall pay the fees applicable at the time the terms of the permit are violated.

Sec. 8. Section 28-2532, Arizona Revised Statutes, is amended to read:

28-2532. Registration; violation; civil penalty; dismissal

A. ~~Except as provided in subsection B of this section,~~ A person who is the resident or nonresident owner or operator of a motor vehicle, trailer or semitrailer that is required by law to be registered in this state and that is not registered or does not display license plates assigned by the department for the current registration year and who operates or knowingly ~~permits~~ ALLOWS the vehicle to be operated on a

highway is subject to a civil penalty of ~~three hundred dollars~~ $300 notwithstanding section 28-1598.

~~B. On proper presentation of evidence of current registration, a person who is charged with a violation of subsection A of this section is subject to a civil penalty of fifty dollars.~~

~~C.~~ B. A court shall ~~not~~ dismiss an action brought under this section ~~merely because~~ IF the defendant ~~has obtained~~ OBTAINS the appropriate license plates or registration after violating this section. A court may decide not to impose a civil penalty against a defendant for a violation of this section if the defendant was an operator but was not the owner of the motor vehicle, trailer or semitrailer.

Sec. 9. Section 28-3511, Arizona Revised Statutes, is amended to read:

28-3511. Removal and immobilization or impoundment of vehicle; Arizona crime information center database

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that:

1. A person is driving the vehicle while any of the following applies:

(a) Except as otherwise provided in this subdivision, the person's driving privilege is revoked for any reason. A peace officer shall not cause the removal and either immobilization or impoundment of a vehicle pursuant to this subdivision if the person's privilege to drive is valid in this state.

(b) The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This subdivision does not apply to the operation of an implement of husbandry.

(c) The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This subdivision does not apply to the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

(d) In furtherance of the illegal presence of an alien in the United States and in violation of a criminal offense, the person is transporting or moving or attempting to transport or move an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

(e) The person is concealing, harboring or shielding or attempting to conceal, harbor or shield from detection an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the

alien has come to, entered or remains in the United States in violation of law.

2. The vehicle is displayed for sale or for transfer of ownership with a vehicle identification number that has been destroyed, removed, covered, altered or defaced.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection D of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

D. A peace officer shall not cause the removal and either the immobilization or impoundment of a vehicle pursuant to subsection C of this section if all of the following apply:

1. The peace officer determines that the vehicle is currently registered and that the driver or the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

2. ~~The spouse of the driver~~ ANOTHER PERSON is with the driver at the time of the arrest.

3. The peace officer has reasonable grounds to believe that the ~~spouse of~~ OTHER PERSON WHO IS WITH the driver AT THE TIME OF THE ARREST MEETS ALL OF THE FOLLOWING:

(a) Has a valid driver license.

(b) Is not impaired by intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.

(c) Does not have any spirituous liquor in the ~~spouse's~~ PERSON'S body if the ~~spouse~~ PERSON is under twenty-one years of age.

4. The ~~spouse~~ OTHER PERSON WHO IS WITH THE DRIVER AT THE TIME OF THE ARREST notifies the peace officer that the ~~spouse~~ PERSON will drive the vehicle from the place of arrest to the driver's home or other place of safety.

5. The ~~spouse~~ OTHER PERSON drives the vehicle as prescribed by paragraph 4 of this subsection.

E. Except as otherwise provided in this article, a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section shall be immobilized or impounded for ~~thirty~~ TWENTY days. An insurance company does not have a duty to pay any benefits for charges or fees for immobilization or impoundment.

F. The owner of a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section, the spouse of the owner and each person who has provided the department with indicia of ownership as prescribed in section 28-3514 or other interest in the vehicle that exists immediately before the immobilization or impoundment shall be provided with an opportunity for an immobilization or poststorage hearing pursuant to section 28-3514.

G. A law enforcement agency that employs the peace officer who removes and either immobilizes or impounds a vehicle pursuant to this section shall enter information about the removal and either immobilization or impoundment of the vehicle in the Arizona crime information center database within three business days after the removal and either immobilization or impoundment.

Sec. 10. Section 28-3512, Arizona Revised Statutes, is amended to read:

28-3512. Release of vehicle; civil penalties; definition

A. An immobilizing or impounding agency shall release a vehicle before the end of the ~~thirty-day~~ immobilization or impoundment period as follows:

1. To the registered owner, if the vehicle is a stolen vehicle.

2. To the registered owner, if the vehicle is subject to bailment and is driven by an employee of a business establishment, including a parking service or repair garage, who is subject to section 28-3511, subsection A, B or C.

3. To the registered owner, if the owner was operating the vehicle at the time of removal and either immobilization or impoundment and presents proof satisfactory to the immobilizing or impounding agency that the owner's driving privilege has been reinstated.

4. To the registered owner, if all of the following apply:

(a) The owner or the owner's agent was not the person driving the vehicle pursuant to section 28-3511, subsection A.

(b) The owner or the owner's agent is in the business of renting motor vehicles without drivers.

(c) The vehicle is registered pursuant to section 28-2166.

(d) There was a rental agreement in effect at the time of the immobilization or impoundment.

5. Except as provided in paragraph 7 of this subsection, to the spouse of the registered owner or any person who is identified as an owner

of the vehicle on the records of the department at the time of removal and either immobilization or impoundment, if the spouse or person was not the driver of the vehicle at the time of removal and either immobilization or impoundment and the spouse or person enters into an agreement with the immobilizing or impounding agency that stipulates that if the spouse or person allows a driver who does not have a valid driving privilege or a driver who commits a violation that causes the spouse's or person's vehicle to be removed and either immobilized or impounded pursuant to this article within one year after any agreement is signed by an immobilizing or impounding agency, the spouse or person will not be eligible to obtain release of the spouse's or person's vehicle before the end of the ~~thirty-day~~ immobilization or impoundment period.

6. To the motor vehicle dealer, if the vehicle is owned by a motor vehicle dealer who has paid fees pursuant to section 28-4302 and is driven by a customer, potential customer or employee of the motor vehicle dealer and the motor vehicle dealer has provided to the immobilizing or impounding agency indicia of the motor vehicle dealer's ownership of the vehicle, including a certificate of title or a manufacturer-issued certificate or statement of origin.

7. To any person who is identified as an owner of the vehicle on the records of the department at the time of removal and either immobilization or impoundment, if the vehicle is a commercial motor vehicle, a street sweeper or heavy equipment as defined in section 28-854 and the person was not the driver of the vehicle at the time of removal and either immobilization or impoundment.

B. A vehicle shall not be released pursuant to subsection A of this section except pursuant to an immobilization or a poststorage hearing under section 28-3514 or if all of the following are presented to the immobilizing or impounding agency:

1. The owner's or owner's spouse's currently valid driver license issued by this state or the owner's or owner's spouse's state of domicile.

2. Proof of current vehicle registration or a valid salvage or dismantle certificate of title.

3. Proof that the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

4. If the person is required by the department to install a certified ignition interlock device on the vehicle, proof of installation of a functioning certified ignition interlock device in the vehicle. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall allow access during normal business hours to the impounded vehicle for the purpose of installing a certified ignition interlock device. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall not charge any fee or require compensation for providing access to the

vehicle or for the installation of the certified ignition interlock device.

C. The owner or the owner's spouse if the vehicle is released to the owner's spouse is responsible for paying all immobilization, towing and storage charges related to the immobilization or impoundment of the vehicle and any administrative charges established pursuant to section 28-3513, unless the vehicle is stolen and the theft was reported to the appropriate law enforcement agency. If the vehicle is stolen and the theft was reported to the appropriate law enforcement agency, the operator of the vehicle at the time of immobilization or impoundment is responsible for all immobilization, towing, storage and administrative charges.

D. Before the end of the ~~thirty-day~~ immobilization or impoundment period, the immobilizing or impounding agency shall release a vehicle to a person, other than the owner, identified on the department's record as having an interest in the vehicle immediately before the immobilization or impoundment if all of the following conditions are met:

1. The person is either of the following:

(a) In the business of renting motor vehicles without drivers and the vehicle is registered pursuant to section 28-2166.

(b) A motor vehicle dealer, bank, credit union or acceptance corporation or any other licensed financial institution legally operating in this state or is another person who is not the owner and who holds a security interest in the vehicle immediately before the immobilization or impoundment.

2. The person pays all immobilization, towing and storage charges related to the immobilization or impoundment of the vehicle and any administrative charges established pursuant to section 28-3513 unless the vehicle is stolen and the theft was reported to the appropriate law enforcement agency. If the vehicle is stolen and the theft was reported to the appropriate law enforcement agency, the operator of the vehicle at the time of immobilization or impoundment is responsible for all immobilization, towing, storage and administrative charges.

3. The person presents foreclosure documents or an affidavit of repossession of the vehicle.

4. The person requesting release of the vehicle was not the person driving the vehicle at the time of removal and immobilization or impoundment.

E. Before a person described in subsection D of this section releases the vehicle to the owner who was operating the vehicle at the time of removal and immobilization or impoundment, the person described in subsection D of this section shall require the owner to present and shall retain for a period of at least three years from the date of releasing the vehicle a copy of all of the following:

1. A driver license issued by this state or the owner's or owner's agent's state of domicile.

2. A current vehicle registration or a valid salvage or dismantle certificate of title.

3. Evidence that the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

F. The person described in subsection D of this section may require the owner to pay charges that the person incurred in connection with obtaining custody of the vehicle, including all immobilization, towing and storage charges that are related to the immobilization or impoundment of the vehicle and any administrative charges that are established pursuant to section 28-3513.

G. A vehicle shall not be released after the end of the ~~thirty-day~~ immobilization or impoundment period unless the owner or owner's agent presents all of the following to the impounding or immobilizing agency:

1. A valid driver license issued by this state or by the owner's or owner's agent's state of domicile.

2. A current vehicle registration or a valid salvage or dismantle certificate of title.

3. Evidence that the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

4. If the person is required by the department to install a certified ignition interlock device on the vehicle, proof of installation of a functioning certified ignition interlock device in the vehicle. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall allow access during normal business hours to the impounded vehicle for the purpose of installing a certified ignition interlock device. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall not charge any fee or require compensation for providing access to the vehicle or for the installation of the certified ignition interlock device.

H. The storage charges relating to the impoundment of a vehicle pursuant to this section shall be subject to a contractual agreement between the impounding agency and a towing firm for storage services pursuant to section 41-1830.51 and shall be ~~fifteen dollars~~ $25 for each day of storage, including any time the vehicle remains in storage after the end of the ~~thirty-day~~ impoundment period.

I. The immobilizing or impounding agency shall have no lien or possessory interest in a stolen vehicle if the theft was reported to the appropriate law enforcement agency. The immobilizing or impounding agency shall release the vehicle to the owner or person other than the owner as identified in subsection D of this section even if the operator at the time of immobilization or impoundment has not paid all immobilization, towing, storage and administrative charges.

J. A person who enters into an agreement pursuant to subsection A, paragraph 5 of this section and who allows another person to operate the

vehicle in violation of the agreement is responsible for a civil traffic violation and shall pay a civil penalty of at least ~~two hundred fifty dollars~~ $250.

K. A person described in subsection D, paragraph 1 of this section who violates subsection E of this section is responsible for a civil traffic violation and shall pay a civil penalty of at least ~~two hundred fifty dollars~~ $250.

L. For the purposes of this section, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

Sec. 11. Section 28-3514, Arizona Revised Statutes, is amended to read:

28-3514. Hearings; notice of immobilization or storage; definition

A. If a peace officer removes and either immobilizes or impounds a vehicle pursuant to section 28-3511, the immobilizing or impounding agency may provide the owner, the spouse of the owner and any other person providing indicia of ownership or other interest in the vehicle immediately before the immobilization or impoundment with the opportunity for an immobilization or poststorage hearing to determine the validity of the immobilization or storage or consider any mitigating circumstances relating to the immobilization or storage or release of the vehicle before the end of the ~~thirty day~~ immobilization or impoundment period. If the immobilizing or impounding agency provides the opportunity for an immobilization or poststorage hearing, the immobilizing or impounding agency shall conduct the hearing in accordance with any of the following:

1. In the immobilizing or impounding agency's jurisdiction.

2. Telephonically.

3. Pursuant to procedures prescribed by the immobilizing or impounding agency to transfer the authority to conduct the immobilization or poststorage hearing to a law enforcement agency in the jurisdiction in which the owner, the spouse of the owner, the owner's agent or any person identified in the department's record as having an interest in the vehicle immediately before the immobilization or impoundment resides.

B. If the immobilizing or impounding agency does not provide an opportunity for an immobilization or poststorage hearing, a justice court shall conduct the immobilization or poststorage hearing. If an immobilization or poststorage hearing is conducted by a justice court, the immobilizing or impounding agency shall appear and show evidence. Immobilization or poststorage hearings conducted by a justice court shall be considered as civil filings for the purposes of judicial productivity credits.

C. Within three business days after immobilization or impoundment, excluding weekends and holidays, the immobilizing or impounding agency shall send a notice of storage by first class mail to each person, other than the owner, identified on the department's record as having an

interest in the vehicle or who has provided the department with indicia of ownership or other interest in the vehicle that exists immediately before the immobilization or impoundment. Service of notice of immobilization or storage is complete on mailing. If within three business days after immobilization or impoundment, excluding weekends and holidays, the immobilizing or impounding agency fails to notify a person, other than the owner, identified on the department's record as having an interest in the vehicle immediately before the immobilization or impoundment, the immobilizing agency or the person in possession of the vehicle shall not charge any administrative fees or more than fifteen days' immobilization or impoundment when the person redeems the impounded vehicle or has the immobilization device removed from the vehicle.

D. Within three business days after immobilization or impoundment, excluding weekends and holidays, the immobilizing or impounding agency shall mail or personally deliver notice of immobilization or storage to the owner of the vehicle.

E. The notice of immobilization or storage shall include all of the following information:

1. A statement that the vehicle was immobilized or impounded.

2. The name, address and telephone number of the immobilizing or impounding agency providing the notice.

3. The name, address and telephone number of the immobilizing or impounding agency or justice court that will provide the immobilization or poststorage hearing.

4. The location of the place of storage and a description of the vehicle, including, if available, the manufacturer, model, license plate number and mileage of the vehicle.

5. A statement that in order to receive an immobilization or poststorage hearing the owner, the spouse of the owner, the owner's agent or the person identified in the department's record as having an interest in the vehicle immediately before the immobilization or impoundment, within ten days after the date on the notice, shall request an immobilization or poststorage hearing by contacting the immobilizing or impounding agency in person or in writing or by filing a request with the justice court if the impounding agency does not provide for a hearing and paying a fee equal to the fee established pursuant to section 22-281 for a small claims answer.

6. A statement that if the immobilizing or impounding agency does not provide the opportunity for an immobilization or poststorage hearing, the owner, the spouse of the owner, the owner's agent or any person identified in the department's record as having an interest in the vehicle or a person who has provided the department with indicia of ownership or other interest in the vehicle that exists immediately before the immobilization or impoundment may request that the immobilization or poststorage hearing be conducted by a justice court in the immobilizing or

impounding agency's jurisdiction or the jurisdiction in which the owner, the spouse of the owner, the owner's agent or the person identified in the department's record as having an interest in the vehicle immediately before the immobilization or impoundment resides.

F. The immobilization or poststorage hearing shall be conducted by the immobilizing or impounding agency or justice court within five business days, excluding weekends and holidays, after receipt of the request.

G. Failure of the owner, the spouse of the owner or other person or the other person's agent to request an immobilization or poststorage hearing within ten days after the date on the notice prescribed in subsection E of this section or to attend a scheduled hearing satisfies the immobilization or poststorage hearing requirement.

H. The immobilizing or impounding agency employing the person who directed the immobilization or storage is responsible for the costs incurred for immobilization, towing and storage if it is determined in the immobilization or poststorage hearing that reasonable grounds for the immobilization or impoundment and storage are not established.

I. In compliance with the requirements of this section, the vehicle owner, the vehicle owner's spouse or another person who has an interest in the vehicle or who has provided the department with indicia of ownership or other interest in the vehicle that exists immediately before the immobilization or impoundment shall have an opportunity for a single poststorage hearing for the release of the vehicle by either the immobilizing or impounding agency or a justice court but not both.

J. For the purposes of this section, "indicia of ownership" includes a certificate of title, a manufacturer-issued certificate or a statement of origin or other similar document.

Sec. 12. Section 28-3515, Arizona Revised Statutes, is amended to read:

28-3515. Unclaimed vehicles

If a claim has not been made for the return or possession of the vehicle by a person legally entitled to the vehicle within ~~thirty days after a vehicle is impounded~~ THE IMMOBILIZATION OR IMPOUNDMENT PERIOD pursuant to this article, the person who has possession of the vehicle shall submit an abandoned vehicle report as provided in section 28-4838. The immobilizing or impounding agency shall require the person who takes possession of a vehicle pursuant to this section to obtain a release for the vehicle from the immobilizing or impounding agency.

Sec. 13. Section 28-5474, Arizona Revised Statutes, is amended to read:

28-5474. Axle fees; commercial vehicles; border crossing; definition

A. The director may adopt rules establishing a fee based on the number of axles attached to a foreign vehicle or a foreign vehicle

combination that is imposed on nonresidents operating or causing the operation of a foreign vehicle or foreign vehicle combination that enters this state by crossing the border between this state and ~~the republic of~~ Mexico in the furtherance of a commercial enterprise.

B. If the director establishes a fee by rule pursuant to this section, the fee shall apply to a nonresident WHO IS operating or causing the operation of a foreign vehicle or foreign vehicle combination and who is required to register the foreign vehicle or foreign vehicle combination pursuant to section 28-2321 or who is responsible for ~~payment of~~ PAYING any fees required by ~~sections~~ SECTION 28-2324, 28-2325, 28-5739, ~~28-5763~~ 28-5863 or 28-5864.

C. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected ~~by rules established~~ pursuant to this section ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

D. For the purposes of this section, "foreign vehicle" or "foreign vehicle combination" means a truck or truck tractor and semitrailer and any trailer that it tows that is registered in a foreign country or jurisdiction of a foreign country and enters this state by crossing the border between this state and ~~the republic of~~ Mexico in the furtherance of a commercial enterprise.

Sec. 14. Section 28-5739, Arizona Revised Statutes, is amended to read:

28-5739. Single trip and other limited use fuel tax permits

A. If a use class motor vehicle is propelled by use fuel and is operated in this state in the course of interstate traffic, the department may issue, in lieu of an interstate user license, a special single trip use fuel tax permit authorizing operation of the vehicle for a single trip through this state or from a point on the Arizona border to a point in this state and return to the border.

B. The fee for the single trip use fuel tax permit is ~~sixty-five dollars~~ $65 for more than fifty miles traveled on the highways in this state and ~~sixteen dollars~~ $16 for fifty miles or less traveled on the highways in this state.

C. The single trip use fuel tax permit is valid for ninety-six hours.

D. The department:

1. Shall issue a single trip use fuel tax permit in duplicate.

2. May issue a single trip use fuel tax permit for a vehicle entering this state at Teec Nos Pos and exiting at Black Rock or entering

this state at Black Rock and exiting at Teec Nos Pos even if the vehicle exits and reenters this state during the trip.

3. May issue a special thirty, ninety or one hundred eighty day use fuel tax permit for a use class motor vehicle if the vehicle is in this state for a limited time. The fees for these permits are as follows:

(a) For a thirty day permit, ~~one hundred thirty dollars~~ $130.

(b) For a ninety day permit, ~~three hundred ninety dollars~~ $390.

(c) For a one hundred eighty day permit, ~~seven hundred eighty dollars~~ $780.

E. The director may authorize third parties to issue use fuel tax permits pursuant to this section in accordance with rules adopted by the director.

F. The director shall deposit, pursuant to sections 35-146 and 35-147, ~~all~~ fees collected pursuant to this section at ports of entry on the border between this state and Mexico ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

G. The fees imposed pursuant to this section do not apply to a use class motor vehicle that is used in the production of:

1. Motion pictures, including films to be shown in theaters and on television.

2. Industrial, training and educational films.

3. Commercials for television.

4. Video discs.

5. Videotapes.

Sec. 15. Section 28-5863, Arizona Revised Statutes, is amended to read:

28-5863. Single trip motor carrier fee trip permit; fee; expiration

A. There is imposed against each motor vehicle for a single trip motor carrier fee trip permit a motor carrier fee of either:

1. ~~Twelve dollars~~ $12 for fifty miles or less to be traveled on the highways of this state.

2. ~~Forty-eight dollars~~ $48 for more than fifty miles to be traveled on the highways of this state.

B. A single trip motor carrier fee trip permit:

1. Expires on the completion of the specific trip for which it is issued and applies only for a period of ninety-six hours ~~from~~ AFTER the time of issuance unless an extension of time is authorized by the director.

2. Is valid for a single trip for vehicles entering this state at Black Rock and exiting at Teec Nos Pos or entering this state at Teec Nos Pos and exiting at Black Rock even if the vehicles exit and reenter this state during the trip.

C. The director may authorize third parties to issue single trip motor carrier fee trip permits pursuant to this section in accordance with rules adopted by the director.

D. The director shall deposit, pursuant to sections 35-146 and 35-147, ~~all~~ fees collected pursuant to this section at ports of entry on the border between this state and Mexico ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

Sec. 16. Section 28-5864, Arizona Revised Statutes, is amended to read:

28-5864. Special thirty day motor carrier fee permit

A. The department may issue a special thirty day motor carrier fee permit for a motor vehicle if the vehicle is not in the commercial transportation business, is in this state for a limited period of time and will make limited use of this state's highways.

B. The motor carrier fee for a special thirty day permit is ~~ninety-six dollars~~ $96.

C. The director may authorize third parties to issue special thirty day motor carrier fee trip permits pursuant to this section in accordance with rules adopted by the director.

D. The director shall deposit, pursuant to sections 35-146 and 35-147, ~~all~~ fees collected pursuant to this section at ports of entry on the border between this state and Mexico ~~in the safety enforcement and transportation infrastructure fund established by section 28-6547.~~ AS FOLLOWS:

1. FIFTY-FIVE PERCENT IN THE STATE HIGHWAY FUND ESTABLISHED BY SECTION 28-6991.

2. FORTY-FIVE PERCENT IN THE ARIZONA HIGHWAY PATROL FUND ESTABLISHED BY SECTION 41-1752.

Sec. 17. Repeal

Section 28-6547, Arizona Revised Statutes, is repealed.

Sec. 18. Section 28-6991, Arizona Revised Statutes, is amended to read:

28-6991. State highway fund; sources

The state highway fund is established that consists of:

1. Monies distributed from the Arizona highway user revenue fund pursuant to chapter 18 of this title.

2. Monies appropriated by the legislature.

3. Monies received from donations for the construction, improvement or maintenance of state highways or bridges. These monies shall be credited to a special account and shall be spent only for the purpose indicated by the donor.

4. Monies received from counties or cities under cooperative agreements, including proceeds from bond issues. The state treasurer shall deposit these monies to the credit of the fund in a special account on delivery to the treasurer of a concise written agreement between the department and the county or city stating the purposes for which the monies are surrendered by the county or city, and these monies shall be spent only as stated in the agreement.

5. Monies received from the United States under an act of Congress to provide aid for the construction of rural post roads, but monies received on projects for which the monies necessary to be provided by this state are wholly derived from sources mentioned in paragraphs 2 and 3 of this section shall be allotted by the department and deposited by the state treasurer in the special account within the fund established for each project. On completion of the project, on the satisfaction and discharge in full of all obligations of any kind created and on request of the department, the treasurer shall transfer the unexpended balance in the special account for the project into the state highway fund, and the unexpended balance and any further federal aid thereafter received on account of the project may be spent under the general provisions of this title.

6. Monies in the custody of an officer or agent of this state from any source that is to be used for the construction, improvement or maintenance of state highways or bridges.

7. Monies deposited in the state general fund and arising from the disposal of state personal property belonging to the department.

8. Receipts from the sale or disposal of any or all other property held by the department and purchased with state highway monies.

9. Monies generated pursuant to section 28-410.

10. Monies distributed pursuant to section 28-5808, subsection B, paragraph 2, subdivision (d).

11. Monies deposited pursuant to sections 28-1143, 28-2353 and 28-3003.

12. Except as provided in section 28-5101, the following monies:

(a) Monies deposited pursuant to section 28-2206 and section 28-5808, subsection B, paragraph 2, subdivision (e).

(b) $1 of each registration fee and $1 of each title fee collected pursuant to section 28-2003.

(c) $2 of each late registration penalty collected by the director pursuant to section 28-2162.

(d) The air quality compliance fee collected pursuant to section 49-542.

(e) The special plate administration fees collected pursuant to sections 28-2404, 28-2407, 28-2412 through 28-2416, 28-2416.01, 28-2417 through 28-2468 and 28-2514.

(f) Monies collected pursuant to sections 28-372, 28-2155 and 28-2156 if the director is the registering officer.

13. Monies deposited pursuant to chapter 5, article 5 of this title.

14. Donations received pursuant to section 28-2269.

15. Dealer and registration monies collected pursuant to section 28-4304.

16. Abandoned vehicle administration monies deposited pursuant to section 28-4804.

17. Monies deposited pursuant to section 28-710, subsection D, paragraph 2.

18. Monies deposited pursuant to section 28-2065.

19. Monies deposited pursuant to section 28-7311.

20. Monies deposited pursuant to section 28-7059.

21. Monies deposited pursuant to section 28-1105.

22. Monies deposited pursuant to section 28-2448, subsection D.

23. Monies deposited pursuant to section 28-3415.

24. Monies deposited pursuant to section 28-3002, subsection A, paragraph 14.

25. Monies deposited pursuant to section 28-7316.

26. Monies deposited pursuant to section 28-4302.

27. Monies deposited pursuant to section 28-3416.

28. Monies deposited pursuant to section 28-4504.

29. Monies deposited pursuant to section 28-2098.

30. MONIES DEPOSITED PURSUANT TO SECTIONS 28-2321, 28-2324, 28-2325, 28-5474, 28-5739, 28-5863 AND 28-5864.

Sec. 19. Section 28-6993, Arizona Revised Statutes, is amended to read:

28-6993. State highway fund; authorized uses

A. Except as provided in subsection B of this section and section 28-6538, the state highway fund shall be used for any of the following purposes in strict conformity with and subject to the budget as provided by this section and by sections 28-6997 through 28-7003:

1. To pay salaries, wages, necessary travel expenses and other expenses of officers and employees of the department and the incidental office expenses, including telegraph, telephone, postal and express charges and printing, stationery and advertising expenses.

2. To pay for both:

(a) Equipment, supplies, machines, tools, department offices and laboratories established by the department.

(b) The construction and repair of buildings or yards of the department.

3. To pay the cost of both:

(a) Engineering, construction, improvement and maintenance of state highways and parts of highways forming state routes.

(b) Highways under cooperative agreements with the United States that are entered into pursuant to this chapter and an act of Congress providing for the construction of rural post roads.

4. To pay land damages incurred by reason of establishing, opening, altering, relocating, widening or abandoning portions of a state route or state highway.

5. To reimburse the department revolving account.

6. To pay premiums on authorized indemnity bonds and on compensation insurance under the workers' compensation act.

7. To defray lawful expenses and costs required to administer and carry out the intent, purposes and provisions of this title, including repayment of obligations entered into pursuant to this title, payment of interest on obligations entered into pursuant to this title, repayment of loans and other financial assistance, including repayment of advances and interest on advances made to the department pursuant to section 28-7677, and payment of all other obligations and expenses of the board and department pursuant to chapter 21 of this title.

8. To pay lawful bills and charges incurred by the state engineer.

9. To acquire, construct or improve entry roads to state parks or roads within state parks.

10. To acquire, construct or improve entry roads to state prisons.

11. To pay the cost of relocating a utility facility pursuant to section 28-7156.

12. For the purposes provided in subsections C, D and E of this section and sections 28-1143, 28-2353 and 28-3003.

13. To pay the cost of issuing an Arizona centennial special plate pursuant to section 28-2448.

14. TO PAY FOR ALL OF THE FOLLOWING:

(a) THE ENFORCEMENT BY THE DEPARTMENT OF PUBLIC SAFETY AND THE DEPARTMENT OF TRANSPORTATION OF VEHICLE SAFETY REQUIREMENTS WITHIN TWENTY-FIVE MILES OF THE BORDER BETWEEN THIS STATE AND MEXICO.

(b) COSTS RELATED TO PROCURING ELECTRONIC EQUIPMENT, AUTOMATED SYSTEMS OR IMPROVEMENTS TO EXISTING ELECTRONIC EQUIPMENT OR AUTOMATED SYSTEMS FOR RELIEVING VEHICLE CONGESTION AT PORTS OF ENTRY ON THE BORDER BETWEEN THIS STATE AND MEXICO.

(c) CONSTRUCTING, MAINTAINING AND UPGRADING TRANSPORTATION FACILITIES, INCLUDING ROADS, STREETS AND HIGHWAYS, APPROVED BY THE BOARD WITHIN TWENTY-FIVE MILES OF THE BORDER BETWEEN THIS STATE AND MEXICO.

(d) AS APPROVED BY THE BOARD, CONSTRUCTING AND MAINTAINING TRANSPORTATION FACILITIES IN THE CANAMEX HIGH PRIORITY CORRIDOR AS DEFINED

IN SECTION 332 OF THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995 (P.L. 104-59; 109 STAT. 568).

(e) ACTIVITIES OF THE DEPARTMENT THAT INCLUDE COLLECTING TRANSPORTATION AND TRADE DATA IN THE UNITED STATES AND MEXICO FOR THE PURPOSES OF CONSTRUCTING TRANSPORTATION FACILITIES, IMPROVING PUBLIC SAFETY, IMPROVING TRUCK PROCESSING TIME AND RELIEVING CONGESTION AT PORTS OF ENTRY ON THE BORDER BETWEEN THIS STATE AND MEXICO. THE DEPARTMENT MAY ENTER INTO AN AGREEMENT WITH THE ARIZONA-MEXICO COMMISSION AND PROVIDE FUNDING TO THE COMMISSION FOR THE PURPOSES OF THIS SUBDIVISION.

(f) A COMMITMENT OR INVESTMENT NECESSARY FOR THE DEPARTMENT OR ANOTHER AGENCY OF THIS STATE TO OBTAIN FEDERAL MONIES THAT ARE DESIGNATED FOR EXPENDITURE PURSUANT TO THIS SECTION.

B. For each fiscal year, the department of transportation shall allocate and transfer monies in the state highway fund to the department of public safety for funding a portion of highway patrol costs in eight installments in each of the first eight months of a fiscal year that do not exceed $10,000,000.

C. Subject to legislative appropriation, the department may use the monies in the state highway fund as prescribed in section 28-6991, paragraph 12 to carry out the duties imposed by this title for registration or titling of vehicles, to operate joint title, registration and driver licensing offices, to cover the administrative costs of issuing the air quality compliance sticker, modifying the year validating tab and issuing the windshield sticker and to cover expenses and costs in issuing special plates pursuant to sections 28-2404, 28-2407, 28-2412 through 28-2468 and 28-2514.

D. The department shall use monies deposited in the state highway fund pursuant to chapter 5, article 5 of this title only as prescribed by that article.

E. Monies deposited in the state highway fund pursuant to section 28-2269 shall be used only as prescribed by that section.

F. Monies deposited in the state highway fund pursuant to section 28-710, subsection D, paragraph 2 shall only be used for state highway work zone traffic control devices.

G. The department may exchange monies distributed to the state highway fund pursuant to section 28-6538, subsection A, paragraph 1 for local government surface transportation program federal monies suballocated to councils of government and metropolitan planning organizations if the local government scheduled to receive the federal monies concurs. An exchange of state highway fund monies pursuant to this subsection shall be in an amount that is at least equal to ninety percent of the federal obligation authority that exists in the project for which the exchange is proposed.

H. The department shall use monies deposited in the state highway fund pursuant to section 28-1105, subsection A, paragraph 2, subdivision

(a) only for a transportation facility that is located within twenty drivable miles of the international port of entry and shall spend the monies proportionally based on the amount of total monies collected pursuant to section 28-1105, subsection A, paragraph 2, subdivision (a). For the purposes of this subsection, "transportation facility" means a highway or a state route or a county, city or town road that is used by a commercial vehicle or a commercial vehicle combination for which an axle fee is paid pursuant to section 28-5474.

Sec. 20. Repeal

A. Title 28, chapter 29, Arizona Revised Statutes, is repealed.

B. Sections 41-803 and 41-804, Arizona Revised Statutes, are repealed.

Sec. 21. Section 41-805, Arizona Revised Statutes, is amended to read:

41-805. Off duty peace officers; lease or rental of law enforcement equipment

A. Subject to the agreement of the director of the department of administration, the head of a state department or agency that employs peace officers who are certified by the Arizona peace officer standards and training board established by section 41-1821 may allow those peace officers to engage in off duty law enforcement work if that work does not conflict with the work performed by the certified peace officers for the state department or agency.

B. If the head of a state department or agency allows its certified peace officers to engage in off duty law enforcement work pursuant to subsection A of this section, the state department or agency may lease or rent motor vehicles and other law enforcement equipment directly to its certified peace officers for the purpose of traffic safety, traffic control or other law enforcement related activity.

C. If a state agency or department leases or rents motor vehicles pursuant to subsection B of this section, the state agency or department shall:

1. Adopt rules and policies relating to the lease or rental of motor vehicles and other law enforcement equipment that are substantially similar to the rules and policies adopted by the department of public safety.

2. Deposit, pursuant to sections 35-146 and 35-147, any monies generated from ~~the~~ leasing or renting ~~of~~ the state fleet motor vehicles in the ~~motor vehicle pool revolving fund established by section 41-804~~ DEPARTMENT OF PUBLIC SAFETY ADMINISTRATION FUND.

D. The department of administration shall adopt uniform contract indemnity provisions and insurance coverage provisions naming this state and the agency that allows its certified peace officers to engage in off duty law enforcement work as additional insureds on a commercial liability policy. The coverage policy applies to all employers of certified peace

officers engaging in off duty law enforcement work pursuant to this section. The coverage policy shall hold this state harmless and indemnify this state by employers of certified peace officers engaging in off duty law enforcement work.

Sec. 22. Section 41-1504, Arizona Revised Statutes, is amended to read:

41-1504. Powers and duties; e-verify requirement

A. The board of directors, on behalf of the authority, may:

1. Adopt and use a corporate seal.

2. Sue and be sued.

3. Enter into contracts as necessary to carry out the purposes and requirements of this chapter, including intergovernmental agreements pursuant to title 11, chapter 7, article 3 and interagency service agreements as provided by section 35-148.

4. Lease real property and improvements to real property for the purposes of the authority. Leases by the authority are exempt from chapter 4, article 7 of this title, relating to management of state properties.

5. Employ or retain legal counsel and other consultants as necessary to carry out the purposes of the authority.

6. Develop and use written policies, procedures and guidelines for the terms and conditions of employing officers and employees of the authority and may include background checks of appropriate personnel.

B. The board of directors, on behalf of the authority, shall:

1. Develop comprehensive long-range strategic economic plans for this state and submit the plans to the governor.

2. Annually update a strategic economic plan for submission to the governor.

3. Accept gifts, grants and loans and enter into contracts and other transactions with any federal or state agency, municipality, private organization or other source.

C. The authority shall:

1. Assess and collect fees for processing applications and administering incentives. The board shall adopt the manner of computing the amount of each fee to be assessed. Within thirty days after proposing fees for adoption, the chief executive officer shall submit a schedule of the fees for review by the joint legislative budget committee. It is the intent of the legislature that a fee shall not exceed one percent of the amount of the incentive.

2. Determine and collect registry fees for the administration of the allocation of federal tax exempt industrial development bonds and student loan bonds authorized by the authority. Such monies collected by the authority shall be deposited, pursuant to sections 35-146 and 35-147, in an application fees fund. Monies in the fund shall be used, subject to annual appropriation by the legislature, by the authority to administer

the allocations provided in this paragraph and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

3. Determine and collect security deposits for the allocation, for the extension of allocations and for the difference between allocations and principal amounts of federal tax exempt industrial development bonds and student loan bonds authorized by the authority. Security deposits forfeited to the authority shall be deposited in the state general fund.

4. At the direction of the board, establish and supervise the operations of full-time or part-time offices in other states and foreign countries for the purpose of expanding direct investment and export trade opportunities for businesses and industries in this state if, based on objective research, the authority determines that the effort would be beneficial to the economy of this state.

5. Establish a program by which entrepreneurs become aware of permits, licenses or other authorizations needed to establish, expand or operate in this state.

6. Post on its website on an annual basis a report containing at least the following information:

(a) The cumulative progress made toward its goals for job creation, capital investment and higher average wages.

(b) To the extent not prohibited by law, information on each incentive application approved by the authority in the fiscal year, including the amount of the incentive approved or awarded and the applicant's activity that is projected or has been achieved, whichever is applicable, to qualify for the incentive.

(c) Rural economic development outreach and impact data.

(d) Small business outreach and impact data.

7. Develop and implement written policies and procedures relating to the administration of grants from the Arizona competes fund established by section 41-1545.01, including the following elements:

(a) Procedures for documenting grantee selection and due diligence.

(b) Procedures for verification of information submitted by grantees.

(c) Procedures for evaluating requests to amend grant terms and for documenting decisions relating to those requests.

8. Notwithstanding any other law, on request of the office of economic opportunity, disclose to the office of economic opportunity applicant information for incentives administered, in whole or in part, by the authority. Any confidentiality requirements provided by law applicable to the information disclosed pursuant to this paragraph apply to the office of economic opportunity.

D. The authority, through the chief executive officer, may:

1. Contract and incur obligations reasonably necessary or desirable within the general scope of the authority's activities and operations to enable the authority to adequately perform its duties.

2. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the authority.

3. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for the conduct of programs that are consistent with the general purposes and objectives of this chapter.

4. Assess business fees for promotional services provided to businesses that export products and services from this state. The fees shall not exceed the actual costs of the services provided.

5. Establish and maintain one or more accounts in banks or other depositories, for public or private monies of the authority, from which operational activities, including payroll, vendor and grant payments, may be conducted. Individual funds that are established by law under the jurisdiction of the authority may be maintained in separate accounts in banks or other depositories, but shall not be commingled with any other monies or funds of the authority.

E. The chief executive officer shall:

1. Hire employees and prescribe the terms and conditions of their employment as necessary to carry out the purposes of the authority. The board of directors shall adopt written policies, procedures and guidelines, similar to those adopted by the department of administration, regarding officer and employee compensation, observed holidays, leave and reimbursement of travel expenses and health and accident insurance. The officers and employees of the authority are exempt from any laws regulating state employment, including:

(a) Chapter 4, articles 5 and 6 of this title, relating to state service.

(b) Title 38, chapter 4, article 1 and chapter 5, article 2, relating to state personnel compensation, leave and retirement.

(c) Title 38, chapter 4, article 2, relating to reimbursement of state employee expenses.

(d) Title 38, chapter 4, article 4, relating to health and accident insurance.

2. Maintain three full-time employees to serve as advocates for small and rural businesses on economic development and regulatory matters before cities, towns, counties or state agencies. Two of the full-time employees shall be dedicated to small business growth, support and regulation, one of whom shall serve as a small business ombudsman. One of the full-time employees shall be dedicated to rural economic development.

3. On a quarterly basis, provide public record data in a manner prescribed by the department of administration related to the authority's revenues and expenditures for inclusion in the comprehensive database of receipts and expenditures of state monies pursuant to section 41-725.

F. In addition to any other requirement, in order to qualify for any grant, loan, reimbursement, tax incentive or other economic development incentive pursuant to this chapter, an applicant that is an employer must register with and participate in the e-verify program in compliance with section 23-214. The authority shall require verification of compliance with this subsection as part of any application process.

G. Notwithstanding any other law, the authority is subject to chapter 3.1, article 1 of this title, relating to risk management.

H. The authority is exempt from title 18, chapter 1, articles 1 and 2, relating to statewide information technology. The authority shall adopt policies, procedures and guidelines regarding information technology.

I. The authority is exempt from state general accounting and finance practices and rules adopted pursuant to chapter 4, article 3 of this title, but the board shall adopt written accounting practices, systems and procedures for the economic and efficient operation of the authority.

J. The authority is exempt from section 41-712, relating to the installation and maintenance of telecommunication systems.

K. The authority may lease or purchase motor vehicles for use by employees to conduct business activities. The authority is exempt from section ~~41-803~~ 28-472, relating to the state motor vehicle fleet, and title 38, chapter 3, article 10, relating to vehicle usage and markings.

L. Any tangible or intangible record submitted to or compiled by the board or the authority in connection with its work, including the award of monies, is subject to title 39, chapter 1, unless an applicant shows, or the board or authority determines, that specific information meets either of the following:

1. If made public, the information would divulge the applicant's or potential applicant's trade secrets, as defined in section 44-401.

2. If made public, the information could potentially harm the applicant's, the potential applicant's or this state's competitive position relating to potential business development opportunities and strategies.

M. The authority is exempt from chapter 25, article 1 of this title, relating to government competition with private enterprise.

Sec. 23. Section 41-1752, Arizona Revised Statutes, is amended to read:

41-1752. Arizona highway patrol fund

A. The Arizona highway patrol fund is established.

B. The Arizona highway patrol fund consists of:

1. Monies distributed to the fund from the Arizona highway user revenue fund by the legislature subject to section 28-6537.

2. Miscellaneous service fees.

3. Rewards.

4. Awards.
5. Insurance recoveries.
6. Receipts from the sale or disposal of any property held by the Arizona highway patrol or purchased with Arizona highway patrol monies.
7. Monies received from the public safety personnel retirement system pursuant to section 20-224.01.
8. Monies deposited pursuant to section 28-3513.
9. Monies deposited pursuant to section 28-2007.
10. MONIES DEPOSITED PURSUANT TO SECTIONS 28-2321, 28-2324, 28-2325, 28-5474, 28-5739, 28-5863 AND 28-5864.

C. Subject to legislative appropriation, the patrol superintendent shall administer and spend monies in the Arizona highway patrol fund in conformity with the laws governing state financial operations.

D. Monies in the Arizona highway patrol fund:

1. Do not revert to the state general fund or Arizona highway user revenue fund.

2. Are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. Subject to legislative appropriation, monies in the Arizona highway patrol fund:

1. Shall be used FOR THE FOLLOWING:

(a) ~~To administer~~ ADMINISTERING the provisions of law relating to the highway patrol and the Arizona highway patrol reserve and all matters pertaining to those laws, except that monies received pursuant to subsection B, paragraph 7 of this section shall be used for the department of public safety.

(b) THE ENFORCEMENT BY THE DEPARTMENT OF PUBLIC SAFETY AND THE DEPARTMENT OF TRANSPORTATION OF VEHICLE SAFETY REQUIREMENTS WITHIN TWENTY-FIVE MILES OF THE BORDER BETWEEN THIS STATE AND MEXICO.

(c) COSTS RELATED TO PROCURING ELECTRONIC EQUIPMENT, AUTOMATED SYSTEMS OR IMPROVEMENTS TO EXISTING ELECTRONIC EQUIPMENT OR AUTOMATED SYSTEMS FOR RELIEVING VEHICLE CONGESTION AT PORTS OF ENTRY ON THE BORDER BETWEEN THIS STATE AND MEXICO.

(d) A COMMITMENT OR INVESTMENT NECESSARY FOR THE DEPARTMENT OR ANOTHER AGENCY OF THIS STATE TO OBTAIN FEDERAL MONIES THAT ARE DESIGNATED FOR EXPENDITURE PURSUANT TO THIS SECTION.

2. May be used for the pharmaceutical diversion and drug theft task force.

Sec. 24. Section 49-555, Arizona Revised Statutes, is amended to read:

49-555. Retrofit of diesel vehicles

Entities THAT ARE subject to ~~the provisions of~~ sections 9-500.04, ~~41-803~~ 28-474, 49-474.01 and 49-573 shall comply with the following time schedule for retrofitting their existing diesel vehicles:

1. Twenty-five ~~per cent~~ PERCENT of the diesel fleet vehicles by December 31, 1998.

2. Forty ~~per cent~~ PERCENT of the diesel fleet vehicles by December 31, 1999.

3. Sixty ~~per cent~~ PERCENT of the diesel fleet vehicles by December 31, 2000.

4. Eighty ~~per cent~~ PERCENT of the diesel fleet vehicles by December 31, 2001.

5. One hundred ~~per cent~~ PERCENT of the diesel fleet vehicles by December 31, 2002.

Sec. 25. Succession; state motor vehicle fleet

A. As provided by this act, the department of transportation succeeds to the authority, powers, duties and responsibilities of the department of administration in state motor vehicle fleet operations.

B. This act does not alter the effect of any actions that were taken or impair the valid obligations of the department of administration in state motor vehicle fleet operations and measures in existence before the effective date of this act.

C. Administrative rules and orders that were adopted by the department of administration related to state motor vehicle fleet operations continue in effect until superseded by administrative action by the department of transportation.

D. All administrative matters, contracts and judicial and quasi-judicial actions, whether completed, pending or in process, of the department of administration related to state motor vehicle fleet operations on the effective date of this act are transferred to and retain the same status with the department of transportation.

E. Notwithstanding any other law, on the effective date of this act all equipment, records, furnishings and other property and all data of the department of administration related to state motor vehicle fleet operations are transferred to the department of transportation. The director of the department of administration shall determine and allocate the transfer, consistent with the provisions of this act.

F. All personnel who are under the state personnel system and employed by the department of administration in positions directly related to state motor vehicle fleet operations are transferred to comparable positions and pay classifications in the department of transportation on the effective date of this act.

Sec. 26. State agency vehicle transfer

All motor vehicles owned by state agencies or departments other than those listed in section 28-472, subsection F, Arizona Revised Statutes, as added by this act, are transferred to the department of transportation from and after June 30, 2021. This section does not apply to any vehicle purchased with monies that are restricted in use by state or federal law or legally committed to the expenditure for specified purposes.

Sec. 27. Exemption from rulemaking

For the purposes of this act, the department of transportation is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 28. Transfer of monies

A. All unexpended and unencumbered monies remaining in the motor vehicle pool consolidation fund established by section 28-414, Arizona Revised Statutes, as repealed by this act, are transferred to the state vehicle replacement fund established by section 28-476, Arizona Revised Statutes, as added by this act.

B. All unexpended and unencumbered monies remaining in the motor vehicle pool revolving fund established by section 41-804, Arizona Revised Statutes, as repealed by this act, are transferred to the state vehicle replacement fund established by section 28-476, Arizona Revised Statutes, as added by this act.

C. All unexpended and unencumbered monies remaining in the department of transportation interagency service agreement fund and interagency governmental agreement fund established pursuant to section 35-131, subsection H, Arizona Revised Statutes, relating to motor vehicle fleet activities are transferred to the state fleet operations fund established by section 28-475, Arizona Revised Statutes, as added by this act.

D. All unexpended and unencumbered monies remaining in the department of transportation subaccount in the safety enforcement and transportation infrastructure fund established by section 28-6547, Arizona Revised Statutes, as repealed by this act, are transferred to the state highway fund established by section 28-6991, Arizona Revised Statutes, as amended by this act.

E. All unexpended and unencumbered monies remaining in the department of public safety subaccount in the safety enforcement and transportation infrastructure fund established by section 28-6547, Arizona Revised Statutes, as repealed by this act, are transferred to the Arizona highway patrol fund established by section 41-1752, Arizona Revised Statutes, as amended by this act.

Sec. 29. Rental vehicle surcharge; vehicle license tax reimbursement

Notwithstanding section 28-5810, Arizona Revised Statutes, a person engaged in the business of renting motor vehicles without drivers may use the surcharge monies collected in 2021 pursuant to section 28-5810, Arizona Revised Statutes, to reimburse the amount of vehicle license tax imposed in 2020 and 2021 on the rental vehicles as described in section 28-5810, subsection B, paragraph 5, Arizona Revised Statutes.

Sec. 30. Retroactivity

A. Except as provided in subsection B of this section, this act applies retroactively to from and after June 30, 2021.

B. Section 28-2007, Arizona Revised Statutes, as amended by this act, applies retroactively to from and after June 29, 2021.

APPROVED BY THE GOVERNOR JUNE 30, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 30, 2021.

Arizona Department of Transportation

One-Year-Review Report

Title 17. Transportation

Chapter 1. Department of Transportation - Administration

Article 4. State Fleet Operations

General and Specific Statutory Authority

A.R.S. § 28-332. Department of transportation jurisdiction; duties

A. The exclusive control and jurisdiction over state highways, state routes, state-owned airports and all state-owned transportation systems or modes are vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes and perform related functions.

2. Do multimodal state transportation planning, cooperate and coordinate transportation planning with local governments and establish an annually updated priority program of capital improvements for all transportation modes.

3. Design and construct transportation facilities in accordance with a priority plan and maintain and operate state highways, state-owned airports and state public transportation systems.

4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.

5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

6. Except as provided in section 28-472, subsection F, operate a state motor vehicle fleet for all motor vehicles that are owned, leased or rented by this state.

C. In order to carry out the responsibilities enumerated in subsection B of this section, the department is organized into the following divisions:

1. Motor vehicle.

2. Transportation planning.

3. Highways.

4. Aeronautics.

5. Public transit.

6. Administrative services.

D. The director may do any of the following:

1. Establish divisions in addition to those prescribed in subsection C of this section.

2. Reorganize the department.

3. Consolidate the department.

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-472. Fleet operation services; records; rules; vehicle replacement rate; participating agencies; coordinator; public service announcements; annual report

A. The director shall operate the state motor vehicle fleet for the purpose of providing fleet operation services to agencies. The director shall make fleet operation services available to an agency on the request of the chosen representative for that agency.

B. The director is responsible for administering the state motor vehicle fleet, including:

1. Procuring motor vehicles for the state motor vehicle fleet.

2. Notwithstanding title 41, chapter 23, article 8, administering the surplus and sale of motor vehicles in the state motor vehicle fleet.

C. The director shall provide for detailed cost, operation, maintenance, mileage and custody records for each state-owned motor vehicle.

D. The director may adopt rules necessary to administer this article.

E. The department shall recover all costs for fleet operation services that are provided to an agency. Each agency shall pay from available monies the cost of fleet operation services received from the department at a rate determined by the director, including a separate vehicle replacement rate for motor vehicle replacements. The director shall deposit, pursuant to sections 35-146 and 35-147, monies received for fleet operation services in the state fleet operations fund established by section 28-475. The director shall deposit, pursuant to sections 35-146 and 35-147, monies received to pay the vehicle replacement rate in the state vehicle replacement fund established by section 28-476.

F. The following agencies are excluded from participation in the state motor vehicle fleet:

1. The department of public safety.

2. The department of economic security.

3. The state department of corrections.

4. Universities and community colleges.

5. The Arizona state schools for the deaf and the blind.

6. The cotton research and protection council.

7. The Arizona commerce authority.

8. The department of child safety.

9. The department of transportation.

G. The director shall appoint a state motor vehicle fleet coordinator.

H. An agency may not purchase, lease or rent a motor vehicle unless the agency is excluded from participation in the state motor vehicle fleet by subsection F of this section. The director may withhold registration for any motor vehicle that is purchased, leased or rented in violation of this subsection.

I. Notwithstanding subsection H of this section, an agency that administers a separate account pursuant to section 28-476, subsection C shall control the purchase, lease or rental of motor vehicles. Vehicles purchased, leased or rented under this subsection shall be used by the agency only for the agency's purposes.

J. An agency listed in subsection F of this section may elect to participate in the state motor vehicle fleet by executing an interagency service agreement between the agency and the department.

K. A governmental budget unit of this state that is not an agency may elect to participate in the state motor vehicle fleet by entering into an interagency service agreement with the department.

L. An agency, including an agency listed in subsection F of this section, may accept compensation for placing public service announcements on state-owned motor vehicles, and monies received shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The agency director shall determine the appropriateness of the announcements, may exempt any motor vehicles that are not suitable for advertising and may contract with private parties to design and place the announcements.

M. On or before October 1 of each year, the department shall submit to the joint legislative budget committee and the governor's office of strategic planning and budgeting a report that accounts for all monies deposited in the state fleet operations fund established by section 28-475 and the state vehicle replacement fund established by section 28-476, including any monies allocated to separate agency accounts. The report shall also include the number of motor vehicles that were replaced in the prior fiscal year, the number of motor vehicles at each agency, the replacement life

cycle for each motor vehicle and the number of motor vehicles the department identifies as not requiring replacement.

ARIZONA STATE PERSONNEL BOARD
Title 2, Chapter 5.1, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 5, 2023**

SUBJECT: **ARIZONA STATE PERSONNEL BOARD**
Title 2, Chapter 5.1, Article 1

Summary

This Five Year Review Report (5YRR) from the Arizona State Personnel Board (Board) covers four (4) rules in Title 2, Chapter 5.1, Article 1 related to General Provisions. The purpose of the Board is to "hear and review appeals relating to personnel actions taken against state employees and dismissals from state service, suspensions for more than forty hours and demotions resulting from disciplinary actions." Laws 2006, Ch.41, § 3. The information contained in these rules covers personnel board procedures, appeals, and complaints.

Proposed Action

In the prior 5YRR, approved by Council on October 2, 2018, the Board proposed to amend rules 102, 103, 104, by December 2020 and they completed this course of action. The Board is currently not proposing any amendments as they have determined no course of action is needed 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 Arizona State Personnel Board (Board) indicates that it has a positive impact on the economy but in regard to small business and consumer impact it does not have any direct ties in either of those areas. The Board directly services the public sector only and does not engage or work with the private sector in any regard. With respect to the economic impact, the Board states that it is vastly cost effective compared to the judicial system that is the only other route that one could take for relief. On average, per matter cost is around $5,000.00 that tremendously and positively impacts the consumers who serve in the public sector.

Stakeholders include the Board and state employees of Arizona.

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 states that the rules benefit the State of Arizona more than the cost. In addition, they indicate that the rules impose the least amount of burden to a regulated person(s) as no costs are associated for the use of services for state employees.

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 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 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 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 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 Board indicates that a permit or license is not required for these rules and therefore this question does not apply.

11. Conclusion

This Five Year Review Report from the Arizona State Personnel Board covers four rules in Title 2, Chapter 5.1, Article 1 related to General Provisions. As indicated above, the Board has determined the rules are clear, concise, and understandable; consistent with other rules and statutes; and enforced as written. The Board is currently not proposing any amendments as they have determined no course of action is needed at this time.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

STATE PERSONNEL BOARD

1740 West Adams Street, Suite 3007
Phoenix, Arizona 85007
Phone: (602) 542-3888

June 28, 2023

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

RE: Arizona State Personnel Board, Title 2 Administration, Chapter 5.1, Article 1, Five Year Review Report.

Dear Chairwomen Sornsin,

Please find enclosed the Five Year Review Report of the Arizona State Personnel Board for Title 2 Administration, Chapter 5.1, Article 1 which was extended to be due on June 28th, 2023 by request.

The Arizona State Personnel Board hereby certifies compliance with A.R.S. §1091.

For questions about this report, please contact Zachariah Tolliver, Executive Director at 602-542-3888 or by email at Zachariah.tolliver@personnel.az.gov

Sincerely,

Zachariah Tolliver

Zachariah Tolliver, Executive Director

Arizona State Personnel Board
5 Year Review Report
Title 2 Administration, Chapter 5.1

October 24, 2023

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

General Authority:

- A.R.S. §38-531
- A.R.S §38-532
- A.R.S. §41-781
- A.R.S. §41-782

Specific Authority:

- A.R.S. §38-531
- A.R.S §38-532
- A.R.S. §41-781
- A.R.S. §41-783

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

Rule	Objective
R2-5.1-101	Definitions
R2-5.1-102	Personnel Board Procedures
R2-5.1-103	Appeal Procedures
R2-5.1-104	Complaint Procedures

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

Yes, the rules are effective in achieving their objective.

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

Yes, all rules governing the Arizona State Personnel Board work cohesively together in an effective manner that affords an efficient and seamless process.

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

Yes, the Arizona State Personnel Board has and continues to enforce the rules as they are written.

6. **Are the rules clear, concise, and understandable?**

Yes, the rules are clear and concise and soundly spell out the process to elevate any gray area.

7. **Has the agency received written criticisms of the rules within the last five years?**

No, to the agencies knowledge we've received no written criticism regarding the rules.

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

The Arizona State Personnel Board has a positive impact on the economics but in regards to small business and consumer impact we do not have any direct ties in either of those areas. We directly service the public sector only and do not engage or work with the private sector in any regard. With respect to the economics, the Arizona State Personnel Board is vastly cost effective compared to the judicial system that is the only other route that one could take for relief. Albeit, the economic impact we have is positive as it gives public employees a cost effective route to take opposed to the judicial system where an attorney will be needed, in addition to court fees and cost. On average, per matter cost is around $5,000.00 that tremendously and positively impacts the consumers whom serve in the public sector.

9. **Has the agency received any business competitiveness analyses of the rules?**

No, the agency 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?**

Yes, the agency was able to amend rules to reflect current statutes as well as updating language.

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:**

Yes, the rules benefit the State of Arizona more than it cost, in addition, the rules impose the least amount of burden to a regulated person(s) as no cost are associated for the use of services for state employees.

12. Are the rules more stringent than corresponding federal laws?

No, the rules are not more stringent than corresponding federal laws. Moreover, the rules reflect federal law in a way that is conducive to the success of the agency and services rendered.

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:

Does not apply to the Arizona State Personnel Board.

14. Proposed course of action

At present, there are no course of actions as the rules work appropriately to allow for due process in the scope of services the Arizona State Personnel Board offers.

§ R2-5.1-101. Definitions

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency" for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. §41-741.

2. "Appeal" means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.

3. "Appellant" means a permanent covered employee in covered service who files an appeal with the Board.

4. "Complainant" means an employee or former employee as defined in A.R.S. §38-531 who files a complaint with the Board.

5. "Complaint" means a written request for relief under A.R.S. §38-532 filed with the Board by an employee or former employee .

6. "Day" means a calendar day, unless otherwise stated.

7. "Deposition" means a form of discovery in which testimony of a witness given under oath or affirmation and subject to cross-examination is recorded in writing prior to a hearing.

8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to present oral or written evidence.

9. "Hearing officer" means a person appointed by the Board, including any member of the Board to act as the trier of fact.

10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.

11. "Subpoena" means a legal document issued under authority of the Board to compel the appearance of a witness at a hearing.

12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness to appear and to bring specified documents, records, or things.

History:

Adopted effective November 10, 1983 (Supp. 83-6). Former Section R2-5.1-101 renumbered to R2-5.1-102; new Section R2-5.1-101 adopted by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by exempt rulemaking at 18 A.A.R. 2926, effective October 29, 2012 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 1359, effective 8/3/2014.

§ R2-5.1-102. Personnel Board Procedures

A. Meetings. The Board shall provide public notice of the date, time, and place of its monthly meetings and any special, emergency, or other meetings it deems necessary. The Board shall give notice as required by law.

B. Agenda. The agenda shall be mailed or electronically provided, as required by law, to each member of the Board, a state agency indicating an interest in receiving the agenda, and all parties in a matter scheduled for a Board meeting. The Board's failure to mail or electronically provide the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.

C. Minutes. The Board shall record in the Board's minutes the date, time, and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested by a member, a member's dissent with the member's reasons. Board staff shall prepare and present the minutes for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant, complainant, and respondent within seven days of the regular meeting at which the minutes are approved.

History:

Adopted effective November 10, 1983 (Supp. 83-6). Amended subsection (B)(2) effective March 3, 1988 (Supp. 88-1). Corrections to subsections (B)(2) and (4) from revised format edition published February 1991 (Supp. 96-1). Former Section R2-5.1-102 renumbered to R2-5.1-103; new Section R2-5.1-102 renumbered from R2-5.1-101 and amended by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Manifest typographical error corrected in Section heading (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by final rulemaking at 20 A.A.R. 1359, effective 8/3/2014.

§ R2-5.1-103. Appeal Procedures

A. Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. §41-783. The appeal shall include:

1. The appellant's name, telephone number, address and e-mail address, if applicable;

2. The name of the agency taking the disciplinary action being appealed;

3. The name, telephone number, address, and e-mail address of the appellant's representative, if applicable;

4. specific response to the causes for disciplinary action upon which the appeal is based; and

5. The action requested of the Board.

B. Change of address. An appellant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the appellant's or respondent's prior address shall be deemed to have been received.

C. Routing of appeal. The Board shall provide a copy of an appeal to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

D. Hearing officer. The Board, including any member of the Board, may assign an appeal or may direct staff to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the appeal to another hearing officer.

E. Change of hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board

shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

F. Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, and the name and contact information of the hearing officer at least 20 days before the date of the hearing.

G. Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

H. Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within 30 calendar days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

I. Nature of hearing. Every hearing shall be open to the public unless the appellant requests a confidential hearing. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. The respondent has the burden of proof and shall present its case first.

J. Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

K. Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The

Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

L. Exhibits. A party introducing an exhibit shall furnish the opposing party with a copy of the exhibit no later than 10 calendar days prior to the hearing. Both parties should be prepared with two additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

M. Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

N. Exclusion of witnesses. Upon the motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

O. Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

P. Telephonic testimony. The appellant or respondent may request through a motion that a party or witness testify telephoni-cally if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined

as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

Q. Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

R. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence.

S. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist and advise the Board.

T. Proposed findings of fact. Appellant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

U. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

V. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board at least 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

W. Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.

X. State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.

Y. Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. §41-783.

History:

New Section renumbered from R2-5.1-103 renumbered from R2-5.1-102 and amended by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by exempt rulemaking at 18 A.A.R. 2926, effective October 29, 2012 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 1359, effective 8/3/2014.

§ R2-5.1-104. Complaint Procedures

A. Complaint. An employee or former employee as defined in A.R.S. §38-531 who wishes to file a complaint shall, no later than 10 calendar days after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. §38-532. The complaint shall include:

1. The complainant's name, telephone number, address, and e-mail address, if applicable;

2. The name, telephone number, address, and e-mail address of the complainant's representative, if applicable;

3. A concise statement of the facts constituting the alleged prohibited personnel practice;

4. The name of the agency or employee believed to have knowingly committed the prohibited personnel practice; and

5. The date and place of the alleged prohibited personnel practice.

B. Change of address. A complainant or respondent shall notify the Board in writing of a change of address or telephone number within five business days of the change. If written notice is not provided, future notices by the Board that are sent to the complainant's or respondent's prior address shall be deemed to have been received.

C. Routing of complaint. The Board shall provide a copy of a complaint to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.

D. Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.

E. Hearing officer. The Board, including any member of the Board, may assign a complaint or may direct staff to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The

assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the complaint to another hearing officer.

F. Change of hearing officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.

G. Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, and the name and contact information of the hearing officer at least 20 days before the date of the hearing.

H. Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

I. Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within 30 calendar days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.

J. Nature of hearing. Every hearing shall be open to the public unless the complainant requests a confidential hearing. A party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties. The complainant has the burden of proof and shall present its case first.

K. Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The complainant, respondent, or hearing officer may request that portions of the

record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.

L. Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.

M. Exhibits. A party introducing an exhibit shall furnish the opposing party with a copy of the exhibit no later than 10 calendar days prior to the hearing. Both parties should be prepared with two additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the witness and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence.

N. Witnesses. No later than 10 days prior to the hearing, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.

O. Exclusion of witnesses. Upon the motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.

P. Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the

witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.

Q. Telephonic testimony. The complainant or respondent may request through a motion that a party or witness testify tele-phonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

R. Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.

S. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence.

T. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist and advise the Board.

U. Proposed findings of fact. Complainant and respondent may request permission to file proposed findings of fact and conclusions of law. The hearing officer shall grant or deny the request.

V. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.

W. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's

proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board at least 48 hours before a Board meeting. The Board shall not consider untimely objections or responses.

X. Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request.

Y. State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. The Board shall make a decision on the complaint in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. §38-532.

Z. Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. §38-532.

History:

New Section made by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). . Amended by final rulemaking at 20 A.A.R. 1359, effective 8/3/2014.

§ 38-531. Definitions

In this article, unless the context otherwise requires:

1. "Employee" means an officer or employee of this state or any of its departments, commissions, agencies or boards. Employee includes employees and officers of community college districts, school districts and counties of this state and law enforcement officers of a city or town but does not include officers or employees of a municipal corporation established for the purpose of reclamation and distribution of water and the generation of electricity.

2. "Former employee" means an employee who was dismissed.

3. "Law enforcement officer" has the same meaning prescribed in section 38-1101.

4. "Personnel action" means:

(a) Appointment.

(b) Promotion.

(c) Disciplinary or corrective action.

(d) Detail, transfer or reassignment.

(e) Suspension, demotion or dismissal.

(f) Reinstatement.

(g) Restoration.

(h) Reemployment.

(i) Performance evaluation.

(j) Decision concerning pay, benefits or awards.

(k) Elimination of the employee's position without a reduction in force by reason of lack of monies or work.

(l) Other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

5. "Public body" means the attorney general, the legislature, the governor, a federal, state or local law enforcement agency, the county attorney, the

governing board of a community college district or school district, the board of supervisors of a county or an agency director.

6. "Reprisal" means to take a personnel action the result of which is adverse to an employee.

§ 38-532. Prohibited personnel practice; violation; reinstatement; exceptions; civil penalty

A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information of a matter of public concern by the employee to a public body that the employee reasonably believes evidences:

1. A violation of any law.

2. Mismanagement, a gross waste of monies or an abuse of authority.

B. The disclosure by an employee to a public body alleging a violation of law, mismanagement, gross waste of monies or abuse of authority shall be in writing and shall contain the following information:

1. The date of the disclosure.

2. The name of the employee making the disclosure.

3. The nature of the alleged violation of law, mismanagement, gross waste of monies or abuse of authority.

4. If possible, the date or range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.

C. An employee who knowingly commits a prohibited personnel practice shall be ordered by the state personnel board, a community college district governing board, a school district governing board, a city or town personnel board or any other appropriate independent personnel board established or authorized pursuant to section 38-534 to pay a civil penalty of up to $5,000 to the state general fund, a county general fund, a community college district unrestricted general fund, a school district maintenance and operation fund or a city or town general fund, whichever is appropriate. The employee who committed the prohibited personnel practice, not the governmental entity, shall pay the civil penalty. On a finding that an employee committed a prohibited personnel practice, the employer shall take appropriate disciplinary action including dismissal, except that on a finding that an employee committed a prohibited personnel practice against an employee who disclosed information that the employee reasonably believed evidenced a violation of any law, the employee who knowingly committed the prohibited personnel practice is subject to a civil penalty of up to $10,000, the employer shall dismiss the employee and the employee is barred from any future employment by the government entity.

D. An employee or former employee against whom a prohibited personnel practice is committed may recover attorney fees, costs, back pay, general and special damages and full reinstatement for any reprisal resulting from the prohibited personnel practice as determined by the court.

E. An employee does not commit a prohibited personnel practice if he takes reprisal against an employee if that employee discloses information in a manner prohibited by law or the materials or information are prescribed as confidential by law.

F. This section may not be used as a defense in a disciplinary action where the employee is being disciplined for cause pursuant to section 41-773, except in a hearing on a complaint brought pursuant to this section by an employee or former employee who believes he has been the subject of a prohibited personnel practice as prescribed in this section as the result of a disclosure of information.

G. On request or at any time an employee alleges reprisal, an employer shall provide an employee who is subject to disciplinary or corrective action, suspension, demotion or dismissal with a copy of this section.

H. If an employee or former employee believes that a personnel action taken against him is the result of his disclosure of information under this section, he may make a complaint to an appropriate independent personnel board, if one is established or authorized pursuant to section 38-534, or to a community college district governing board, school district governing board or city or town council. If an independent personnel board has not been established or authorized, or if a school district governing board, a community college district governing board or a city or town council does not hear and decide personnel matters brought pursuant to this section, the employee or former employee may make a complaint to the state personnel board. A complaint made pursuant to this subsection shall be made within ten working days after the effective date of the action taken against him. The state personnel board, a school district governing board, a community college district governing board, a city or town council or any other appropriate independent personnel board shall, pursuant to the rules governing appeals under section 41-783, make a determination concerning:

1. The validity of the complaint.

2. Whether a prohibited personnel practice was committed against the employee or former employee as a result of disclosure of information by the employee or former employee.

I. If the state personnel board, a community college district governing board, a school district governing board, a city or town council or any other appropriate independent personnel board established or authorized pursuant to section 38-534 determines that a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, it shall rescind the personnel action and order that all lost pay and benefits be returned to the employee or former employee. The employee, former employee, employee alleged to have committed a prohibited personnel practice pursuant to subsection A of this section or employer may appeal the decision of the state personnel board, a community college district governing board, a school district governing board, a city or town council or any other appropriate independent personnel board established or authorized pursuant to section 38-534 to the superior court as provided in title 12, chapter 7, article 6.

J. For purposes of a hearing by the state personnel board, a school district governing board, a community college district governing board, a city or town council or any other appropriate independent personnel board conducted under this section, the employee, former employee, employee alleged to have committed the prohibited personnel practice pursuant to subsection A of this section and employer may be represented by counsel. In addition, representation by counsel in such hearings shall meet any other requirements stipulated by the state personnel board, a school district governing board, a community college district governing board, a city or town council or any other appropriate independent personnel board or as required by law.

K. An employee or former employee may also seek injunctive relief as is otherwise available in civil actions. A court may award reasonable attorney fees to an employee or former employee who prevails in an action pursuant to this section, but the award of attorney fees shall not exceed $10,000.

L. This section shall not be construed to limit or extend the civil or criminal liability of an employee or former employee for any disclosure of information or to limit an employee's right to a separate pretermination hearing with the employee's employer, as provided by law.

M. An employee who knowingly makes a false accusation that a public officer or employee who has control over personnel actions has engaged in a violation of any law, mismanagement, a gross waste of monies or an abuse of authority is personally subject to a civil penalty of up to $25,000 and dismissal from employment by the employer.

History:

Amended by L. 2021, ch. 130,s. 1, eff. 9/29/2021. L12, ch 321, sec 91.

§ 41-781. State personnel board; members; appointment; term; meetings; compensation

A. The state personnel board consists of five members appointed by the governor pursuant to section 38-211. No more than three members shall belong to the same political party. Persons eligible for appointment shall have had a continuous recorded registration pursuant to title 16, chapter 1 with either the same political party or as an independent for at least two years immediately preceding appointment. Of the members appointed one shall be a person who for more than five years has managed a component or unit of government or industry with more than twenty employees, one shall be a professional personnel administrator, one a state employee, one a person active in business management and one a member of the public. Members may be removed by the governor for cause. The chairperson of the state personnel board shall serve as an ex officio member of the law enforcement merit system council established by section 41-1830.11 without voting privileges.

B. The term of office for each member is three years, each term to expire three years from the date of appointment. On the expiration of the term of a member a successor shall be appointed for a full term of three years.

C. The state personnel board may hold regular monthly meetings and, in addition, may hold special meetings the board deems necessary. A chairperson and vice chairperson shall be elected by the members at the first meeting of each year and the chairperson shall not serve successive terms as chairperson. Meetings of the state personnel board shall be open to the public, and executive sessions may be held as provided by law.

D. Any one of the following constitutes the resignation of a board member and authorizes the governor to appoint a new member to fill the unexpired term so vacated:

1. Becoming a candidate for any elective public office.

2. Accepting any appointive office or employment in the state personnel system, except the state employee who is designated to serve on the board.

E. Members of the state personnel board, except the person designated as the state employee, are eligible to receive compensation of one hundred dollars for each meeting attended, prorated for partial days for each meeting attended. The member of the state personnel board designated as the state employee shall be paid the state employee's regular compensation for meetings of the board.

§ 41-782. Powers and duties of the state personnel board

A. Except as provided by section 41-1830.16, the state personnel board shall hear and review appeals as provided in this article relating to dismissal of a covered employee from covered service, suspension for more than eighty working hours or involuntary demotion resulting from disciplinary action as defined in the personnel rules for an employee in covered service.

B. The state personnel board shall hear and review complaints as provided in title 38, chapter 3, article 9, relating to any personnel action taken against an employee or former employee of this state, except an employee or former employee of a state university or the board of regents, which the employee or former employee believes was taken in reprisal for the employee's or former employee's disclosure of information to a public body. The state personnel board shall recommend the dismissal of a supervisor or other responsible person, other than an elected official, who it determines committed a prohibited personnel practice.

C. The state personnel board may adopt rules it deems necessary for the administration of hearings and the review of appeals and complaints as prescribed in this section.

D. The state personnel board shall only exercise authority that is specifically granted to the board pursuant to this article.

History:

L12, ch 321, sec 120.

§ 41-783. Appeals to the state personnel board for covered employees; notice of charges; hearings

A. Except as provided by section 41-1830.16, a covered employee who has completed the covered employee's original probationary period of service as provided by the personnel rules may appeal to the state personnel board the covered employee's dismissal from covered service, suspension for more than eighty working hours or involuntary demotion resulting from disciplinary action. The appeal shall be filed not later than ten working days after the effective date of such action. The covered employee shall be furnished with specified charges in writing when the action is taken. Such appeal shall be in writing and must state specific facts relating directly to the charges on which the appeal is based and shall be heard by the state personnel board within sixty days after its receipt. The state personnel board shall provide the employing agency with a copy of the appeal not less than twenty days in advance of the hearing.

B. Hearings on such appeals shall be open to the public, except in cases where the covered employee requests a confidential hearing, and shall be informal with technical rules of evidence not applying to the proceedings except the rule of privilege recognized by law. Both the covered employee and the employing agency shall be notified of the initial hearing date not less than twenty days in advance of the hearing and not less than ten days in advance of a board meeting. The covered employee and the employing agency may select representatives of their choosing, present and cross-examine witnesses and give evidence at the hearing. The state personnel board may appoint a hearing officer to conduct the hearing and take evidence on behalf of the board and exercise the rights prescribed by section 12-2212. The state personnel board shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits. Either party may request that the record be transcribed. If a party requests that the record be transcribed, an entity, other than the state personnel board, selected by the requesting party shall transcribe the record at the cost of the requesting party. If the disciplinary hearing would involve evidence the state is prevented by law from disclosing, then a confidential hearing upon the state's request shall be granted.

C. The state personnel board:

1. Shall determine whether the state agency has proven by a preponderance of the evidence the material facts on which the discipline was based. On such a finding, the board shall affirm the decision of the state agency head, unless the disciplinary decision was arbitrary and capricious.

2. May recommend modification of a disciplinary action if the agency has not proven by a preponderance of the evidence the material facts on which the discipline was based or if a disciplinary decision is found to be arbitrary and capricious.

3. Shall reverse the decision of the state agency head if the board finds that cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the covered employee to the same position the employee held before the dismissal or demotion with or without back pay.

D. On a finding that the agency has not proven by a preponderance of the evidence the material facts on which the discipline was based, the board shall identify the material facts that the board found were not supported by a preponderance of the evidence and may recommend a proposed disciplinary action in light of the facts proven. On a finding that the disciplinary decision was arbitrary and capricious, the board shall include the board's reasons for the board's finding and may recommend a proposed disciplinary action in light of the facts proven.

E. Within forty-five days after the conclusion of the hearing, the state personnel board shall enter its decision or recommendation and shall at the same time send a copy of the decision or recommendation by certified mail to the employing agency and to the covered employee at the employee's address as given at the hearing or to a representative designated by the covered employee to receive a copy of the decision or recommendation. The agency director or the director's designee shall accept, modify or reverse the board's decision or accept, modify or reject the board's recommendation within fourteen days of receipt of the findings or recommendation from the state personnel board. The decision of the agency director or director's designee is final and binding. The agency director shall send a copy of the agency's final determination to the covered employee pursuant to this section.

F. Any party may appeal the decision of the state personnel board or the final decision of the agency pursuant to title 12, chapter 7, article 6 to the superior court in the covered employee's county of residence on one or more of the following grounds that the order was:

1. Founded on or contained error of law that shall specifically include error of construction or application of any pertinent rules.

2. Unsupported by any evidence as disclosed by the entire record.

3. Materially affected by unlawful procedure.

4. Based on a violation of any constitutional provision.

5. Arbitrary or capricious.

G. An appeal shall be available to the court of appeals from the order of the superior court pursuant to title 12, chapter 7, article 6 as in other civil cases.

H. A covered employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing held pursuant to this section providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative who is not an attorney admitted to practice.

History:

Amended by L. 2021, ch. 130,s. 2, eff. 9/29/2021. L12, ch 321, sec 122.

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CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON STATE LAND DEPARTMENT BI-MONTHLY PROGRESS UPDATE

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department

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December 20, 2023

Nicole Sornisn
General Counsel Chair
Governor's Regulatory Review Council
Department of Administration
100 N. 15th Ave, Ste 302
Phoenix, AZ 85007

RE: ASLD Bi-Monthly Rulemaking Progress Update

Chairwoman Sornsin,

Since the October 31st GRRC Study Session, our rulemaking team has been hard at work. They have been meeting weekly to discuss rulemaking next steps and setting up future rulemaking protocols for the Department.

Below, you will find highlights relative to the work we have been doing since that meeting:

On November 2nd, we filed Notices of Docket Opening and of Proposed Rulemaking for articles 1,7, 8, 9, and 11. These were published on November 17, 2023 (Arizona Administrative Register Volume 29, Issue 46).

Immediately after the notice was posted, we began stakeholder outreach. We created a stakeholder list for all the stakeholders impacted by the aforementioned articles. We then reached out to them via email, letter and phone calls. We also sent emails to all of stakeholders on 12/19 and will send another on 12/25 to remind them that the close of docket is approaching.

Additionally, we held an informal stakeholder meeting on December 6, 2023. This meeting was both virtual and in-person. Twenty-nine stakeholders attended and provided feedback on the proposed rulemaking and were encouraged to submit formal comments in writing. We had hoped to have a stakeholder meeting in November, but due to the Thanksgiving holiday, we were unable to do so within that timeframe.

The stakeholder comment form was ready to go live once the notice of proposed rulemaking was posted, but as we were going to make it live, we encountered some IT issues. For articles 1,7,8,9 and 11, stakeholders were directed to email their comments while we resolved the form issues.

We have since fixed the IT problems and the form is now live for stakeholder comments. We have since informed the stakeholders that the form can be used for comments. This form can be found here.

Should you have any questions, feel free to reach out to me or Lynn Cordova, rules@azland.gov or 602-542-2654.

Sincerely,

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner