ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22

Amend: R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-22-712.90

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 10, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22

Amend: R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-22-712.90

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend four (4) rules in Title 9, Chapter 22, Article 7 regarding Standards for Payments. Specifically, AHCCCS indicates the proposed rulemaking will amend and clarify rules specifying requirements for receipt of Differential Adjusted Payment (DAP) for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2024 through September 30, 2025.

DAP initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. The objective of DAP delineated in this proposed rulemaking is to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals and hospital-based emergency departments which satisfy the requirements delineated in the proposed rules for the time period of October 1, 2024 through September 30, 2025 (CYE 2025) will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services. AHCCCS indicates the proposed DAP rules represent the AHCCCS Administration's expanding efforts to

enhance accountability of the health care delivery system. AHCCCS indicates the proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

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

AHCCCS cites both general and specific statutory authority for these rules.

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

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

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

AHCCCS indicates it did not review any study relevant to this rulemaking.

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

The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2024 through September 30, 2025 (contract year). The rule is designed to incentivize hospital participation in the state's health information exchange (HIE) which is expected to enhance quality of care and reduce growth in the cost of care. AHCCCS anticipates that the rulemaking will result in approximately $87.5 million of additional payments for the contract year.

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?

AHCCCS believes the revisions to rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

6. What are the economic impacts on stakeholders?

AHCCCS, taxpayers, and providers will directly benefit from this rulemaking as the DAP payments incentivize improved patient care, innovation, efficient delivery of services, and the reduction in the growth of the costs of healthcare.

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

AHCCCS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on July 5, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

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

AHCCCS indicates it did not receive any public comments regarding this rulemaking.

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

AHCCCS indicates the rules do not require the issuance of a permit, license, or agency authorization.

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

AHCCCS states the rulemaking must be established consistent with 42 CFR Part 433 Subpart B. AHCCCS indicates the rule is not more stringent than federal law.

11. Conclusion

This regular rulemaking from AHCCCS seeks to amend four (4) rules in Title 9, Chapter 22, Article 7 regarding Standards for Payments. Specifically, AHCCCS indicates the proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2024 through September 30, 2025.

AHCCCS is seeking an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(3), specifically, "[t]o comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction." Council staff believes AHCCCS has provided adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

August 19, 2024

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

RE: R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-22-712.90 Rulemaking

Dear Ms. Klein:

1.	The close of record date:	8/5/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	No
a.	If yes, the date the Council approved the Five Year Review Report:	N/A
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	Yes

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. If applicable: An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the governor on:

August 15, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R9-22-712.35	Amend
R9-22-712.61	Amend
R9-22-712.71	Amend
R9-22-712.90	Amend

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

Authorizing statute: A.R.S. § 36-2903.01(A)

Implementing statute: A.R.S. § 36-2903.01(G)(12)

4. The effective date of the rule:

This rule shall become effective immediately after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A)(3). The effective date is (to be filled in by *Register* editor).

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 the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

This rule shall become effective on October 1, 2024. Agency has selected this date to comply with deadlines and amendments to an agency's governing statute and federal programs.

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 the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 2240, Issue Date: July 5, 2024, Issue Number: 27, File number: R24-124

Notice of Proposed Rulemaking: 30 A.A.R. 2167, Issue Date: July 5, 2024, Issue Number: 27, File number: R24-117

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

Name: Sladjana Kuzmanovic

Title: Sr. Rules Analyst

Division: AHCCCS Office of the General Counsel

Address: 801 E. Jefferson Street, MD 6200

Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

Email: AHCCCSRules@azahcccs.gov

Website: www.azahcccs.gov

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

Answer AHCCCS Differential Adjusted Payment (DAP) initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. The objective of DAP delineated in this proposed rulemaking is to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals and hospital-based emergency departments which satisfy the requirements delineated in the proposed rule for the time period of October 1, 2024 through September 30, 2025 (CYE 2025) will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services. The proposed DAP rules represent the AHCCCS Administration's expanding efforts to enhance accountability of the health care delivery system.

The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2024 through September 30, 2025. These initiatives include participation in the Health Information Exchange, Arizona Health Directives Registry, Social Determinants of Health Closed Loop Referral System, and the Naloxone Distribution Program (NDP), as well as includes a performance measure for Long-Term Care Hospitals and Inpatient Rehabilitation Hospitals that meet or fall below the national average percentage for pressure ulcers. The proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

8. 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 Administration did not review or rely on any study for this rulemaking.

9. 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

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

The Administration anticipates that the DAP rulemaking will result in approximately $87.5 million of additional payments for the contract year October 1, 2024 through September 30, 2025 to 170 hospitals.

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

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

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

There were no public or stakeholder comments made about the rulemaking.

13. 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 Administration 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:

The rulemaking must be established consistent with 42 CFR Part 433 Subpart B. The rule is not more stringent than federal law.

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

No business competitiveness analysis was submitted to the Administration.

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

Not applicable

15. 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

16. The full text of the rules follows:

TITLE 9. HELTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINEMNT SYSTEM - ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.35. OUTPATIENT HOSPITAL REIMBURSEMENT: ADJUSTMENT TO FEES

A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:

1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.

B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:

1. By 73 percent for public hospitals;
2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.

C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.

D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).

E. ~~For outpatient services with dates of service from October 1, 2022 through September 30, 2023 (CYE 2023), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by~~

a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1) (a), (b), (c), or (d):
    a. By April 1, 2022, the hospital must have submitted a Letter of Intent (LOI) to the Health Information Exchange (HIE) in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
        i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
        ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
            (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
            (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
            (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
        iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
        iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
        v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of

~~work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.~~

~~vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.~~

~~vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.~~

~~viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.~~

~~ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.~~

~~x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:~~

~~(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.~~

~~(2) Meet a minimum performance standard of at least 60% based on March 2022 data.~~

~~(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.~~

~~xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.5% if criteria are met for all categories.~~

~~(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)~~

~~(2) Event type must be properly coded on all ADT transactions. (0%)~~

~~(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)~~

~~(4) Patient demographic information must be submitted on all ADT transactions. (0%)~~

~~(5) Race must be submitted on all ADT transactions. (0.5%)~~

~~(6) Ethnicity must be submitted on all ADT transactions. (0.5%)~~

~~(7) Diagnosis must be submitted on all ADT transactions. (0.5%)~~

~~(8) Overall completeness of the ADT message. (0.5%)~~

~~b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;~~

~~i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.~~

~~ii. No later than April 1, 2022:~~

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult

and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection 2(a), (b), (c), or (d):

a. By April 1, 2022 the hospital must have submitted a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;

laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

viii. No later than January 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (1.0%)

(2) Event type must be properly coded on all ADT transactions. (1.0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (2.0%)

(6) Ethnicity must be submitted on all ADT transactions. (2.0%)

(7) Diagnosis must be submitted on all ADT transactions. (2.0%)

(8) Overall completeness of the ADT message. (0%)

- By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE

organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

e. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA

claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use

ii. Number of ICU beds available for use

iii. Number of Medical-Surgical beds in use

iv. Number of Medical-Surgical beds available for use

v. Number of Telemetry beds in use

vi. Number of Telemetry beds available for use

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in subsection 3(a), (b), (c), (d), (e), or (f):

a. In order to qualify, by April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization or an Advance Directives Registry platform operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (0.5%)

(6) Ethnicity must be submitted on all ADT transactions. (0.5%)

(7) Diagnosis must be submitted on all ADT transactions. (0.5%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. On March 15, 2022 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website; APU recipients are those facilities that satisfactorily met the requirements for the IPFQR program, which includes multiple clinical quality measures. Facilities identified as APU recipients will qualify for the DAP increase.

d. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for long-term care hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

e. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for rehabilitation hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

f. By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

4. A hospital designated as type: hospital, subtype: long-term or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the following criteria. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

a. Number of ICU beds in use

b. Number of ICU beds available for use

c. Number of Medical-Surgical beds in use

d. Number of Medical-Surgical beds available for use

e. Number of Telemetry beds in use

f. Number of Telemetry beds available for use

5. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in subsection 5(a) or (b);

a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to

achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If the hospital has ambulatory and/or behavioral health practices, then the facility must submit the following actual patient identifiable information to the production environment of a qualifying HIE: registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization. For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

vii. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

viii. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

ix. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 2.5% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0.5%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0.5%)

(4) Patient demographic information must be submitted on all ADT transactions. (0.5%)

(5) Overall completeness of the ADT message. (0.5%)

- By March 15, 2022, the facility must submit a LOI to enter into a CCA with a non-IHS/638 facility (a fully signed copy of a CCA with a non-IHS/Tribal 638 facility is also acceptable). By April 30, 2021, the facility must have entered into a CCA with a non-IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

  The IHS/Tribal 638 facility will have in place a signed CCA with a non-IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

  i. The IHS/Tribal 638 facility will have a valid referral template in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

  ii. The IHS/Tribal 638 facility will continue to assume responsibility of the referred member, maintaining records and release of information protocol including clinical documentation of services provided by the non-IHS/Tribal 638 facility.

  iii. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the IHS/Tribal 638 facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2021.

  iv. The IHS/638 facility will submit a minimum of one referral and any supporting medical documentation to the non-IHS/Tribal 638 facility by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA referrals per month to the non-IHS/Tribal 638 facility.

  v. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA referrals to the non-IHS/Tribal 638 facility by March 15, 2022, and submit an average of 5 CCA referrals per month by May 31, 2022.

F. For outpatient services with dates of service from October 1, 2023 through September 30, 2024 (CYE 2024), the

payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2023. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1) (a), (b), (c) or (d):
    a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
        i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.
        ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
        iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
        iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.
        v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.
    b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement

of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
   (2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
   (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the

following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection (2)(a), (b), (c) or (d). No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

   a. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

      i. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

      ii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

      iii. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

      iv. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

   b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in

the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
   (2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
   (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s)

and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in subsection (3)(a), (b), (c), (d), (e), or (f):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in

the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
   (2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
   (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. On March 15, 2023 a hospital that is identified as a Medicare Annual Payment Update (APU) recipient on the QualityNet.org website will qualify for the DAP increase. APU recipients are those hospitals that satisfactorily meet the requirements for the Inpatient Psychiatric Facility Quality Reporting Program,

which includes multiple clinical quality measures.

e. On March 15, 2023, long-term care hospitals that meet or fall below the national average for the pressure ulcers performance measure will qualify for the DAP increase. The national average will be downloaded from the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury for long-term care hospitals. Facility results will be compared to the national average results for the measure.

f. On March 15, 2023, rehabilitation hospitals that meet or fall below the national average for the pressure ulcers performance measure will qualify for the DAP increase. The national average will be downloaded from the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury rehabilitation hospitals. Facility results will be compared to the national average results for the measure.

4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in subsection (4)(a) or (b);

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE

integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 1, 2023, complete the AzHDR Participant Agreement.
   ii. No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required.
   ii. No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
   ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

F. For outpatient services with dates of service from October 1, 2024 through September 30, 2025 (CYE 2025), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2024. If a hospital receives a DAP for CYE 2025 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2025 through September 30, 2026 (CYE 2026), if a DAP would be available at that time. A hospital can and will qualify for an increase if it meets the criteria specified below for any of the applicable hospital subtypes.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1) (a), (b), (c), (d) (e) or (f):

   a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

      i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange

(HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the hospital's Electronic Health Record (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, hospitals must complete their HIE Integration workbook in its entirety to connect data sender interfaces to ONE Platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, hospitals must launch the integration implementation project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements

with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform HIE portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to

the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI) that the hospital requests to participate in the DAP.

ii. Within 30 days of sending data into the test environment but no later than December 1, 2024, the hospital must review the results of up to 217 parameters from the HIE Data Quality Report with the HIE organization, identifying the high-risk (red) and moderate risk (orange) scores for each parameter.

iii. Within 60 days of sending data into the test environment, but no later than December 1, 2024, the hospital must achieve an HIE Data Quality Report with 0 high-risk (red) test parameters prior to sending data into the HIE production environment.

iv. No later than December 1, 2024, the hospital must submit a written resolution plan to Contexture along with an expected timeline and detailed action plan for resolution to correct the moderate risk (orange) parameters on the HIE Data Quality Report.

d. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screening/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked

monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

e. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings/referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

iv. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

v. No later than November 30, 2024, the hospital must develop and submit a current facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

vi. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

f. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets

AHCCCS/ADHS standards for an NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2)(a),(b), (c), (d), (e), (f), (g) or (h):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the facility's (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, the hospital must complete their HIE Integration workbook in its entirety to connect data sender interfaces to ONE platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being

granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP AzHDR program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 patient document uploads of advanced directives and 15 searches of advance directives per month per registered AHCCCS ID.

d. Hospitals who have **not** participated in the DAP AzHDR program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 1, 2024, the hospital must submit the AzHDR Subscription Agreement to the HIE organization.

iii. No later than April 1, 2025, the hospital must have onboarding completed by working with

AzHDR to submit user information to gain credentials to access AzHDR and complete training.

iv. No later than May 1, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 searches/uploads of advance directives per month per AHCCCS ID.

e. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screening/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

f. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP, and the total number of patient visits per year.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings and referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist hospitals in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

g. Hospitals with an Emergency Department that participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

iii. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

h. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in (3)(a), (b), (c), (d) or (e):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the hospital's Electronic Health Record (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable), laboratory, and radiology information (if applicable), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, hospitals must complete their HIE Integration workbook in its entirety to connect data sender interfaces to the ONE platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange

(HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI).

ii. Within 30 days of sending data into the test environment but no later than December 1, 2024, the hospital must review the results of up to 217 parameters from the HIE Data Quality Report with the HIE organization, identifying the high-risk (red) and moderate risk (orange) scores for each parameter.

iii. Within 60 days of sending data into the test environment, but no later than December 1, 2024, the hospital must achieve an HIE Data Quality Report with 0 high-risk (red) test parameters prior to sending data into the HIE production environment.

iv. No later than December 1, 2024, the hospital must submit a written resolution plan to Contexture along with an expected timeline and detailed action plan for resolution to correct the moderate risk (orange) parameters on the HIE Data Quality Report.

d. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screenings/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

e. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s)

and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP, and the total number of patient visits per year.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings and referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

iv. Hospitals that meet or fall below the national average for the pressure ulcer performance measure will qualify for a 2.0% DAP increase. On March 15, 2024, AHCCCS will download the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

v. Hospitals that meet or fall below the national average for the pressure ulcer performance measure will qualify for a 2.0% DAP increase. On March 15, 2024, AHCCCS will download the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in (4)(a), (b), (c), (d), (e), (f), (g) or (h):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the hospital's Electronic Health Record (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If the hospital has ambulatory and/or behavioral health practices, then the facility must submit the following patient identifiable information to the production environment of the HIE: registration, encounter summary, and data elements defined by the HIE specific to individuals with a serious mental illness.

(1) If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, the hospital must complete their HIE Integration workbook in its entirety to connect data sender interfaces to the ONE Platform.

vi. No later than September 1, 2024, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

vii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If the hospital has ambulatory and/or behavioral health practices, then the facility must submit the following patient identifiable information to the production environment of the HIE: registration, encounter summary, and data elements defined by the HIE specific to individuals with a serious mental illness.

viii. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

ix. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being

granted.

x. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

c. Hospitals who participated in the DAP AzHDR program in CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 patient document uploads of advanced directives and 15 searches of advance directives per month per registered AHCCCS ID.

d. Hospitals who have **not** participated in the DAP AzHDR program CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of

Work (DAP SOW) the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 1, 2024, the hospital must complete the AzHDR Subscription Agreement.

iii. No later than April 1, 2025, the hospital must have onboarding completed by working with AzHDR to submit user information to gain credentials to access AzHDR and complete training.

iv. No later than May 1, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 searches/uploads of advance directives per month per registered AHCCCS ID.

e. Hospitals who participated in the DAP SDOH program in CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screenings/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/ referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

f. Hospitals that have **not** participated in the DAP SDOH program in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP, and the total number of patient visits per year.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the

CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings and referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

g. Hospitals with an Emergency Department that participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

iii. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

h. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

R9-22-712.61. DRG PAYMENTS: EXCEPTIONS

A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 801 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).

1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;

B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.

C. Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.

D. Notwithstanding section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.

E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.

F. For inpatient services with a date of admission from October 1, 2023 through September 30, 2024 (CYE 2024), provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2023. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (G), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c) or (d):
    a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
        i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE

services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit

all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
      (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
      (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.
   ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
      (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
      (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
   ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection (2)(a), (b), (c) or (d):

   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE

services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit

all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

G. For outpatient services with dates of service from October 1, 2024 through September 30, 2025 (CYE 2025), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2024. If a hospital receives a DAP for CYE 2025 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2025 through September 30, 2026 (CYE 2026), if a DAP would be available at that time. A hospital can and will qualify for an increase if it meets the criteria specified below for any of the applicable hospital subtypes.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)

(a), (b), (c), (d), (e) or (f):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP. Hospitals must meet the following milestones in maintaining existing connections to the current HIE platform:

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the hospital's Electronic Health Record (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, hospitals must complete their HIE Integration workbook in its entirety to connect data sender interfaces to ONE Platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, hospitals must launch the integration implementation project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge

orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform HIE portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result

processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI) that the hospital requests to participate in the DAP.

ii. Within 30 days of sending data into the test environment but no later than December 1, 2024, the hospital must review the results of up to 217 parameters from the HIE Data Quality Report with the HIE organization, identifying the high-risk (red) and moderate risk (orange) scores for each parameter.

iii. Within 60 days of sending data into the test environment, but no later than December 1, 2024, the hospital must achieve an HIE Data Quality Report with 0 high-risk (red) test parameters prior to sending data into the HIE production environment.

iv. No later than December 1, 2024, the hospital must submit a written resolution plan to Contexture along with an expected timeline and detailed action plan for resolution to correct the moderate risk (orange) parameters on the HIE Data Quality Report.

d. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network

screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screening/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

e. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings/referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

iv. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

v. No later than November 30, 2024, the hospital must develop and submit a current facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

vi. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

f. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the

Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for an NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2)(a),(b), (c), (d), (e), (f), (g) or (h):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the facility's (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, the hospital must complete their HIE Integration workbook in its entirety to connect data sender interfaces to ONE platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP AzHDR program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 patient document uploads of advanced directives and 15 searches of advance directives per month per registered AHCCCS ID.

d. Hospitals who have **not** participated in the DAP AzHDR program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital

requests to participate in the DAP.

ii. No later than November 1, 2024, the hospital must submit the AzHDR Subscription Agreement to the HIE organization.

iii. No later than April 1, 2025, the hospital must have onboarding completed by working with AzHDR to submit user information to gain credentials to access AzHDR and complete training.

iv. No later than May 1, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 searches/uploads of advance directives per month per AHCCCS ID.

e. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screening/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

f. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP, and the total number of patient visits per year.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings and referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist hospitals in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

g. Hospitals with an Emergency Department that participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

iii. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

h. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

R9-22-712.71. FINAL DRG PAYMENT

A. The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

B. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

C. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

D. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the

AHCCCS administration located at 801 E. Jefferson Street, Phoenix, Arizona.

E. ~~For inpatient services with a date of discharge from October 1, 2022 through September 30, 2023 (CYE 2023), the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.~~

~~1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria:~~

~~a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved .~~

~~i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.~~

~~ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:~~

~~(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.~~

~~(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.~~

~~(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.~~

~~iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.~~

~~iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists~~

(diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (0.5%)

(6) Ethnicity must be submitted on all ADT transactions. (0.5%)

(7) Diagnosis must be submitted on all ADT transactions. (0.5%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

e. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to

AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified;

a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization:

admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (1.0%)

(2) Event type must be properly coded on all ADT transactions. (1.0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (2.0%)

(6) Ethnicity must be submitted on all ADT transactions. (2.0%)

(7) Diagnosis must be submitted on all ADT transactions. (2.0%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
   i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
   ii. No later than April 1, 2022:
      (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
   iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
   i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
   ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
   iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
   iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
   v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average

~~of 5 CCA claims per month to AHCCCS.~~

~~vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.~~

~~d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:~~

~~i. Number of ICU beds in use,~~

~~ii. Number of ICU beds available for use,~~

~~iii. Number of Medical-Surgical beds in use,~~

~~iv. Number of Medical-Surgical beds available for use,~~

~~v. Number of Telemetry beds in use,~~

~~vi. Number of Telemetry beds available for use.~~

~~F.~~ For inpatient services with a date of discharge from October 1, 2023 through September 30, 2024 (CYE 2024), the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2023. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1) (a), (b), (c), or (d):
   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's system.
      ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
      iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient

identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. Which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection (2)(a), (b), (c) or (d):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient

identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. Which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

F. For outpatient services with dates of service from October 1, 2024 through September 30, 2025 (CYE 2025), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2024. If a hospital receives a DAP for CYE 2025 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2025 through September 30, 2026 (CYE 2026), if a DAP would be available at that time. A hospital can and will qualify for an increase if it meets the criteria specified below for any of the applicable hospital subtypes.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1) (a), (b), (c), (d), (e) or (f):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s)

(NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the hospital's Electronic Health Record (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, hospitals must complete their HIE Integration workbook in its entirety to connect data sender interfaces to ONE Platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, hospitals must launch the integration implementation project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform HIE portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient

identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI) that the hospital requests to participate in the DAP.

ii. Within 30 days of sending data into the test environment but no later than December 1, 2024, the hospital must review the results of up to 217 parameters from the HIE Data Quality Report with the HIE organization, identifying the high-risk (red) and moderate risk (orange) scores for each parameter.

iii. Within 60 days of sending data into the test environment, but no later than December 1, 2024, the hospital must achieve an HIE Data Quality Report with 0 high-risk (red) test parameters prior to sending data into the HIE production environment.

iv. No later than December 1, 2024, the hospital must submit a written resolution plan to Contexture along with an expected timeline and detailed action plan for resolution to correct the moderate risk (orange) parameters on the HIE Data Quality Report.

d. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screening/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever

is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

e. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings/referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

iv. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

v. No later than November 30, 2024, the hospital must develop and submit a current facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

vi. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

f. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for an NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2) (a),(b), (c), (d), (e), (f), (g) or (h):

a. Hospitals who participated in the DAP HIE program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than May 1, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, standard Admission, Discharge, Transfer (ADT) Alerts, standard Clinical Notifications, or an interface that delivers patient data into the facility's (EHR) system.

iii. No later than May 31, 2024, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iv. No later than May 31, 2024, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department (if applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If a hospital is in the process of integrating a new EHR system, the hospital must notify the HIE organization and get the implementation timeline approved to continue meeting DAP requirements.

v. No later than May 1, 2024, the hospital must complete their HIE Integration workbook in its entirety to connect data sender interfaces to ONE platform.

vi. No later than May 1, 2024, the hospital must submit a signed Picture Archiving and Communication System (PACS) Statement of Work (SOW) to participate in sharing images via the HIE.

vii. No later than September 1, 2024, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

viii. No later than December 30, 2024, the hospital must have a connection in place with the HIE and electronically submit the following patient information to the ONE Platform production environment: ADT information, including data from the hospital emergency department (if

applicable); laboratory and radiology information (if applicable); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

ix. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

x. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

xi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform portal.

b. Hospitals who have **not** participated in the DAP HIE program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than October 1, 2024, the hospital must launch the implementation project to access patient health information via the HIE and complete the HIE portal training prior to access being granted.

iii. No later than December 30, 2024, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the HIE Portal.

iv. No later than February 28, 2025, the hospital must have in place the following new agreements with the HIE organization as a result of the affiliation of Health Current and Colorado Regional Health Information Organization (CORHIO).

(1) HIE Participation Agreement for ONE Platform

(2) Statement of Work (SOW) to access the ONE Platform Portal

(3) Statement of Work (SOW) to send data to ONE Platform

v. No later than May 1, 2025, the hospital must launch the implementation project to access patient health information via the HIE and complete the ONE Platform portal training prior to access being granted.

vi. No later than July 30, 2025, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing the ONE Platform

portal.

vii. No later than August 1, 2025, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

viii. No later than August 1, 2025, the hospital must launch the integration implementations project, have a VPN connection in place with the HIE, and electronically submit test patient information to the ONE Platform test environment. The hospital is required to engage in interface testing as required by the HIE and focus on improving data integrity in the test environment.

ix. No later than September 30, 2025, the hospital must electronically submit the following patient identifiable information to the production environment of the HIE organization: ADT information, including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. The hospital is required to engage in interface testing as required by the HIE.

c. Hospitals who participated in the DAP AzHDR program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 patient document uploads of advanced directives and 15 searches of advance directives per month per registered AHCCCSID.

d. Hospitals who have **not** participated in the DAP AzHDR program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must have in place an active Health Information Exchange (HIE) Participation Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization indicating Arizona Health Directives Registry (AzHDR) participation. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 1, 2024, the hospital must submit the AzHDR Subscription Agreement to the HIE organization.

iii. No later than April 1, 2025, the hospital must have onboarding completed by working with AzHDR to submit user information to gain credentials to access AzHDR and complete training.

iv. No later than May 1, 2025, the hospital must participate in the utilization of the AzHDR platform by facilitating at least 5 searches/uploads of advance directives per month per AHCCCS ID.

e. Hospitals who participated in the DAP SDOH program in CYE 2023 and/or CYE 2024.

i. No later than April 1, 2024, the hospital must have an active CommunityCares Agreement and submit a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than September 30, 2024, the hospital must participate in a post-live meeting with their assigned SDOH Advisor to discuss training needs, SDOH Screening and Referral workflows, implementation of the SDOH screening tool, and to define the CYE 2025 in-network screening/referral monthly goal.

iii. From October 1, 2024 through September 30, 2025, the hospital must participate in the utilization of CommunityCares by facilitating screenings/referrals. All screening/referrals entered into CommunityCares by the hospital will be counted towards the utilization requirements and tracked monthly. Based on the SDOH CYE 2024 monthly screenings/referrals average, the hospital's goal for CYE 2025 is to improve the submission of the monthly screenings/referrals average by 5%, and no less than a combination of 10 screenings or referrals per month per facility location, whichever is greater. This goal will be defined and discussed in the post-live meeting with the hospital's assigned SDOH Advisor.

iv. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to review progress on goals. If the goal is not being met, the SDOH Advisor will assist the hospital in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

f. Hospitals who have **not** participated in the DAP SDOH program in CYE 2023 or CYE 2024.

i. No later than April 1, 2024, the hospital must submit a CommunityCares Access Agreement and a signed Differential Adjusted Payment Statement of Work (DAP SOW) to the HIE organization. The participant list attached to the DAP SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP, and the total number of patient visits per year.

ii. No later than January 1, 2025, the hospital must have onboarding completed by working with the CommunityCares team to submit all requirements prior to gaining access to the system. The hospital must utilize CommunityCares by facilitating in-network screenings and referrals within CommunityCares per facility location.

iii. From October 1, 2024, through September 30, 2025, the hospital must meet with their SDOH Advisor quarterly to set a utilization goal and to review progress. If the goal is not being met, the SDOH Advisor will assist hospitals in completing a written document that identifies barriers to achieving goals and outlines steps to overcome these barriers (improvement plan).

g. Hospitals with an Emergency Department that participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the

Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.

iii. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

h. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.

i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

R9-22-712.90. REIMBURSEMENT OF HOSPITAL-BASED FREESTANDING EMERGENCY DEPARTMENTS

A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 C.F.R. 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.

B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.

C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with R9-22-712.20 through R9- 22-712.30 without a percentage reduction.

1. 60 percent for a level 1 emergency department visit as indicated by CPT 99281.
2. 80 percent for a level 2 emergency department visit as indicated by CPT 99282.
3. 90 percent for a level 3 emergency department visit as indicated by CPT 99283.
4. 100 percent for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.

D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.

E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019 but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for- service schedule under R9-22-710.

F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

G. For dates of service from October 1, 2023 through September 30, 2024 (CYE 2024), the payment otherwise required for hospital-based FSED services provided by qualifying hospital-based FSEDs shall be increased by a percentage established by the Administration and shall be applied to the payment methodology as described in subsection (C). The percentage is published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2023. A hospital-based FSED will qualify for an increase if it meets the criteria specified below. If a hospital-based FSED receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (G), the hospital-based FSED shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A outpatient treatment center designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital-based freestanding emergency department will qualify for an increase if it meets the criteria in subsection (1)(a):
    a. No later than April 30, 2023, the hospital-based FSED must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP).
    b. The LOI must contain each hospital-based FSED, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
        i. No later than November 30, 2023, develop and submit a hospital-based FSED policy that meets AHCCCS/ADHS standards for a NDP.
        ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the hospital-based FSEDs' policy.

H. For dates of service from October 1, 2024 through September 30, 2025 (CYE 2025), the payment otherwise required for hospital-based FSED services provided by qualifying hospital-based FSEDs shall be increased by a percentage established by the Administration and shall be applied to the payment methodology as described in subsection (C). The percentage is published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2024. A hospital-based FSED can and will qualify for an increase if it meets the criteria specified below for any of the applicable hospital-based FSED subtypes. If a hospital-based FSED receives a DAP for CYE 2025 but fails to meet all of the requirements in

subsection (G), the hospital-based FSED shall be disqualified from participating in a DAP for dates of service October 1, 2025 through September 30, 2026 (CYE 2026), if a DAP would be available at that time.

1. A outpatient treatment center designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital-based freestanding emergency department will qualify for an increase if it meets the criteria in subsection (1)(a) or (b):
    a. Hospitals with an Emergency Department that participated in the NDP DAP in CYE 2024.
        i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
        ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that ensures hospitals are purchasing Naloxone through standard routine pharmacy ordering.
        iii. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.
    b. Hospitals with an Emergency Department that have **not** participated in the NDP DAP in CYE 2024.
        i. No later than April 1, 2024, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
        ii. No later than November 30, 2024, the hospital must develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
        iii. No later than January 1, 2025, the hospital must begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.
        iv. No later than February 28, 2025, the hospital must submit a Naloxone Distribution Program Attestation to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-220712.90

1. **Identification of rulemaking.**

AHCCCS Differential Adjusted Payment (DAP) initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. The objective of DAP delineated in this proposed rulemaking is to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals and hospital-based emergency departments which satisfy the requirements delineated in the proposed rule for the time period of October 1, 2024 through September 30, 2025 (CYE 2024) will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services. The proposed DAP rules represent the AHCCCS Administration's expanding efforts to enhance accountability of the health care delivery system.

The proposed rulemaking will amend and clarify rules specifying requirements for

receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2024 through September 30, 2025. These initiatives include participation in the Health Information Exchange, Arizona Health Directives Registry, Social Determinants of Health Closed Loop Referral System, Naloxone Distribution Program (NDP), and the Inpatient Psychiatric Facility Quality Reporting Program, as well as includes a performance measure for Long-Term Care Hospitals and Inpatient Rehabilitation Hospitals that meet or fall below the national average percentage for pressure ulcers. The proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

- **The conduct and its frequency of occurrence that the rule is designed to change:**

  The rule is designed to incentivize hospital participation in the state's health information exchange (HIE) which are expected to enhance quality of care and reduced growth in the cost of care.

- **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 expected that the change in hospital behavior will improve patient care experience, improve patient health, and reduce the growth in the cost of health

care.

- **The estimated change in frequency of the targeted conduct expected from the rule change:**

  It is anticipated that hospitals which participate in the health information exchange in order to receive increased payments through the DAP initiative will continue to do so going forward.

2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

   The State, taxpayers, and providers will directly benefit from this rulemaking as the payment model will reward efficient utilization of services. Hospital providers which participate in the health information exchange will benefit by receiving a higher rate of reimbursement for medical services. In addition, patients are expected to experience improved care while the State and taxpayers will be positively affected by the more efficient delivery of health care services and the reduced growth in the cost of care.

3. **Cost benefit analysis.**

   a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to**

implement and enforce the proposed rule:

i. Cost:

The Administration anticipates that the DAP rulemaking will result in approximately 87.5 million of additional payments for the contract year October 1, 2024 through September 30, 2025 to 170 hospitals.

ii. Benefit:

The AHCCCS Administration, taxpayers, and providers will directly benefit from this rulemaking as the DAP payments incentivize improved patient care, innovation, efficient delivery of services, and the reduction in the growth of the costs of health care.

iii. Need for additional Full-time Employees:

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

- **Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

  This rulemaking does not directly affect political subdivisions.

4. General description of the probable impact on private and public employment in

businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Administration anticipates no economic impact on public and private employment.

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

   a. **Identification of the small businesses subject to the proposed rulemaking.**

      Of the 135 hospitals, 2 hospitals satisfy the definition of small businesses.

   b. **Administrative and other costs required for compliance with the proposed rulemaking.**

      The Administration does not anticipate an impact on the small business community because providers do not incur additional costs for participating in the state's health information exchange.

   c. **Description of methods prescribed in section A.R.S. § 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 use each method:**

      i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses;**

         This rulemaking does not impose compliance or reporting requirements on

small businesses. Participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule.

ii. **Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;**

This rulemaking does not impose compliance or reporting requirements on small businesses. Participation in the state's health information exchange are voluntary and will result in increased funding for medical services under this rule.

iii. **Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**

This rulemaking does not impose compliance or reporting requirements on small businesses. Participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule.

iv. **Establish performance standards for small businesses to replace design or operational standards in the rule; and**

This rulemaking does not establish performance standards for small businesses.

v. **Exempting small businesses from any or all requirements of the rule.**

Exempting small businesses is not applicable to this rulemaking.

d. **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

It is anticipated that private persons and consumers of medical services provided by hospitals will benefit from an improved patient care experience, improved health outcomes, and a reduction in the growth of medical care costs.

6. **Statement of the probable effect on state revenues.**

It is anticipated that the rulemaking will not affect state revenues.

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

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. <u>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.</u>

The Administration did not rely on any data for this rulemaking.

R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees

A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.

B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
1. By 73 percent for public hospitals;
2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.

C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.

D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).

E. For outpatient services with dates of service from October 1, 2022 through September 30, 2023 (CYE 2023), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c), or (d):
   a. By April 1, 2022, the hospital must have submitted a Letter of Intent (LOI) to the Health Information Exchange (HIE) in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
      i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
         (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
      iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the produc-

tion environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described in subsections (x)(1) through (3):
   (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
   (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
   (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.5% if criteria are met for all categories.
   (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
   (2) Event type must be properly coded on all ADT transactions. (0%)
   (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
   (4) Patient demographic information must be submitted on all ADT transactions. (0%)
   (5) Race must be submitted on all ADT transactions. (0.5%)
   (6) Ethnicity must be submitted on all ADT transactions. (0.5%)
   (7) Diagnosis must be submitted on all ADT transactions. (0.5%)
   (8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
   i. No later than April 1, 2022, submit registration form or forms for participation using the form or forms on the website of the qualifying HIE organization.
   ii. No later than April 1, 2022:
      (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
   iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
   i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have

submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsection (2)(a), (b), (c), or (d):

a. By April 1, 2022, the hospital must have submitted a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

viii. No later than January 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described in subsections (x)(1) through (3):
(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
(2) Meet a minimum performance standard of at least 60% based on March 2022 data.
(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.
(1) Data source and data site information must be submitted on all ADT transactions. (1.0%)
(2) Event type must be properly coded on all ADT transactions. (1.0%)
(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
(4) Patient demographic information must be submitted on all ADT transactions. (0%)
(5) Race must be submitted on all ADT transactions. (2.0%)
(6) Ethnicity must be submitted on all ADT transactions. (2.0%)
(7) Diagnosis must be submitted on all ADT transactions. (2.0%)
(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
ii. No later than April 1, 2022:
(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed

capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,
ii. Number of ICU beds available for use,
iii. Number of Medical-Surgical beds in use,
iv. Number of Medical-Surgical beds available for use,
v. Number of Telemetry beds in use, and
vi. Number of Telemetry beds available for use.

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in subsection (3)(a), (b), (c), (d), (e), or (f):
   a. In order to qualify, by April 1, 2022, the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
      i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
         (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
      iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
      v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
      vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization or an Advance Directives Registry platform operated by the qualifying HIE organization.
      vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
      viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
      ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
      x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases described in subsections (x)(1) through (3):
         (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
         (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
         (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
      xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.
         (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
         (2) Event type must be properly coded on all ADT transactions. (0%)
         (3) Patient class must be properly coded on all

appropriate ADT transactions. (0%)
(4) Patient demographic information must be submitted on all ADT transactions. (0%)
(5) Race must be submitted on all ADT transactions. (0.5%)
(6) Ethnicity must be submitted on all ADT transactions. (0.5%)
(7) Diagnosis must be submitted on all ADT transactions. (0.5%)
(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
i. No later than April 1, 2022, submit registration form or forms for participation using the form or forms on the website of the qualifying HIE organization.
ii. No later than April 1, 2022:
(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. On March 15, 2022 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website; APU recipients are those facilities that satisfactorily met the requirements for the IPFQR program, which includes multiple clinical quality measures. Facilities identified as APU recipients will qualify for the DAP increase.

d. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for long-term care hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

e. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for rehabilitation hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

f. By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

4. A hospital designated as type: hospital, subtype: long term or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the following criteria. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
a. Number of ICU beds in use,
b. Number of ICU beds available for use,
c. Number of Medical-Surgical beds in use,
d. Number of Medical-Surgical beds available for use,
e. Number of Telemetry beds in use, and

f. Number of Telemetry beds available for use.

5. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in subsection (5)(a) or (b);
   a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
   i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
   ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
      (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
      (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
      (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
   iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
   iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If the hospital has ambulatory and/or behavioral health practices, then the facility must submit the following actual patient identifiable information to the production environment of a qualifying HIE: registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization. For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
   v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
   vi. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
   vii. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
   viii. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described in subsections (viii)(1) through (3):
      (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
      (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
      (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
   ix. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 2.5% if criteria are met for all categories indicating a DAP.
      (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
      (2) Event type must be properly coded on all ADT transactions. (0.5%)
      (3) Patient class must be properly coded on all appropriate ADT transactions. (0.5%)
      (4) Patient demographic information must be submitted on all ADT transactions. (0.5%)
      (5) Overall completeness of the ADT message. (0.5%)
   b. By March 15, 2022, the facility must submit a LOI to enter into a CCA with a non-HIS/638 facility (a fully signed copy of a CCA with a non-HIS/Tribal 638 facility is also acceptable). By April 30, 2021, the facility must have entered into a CCA with a non-IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the

following activities: The IHS/Tribal 638 facility will have in place a signed CCA with a non-IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

i. The IHS/Tribal 638 facility will have a valid referral template in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

ii. The IHS/Tribal 638 facility will continue to assume responsibility of the referred member, maintaining records and release of information protocol including clinical documentation of services provided by the non-IHS/Tribal 638 facility.

iii. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the IHS/Tribal 638 facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2021.

iv. The IHS/638 facility will submit a minimum of one referral and any supporting medical documentation to the non-IHS/Tribal 638 facility by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA referrals per month to the non-IHS/Tribal 638 facility.

v. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA referrals to the non-IHS/Tribal 638 facility by March 15, 2022, and submit an average of 5 CCA referrals per month by May 31, 2022.

F. For outpatient services with dates of service from October 1, 2023 through September 30, 2024 (CYE 2024), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2023. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c) or (d):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month

per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.
ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection (2)(a), (b), (c) or (d). No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
a. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.
i. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
ii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
iii. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

iv. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
      (1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
      (2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.
   ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
      (1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
      (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
      (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
      (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.
   ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
      (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
      (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
   ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in subsection (3)(a), (b), (c), (d), (e), or (f):
   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.
      ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if

required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. On March 15, 2023 a hospital that is identified as a Medicare Annual Payment Update (APU) recipient on the QualityNet.org website will qualify for the DAP increase. APU recipients are those hospitals that satisfactorily meet the requirements for the Inpatient Psychiatric Facility Quality Reporting Program, which includes multiple clinical quality measures.

e. On March 15, 2023, long-term care hospitals that meet or fall below the national average for the pressure ulcers performance measure will qualify for the

DAP increase. The national average will be downloaded from the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury for long-term care hospitals. Facility results will be compared to the national average results for the measure.

f. On March 15, 2023, rehabilitation hospitals that meet or fall below the national average for the pressure ulcers performance measure will qualify for the DAP increase. The national average will be downloaded from the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury rehabilitation hospitals. Facility results will be compared to the national average results for the measure.

4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in subsection (4)(a) or (b);
   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.
      ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
      iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
      iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.
      v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.
   b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
      i. No later than November 1, 2023, complete the AzHDR Participant Agreement.
      ii. No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.
   c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
      i. No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required.
      ii. No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.
   d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
      i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
      ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4). AHCCCS filed an incorrect version of a final rulemaking which made amendments to this Section published at 27 A.A.R. 2501 (October 29, 2021); AHCCCS filed the correct version of its final rulemaking on December 3, 2021, with this Section amended by final rulemaking at 27 A.A.R. 3015 (December 31, 2021), effective October 1, 2021 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 3283 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 3394 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-22-712.36. Reserved

R9-22-712.37. Reserved

R9-22-712.38. Reserved

R9-22-712.39. Reserved

R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update

A. Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.

B. APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.

C. Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:

1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.

D. Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.

E. Rebase. AHCCCS shall rebase the outpatient fees every five years.

F. Statewide CCR:

1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).

G. Other Updates. In addition to the other updates provided for in this Section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.41. Reserved

R9-22-712.42. Reserved

R9-22-712.43. Reserved

R9-22-712.44. Reserved

R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions

A. AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.

B. AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.

C. Same day admit and discharge.

1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser

of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.

2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.46. Reserved

R9-22-712.47. Reserved

R9-22-712.48. Reserved

R9-22-712.49. Reserved

R9-22-712.50. Outpatient Hospital Reimbursement: Billing

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

R9-22-712.51. Reserved

R9-22-712.52. Reserved

R9-22-712.53. Reserved

R9-22-712.54. Reserved

R9-22-712.55. Reserved

R9-22-712.56. Reserved

R9-22-712.57. Reserved

R9-22-712.58. Reserved

R9-22-712.59. Reserved

R9-22-712.60. Diagnosis Related Group Payments

A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this Section and R9-22-712.61 through R9-22-712.81.

B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.

C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. The applicable version of the APR-DRG classification system shall be available on the agency's website.

D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.

E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.

F. For purposes of this Section and Sections R9-22-712.61 through R9-22-712.81:

1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.61. DRG Payments: Exceptions

A. Notwithstanding Section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 801 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).

1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;

B. Notwithstanding Section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.

C. Notwithstanding Section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.

D. Notwithstanding Section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the Federal Register.

E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.

F. For inpatient services with a date of admission from October 1, 2022 through September 30, 2023 (CYE 2023), provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c), or (d):
    a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
        i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
        ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
            (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
            (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
            (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
        iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
        iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
        v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
        vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
        vii. No later than November, 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
        viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
        ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
        x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligi-

ble to receive DAP increases described in subsection (1)(a)(x).
(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2022 data, to the final data quality profile, based on March 2022 data.
(2) Meet a minimum performance standard of at least 60% based on March 2022 data.
(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.
(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
(2) Event type must be properly coded on all ADT transactions. (0%)
(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
(4) Patient demographic information must be submitted on all ADT transactions. (0%)
(5) Race must be submitted on all ADT transactions. (0.5%)
(6) Ethnicity must be submitted on all ADT transactions. (0.5%)
(7) Diagnosis must be submitted on all ADT transactions. (0.5%)
(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
i. No later than April 1, 2022, submit registration form or forms for participation using the form or forms on the website of the qualifying HIE organization.
ii. No later than April 1, 2022:
(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
i. Number of ICU beds in use,

ii. Number of ICU beds available for use,
iii. Number of Medical-Surgical beds in use,
iv. Number of Medical-Surgical beds available for use,
v. Number of Telemetry beds in use, and
vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsection (2)(a), (b), (c), or (d):
   a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
      i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
         (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
      iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
      v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
      vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
      vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
      viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
      ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
      x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.
         (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
         (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
         (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
      xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.
         (1) Data source and data site information must be submitted on all ADT transactions. (2.0%)
         (2) Event type must be properly coded on all ADT transactions. (0%)
         (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
         (4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (2.0%)
(6) Ethnicity must be submitted on all ADT transactions. (2.0%)
(7) Diagnosis must be submitted on all ADT transactions. (2.0%)
(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.
i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
ii. No later than April 1, 2022:
(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
i. Number of ICU beds in use,
ii. Number of ICU beds available for use,
iii. Number of Medical-Surgical beds in use,
iv. Number of Medical-Surgical beds available for use,
v. Number of Telemetry beds in use, and
vi. Number of Telemetry beds available for use.

G. For inpatient services with a date of admission from October 1, 2023 through September 30, 2024 (CYE 2024), provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2023. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (G), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c) or (d):
a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization

and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection (2)(a), (b), (c) or (d):
a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.
ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.
v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.
ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agree-

ment indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
   (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
   (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
   (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
   (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
   ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3111 and at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4). AHCCCS filed an incorrect version of a final rulemaking which made amendments to this Section published at 27 A.A.R. 2501 (October 29, 2021); AHCCCS filed the correct version of its final rulemaking on December 3, 2021, with this Section amended by final rulemaking at 27 A.A.R. 3015 (December 31, 2021), effective October 1, 2021 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 3283 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 3394 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-22-712.62. DRG Base Payment

A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjustors.

B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index. The hospital's labor share is determined based on the labor share for the Medicare inpatient prospective payment system published in 85 Fed. Reg. 59060 through 59061 (September 18, 2020). The hospital's wage index is determined based on the wage index tables reference in 85 Fed. Reg. 59059 (September 18, 2020). The statewide standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 27 A.A.R. 2512 (October 29, 2021), with an immediate effective date of October 6, 2021 (Supp. 21-4).

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

A. Notwithstanding Section R9-22-712.62, a select specialty hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
   1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
   2. Hospitals designated as type: hospital, subtype: short term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.

B. The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

C. Notwithstanding Section R9-22-712.62, a rural hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.
2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.71. Final DRG Payment

A. The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

B. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

C. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

D. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 801 E. Jefferson Street, Phoenix, Arizona.

E. For inpatient services with a date of discharge from October 1, 2022 through September 30, 2023 (CYE 2023), the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria:
   a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
      i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
         (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
      iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiol-

ogy information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described in subsections (x)(1) through (3).
   (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
   (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
   (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.
   (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
   (2) Event type must be properly coded on all ADT transactions. (0%)
   (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
   (4) Patient demographic information must be submitted on all ADT transactions. (0%)
   (5) Race must be submitted on all ADT transactions. (0.5%)
   (6) Ethnicity must be submitted on all ADT transactions. (0.5%)
   (7) Diagnosis must be submitted on all ADT transactions. (0.5%)
   (8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.
   i. No later than April 1, 2022, submit registration form or forms for participation using the form or forms on the website of the qualifying HIE organization.
   ii. No later than April 1, 2022:
      (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
   iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
   i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
   ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for

requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified;

a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.
(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
(2) Meet a minimum performance standard of at least 60% based on March 2022 data.
(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.
(1) Data source and data site information must be submitted on all ADT transactions. (1.0%)
(2) Event type must be properly coded on all ADT transactions. (1.0%)
(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
(4) Patient demographic information must be submitted on all ADT transactions. (0%)
(5) Race must be submitted on all ADT transactions. (2.0%)
(6) Ethnicity must be submitted on all ADT transactions. (2.0%)
(7) Diagnosis must be submitted on all ADT transactions. (2.0%)
(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
i. No later than April 1, 2022, submit registration form or forms for participation using the form or forms on the website of the qualifying HIE organization.
ii. No later than April 1, 2022:
(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult

and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,
ii. Number of ICU beds available for use,
iii. Number of Medical-Surgical beds in use,
iv. Number of Medical-Surgical beds available for use,
v. Number of Telemetry beds in use,
vi. Number of Telemetry beds available for use.

F. For inpatient services with a date of discharge from October 1, 2023 through September 30, 2024 (CYE 2024), the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2023. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c), or (d):
   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's system.
      ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
      iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
      iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.
      v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. Which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.
   b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
      i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
         (1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
         (2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.
      ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
         (1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
         (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
      (1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
      (2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.
   ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
      (1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
      (2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
   i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
   ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in subsection (2)(a), (b), (c) or (d):
   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.
      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's system.
      ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.
      iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
      iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.
      v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. Which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.
   b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:
(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.
(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:
(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and
(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:
(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.
(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:
(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and
(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.
ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 31, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4). AHCCCS filed an incorrect version of a final rulemaking which made amendments to this Section published at 27 A.A.R. 2501 (October 29, 2021); AHCCCS filed the correct version of its final rulemaking on December 3, 2021, with this Section amended by final rulemaking at 27 A.A.R. 3015 (December 31, 2021), effective October 1, 2021 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 3283 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 3394 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in Sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in Sections R9-22-712.60 through R9-22-712.81.

charges on the Same Day

A. Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.

B. Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired on the date of discharge shall be reimbursed under the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.78. DRG Reimbursement: Readmissions

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.79. DRG Reimbursement: Change of Ownership

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.80. DRG Reimbursement: New Hospitals

A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in subsection R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in subsection R9-22-712.62(B) shall be calculated as the statewide standardized amount after adjusting that amount for the labor-related share and the wage index published by CMS as described in subsection R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in subsection R9-22-712.62(B).

B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in subsection R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in subsection R9-22-712.68(C).

C. In addition to the requirement of this Section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in Sections R9-22-712.60 through R9-22-712.80, the Administration may update the version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in Section R9-22-712.62, the base payments in R9-22-712.63 and R9-22-712.64, the provider policy adjustor in R9-22-712.65, service policy adjustors in R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency's website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 CFR § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments

A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 C.F.R. 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.

B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.

C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with R9-22-712.20 through R9-22-712.30 without a percentage reduction.

1. 60 percent for a level 1 emergency department visit as indicated by CPT 99281.
2. 80 percent for a level 2 emergency department visit as indicated by CPT 99282.
3. 90 percent for a level 3 emergency department visit as indicated by CPT 99283.
4. 100 percent for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.

D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.

E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.

F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

G. For dates of service from October 1, 2023 through September 30, 2024 (CYE 2024), the payment otherwise required for hospital-based FSED services provided by qualifying hospital-based FSEDs shall be increased by a percentage established by the Administration and shall be applied to the payment methodology as described in subsection (C). The percentage is published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2023. A hospital-based FSED will qualify for an increase if it meets the criteria specified below. If a hospital-based FSED receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (G), the hospital-based FSED shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A outpatient treatment center designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital-based freestanding emergency department will qualify for an increase if it meets the criteria in subsection (1)(a):
   a. No later than April 30, 2023, the hospital-based FSED must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCS-DAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP).
   b. The LOI must contain each hospital-based FSED, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
      i. No later than November 30, 2023, develop and submit a hospital-based FSED policy that meets AHCCCS/ADHS standards for a NDP.
      ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the hospital-based FSEDs' policy.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 22, February 11, 2017 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 3394 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-22-713. Overpayment and Recovery of Indebtedness

A. If a contractor or a subcontracting provider receives an overpayment from the Administration or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the AHCCCS fund.

B. If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
1. A repayment agreement executed with the Administration;
2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Former Section R9-22-713 repealed, new Section R9-22-713 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714, former Section R9-22-709 renumbered and amended as Section R9-22-713 effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-714. Payments to Providers

A. Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.

B. Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
1. The provider personally furnishes the service to a specific member. For purposes of this Section, services personally furnished by a provider include:
   a. Services provided by medical residents or dental students in a teaching environment; or
   b. Services provided by a licensed or certified assistant under the general supervision of a licensed practitioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;
2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
3. The service contributes directly to the diagnosis or treatment of the member; and

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Differential Adjusted Payments (DAP) Rulemaking (R9-22-712.35 et seq.) - 9/24 Study Session questions

AHCCCS Rules - AHCCCS <ahcccsrules@azahcccs.gov> Thu, Sep 26, 2024 at 9:15 AM
To: GRRC - ADOA <grrc@azdoa.gov>

Good morning,

Councilmember Thorwald had some questions regarding AHCCCS's Differential Adjusted Payments (DAP) Rulemaking (R9-22-712.35 et seq.). We hope that the attached information is able to best answer his questions, but please let us know if there is anything else he has questions about.

The DAP rulemaking is a form of value-based purchasing, which the Center for Medicare and Medicaid Services (CMS) authorized via a pre-print approval process, over a decade ago. Under value-based purchasing, a variety of incentive measures were authorized for states to enact to reimburse certain providers or provider types at a higher rate, in order to encourage better health outcomes. Since its inception, states have used it in a variety of ways, but the most common is differential adjusted payment structures. Due to the volume of pre-print approval requests that states submit to CMS, it would be extremely time intensive for a complete comparison report between AHCCCS's submissions and those of other states. However, at this time, studies and reports of the effectiveness of VBP have been conducted, and one such study includes Arizona among 10 other similarly situated State Medicaid Agencies (SMA). In the attached report there is a table and a line graph, both of which outline that Arizona is squarely in the middle of both volume and provider types that it incentivizes via DAP. Other states use payment arrangements like DAP to recognize value or outcomes over volume of services to reward providers for taking steps to reform the delivery of services. Typically, providers would need to meet a performance target or certain milestone(s) to receive payment. This is consistent with how Arizona's program is structured.

The Councilmember's other question that remained unanswered during the meeting included how and why AHCCCS outlines percentages as reimbursement levels in the rulemaking. This is due to the method of reimbursement. The DAP incentive percentage is reimbursed on top of the claims that a provider bills through our regular reimbursement. As an agency, we make the determination of the DAP percentage increases to provider rates based on requests from agency subject matter experts and external stakeholders, but within the limits of available DAP funding. Percentages may vary for different provider types because they have various amounts of billing in a year and AHCCCS has limited resources that the agency can devote to DAP incentives. Additionally, we solicit public comments from stakeholders and take their comments into consideration before finalizing the DAP percentages in the Final DAP Public Notice. This year we received no public comments on our DAP notice or rulemaking, and AHCCCS believes this is due to the robust stakeholder engagement that occurs in advance of the reimbursement percentages being finalized in the Notice.

Thank you for your consideration of our rulemaking.

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MEDICAID 1115 DEMONSTRATIONS

December 2019

Accelerating the Adoption of Value-Based Payment in Medicaid by Linking Delivery System Reform to Managed Care Payment

Debra J. Lipson, Melanie Au, Ryan Stringer, and Rachel Vogt

Summary

To improve the quality of health care and patient outcomes and slow growth in spending, state Medicaid programs are pursuing a variety of strategies to reform the health care delivery system. Payment reform is a defining feature of these strategies. Like private payers, Medicaid agencies are trying to move away from the fee-for-service model, which reimburses health care providers based on the volume of services they deliver. Instead, agencies are moving toward value-based payment (VBP) arrangements that reward providers for better outcomes.

This brief examines how 10 states are seeking to accelerate the use of VBP—and sustain the delivery system reforms achieved through Medicaid section 1115 demonstrations—by setting requirements or targets for managed care plans (MCPs) to contract with network providers using VBP arrangements. We compare how states design the interaction and sequencing of provider delivery reforms with VBP goals for MCPs. We also assess the extent to which state policies align the incentives to increase the use of VBP for both providers that receive delivery reform funding and MCPs.

It is too early to know which mix of policies is most effective in advancing VBP, and other factors—such as continued use of supplemental Medicaid payments to providers—may dampen VBP incentives. However, in 2018 and 2019, the 10 states in this study began to hold health plans, providers—and, in some cases, the state itself—accountable for reaching VBP goals. To compare states' progress fairly, it is important to consider how their goals differ with respect to the level and pace of VBP adoption, how much financial risk providers must assume to reach VBP goals, and the extent to which strategies to promote VBP by safety net providers and MCPs are mutually reinforcing.

I. Introduction

State Medicaid agencies are implementing a wide array of delivery system and payment reforms designed to contain rising Medicaid costs and improve the quality of care and outcomes for Medicaid beneficiaries. In 2019, 44 states reported having at least one—and sometimes several—initiatives designed to reform care delivery and payment. These initiatives include patient-centered medical homes, Medicaid health homes, accountable care organizations (ACOs), episode-of care-payment, or delivery system reform incentive payment (DSRIP) demonstrations (Gifford et al. 2019). These reforms are intended to redesign the care delivery system for Medicaid beneficiaries, improve their access to coordinated physical and behavioral health services, and connect them to social services and supports. To support these goals, states are reforming the way providers are paid, shifting away from fee-for-service (FFS)—which pays providers for the volume of care delivered—and moving toward paying for better value, measured by higher quality and better health outcomes.

THE MEDICAID CONTEXT

Medicaid is a health insurance program that serves low-income children, adults, individuals with disabilities, and seniors. Medicaid is administered by states and is jointly funded by states and the federal government. Within a framework established by federal statutes, regulations and guidance, states can choose how to design aspects of their Medicaid programs, such as benefit packages and provider reimbursement. Although federal guidelines may impose some uniformity across states, federal law also specifically authorizes experimentation by state Medicaid programs through section 1115 of the Social Security Act. Under section 1115 provisions, states may apply for federal permission to implement and test new approaches to administering Medicaid programs that depart from existing federal rules yet are consistent with the overall goals of the program and are budget neutral to the federal government.

Some states have used section 1115 waiver authority to implement delivery system reform incentive payment (DSRIP) demonstrations. Since the first DSRIP program was approved in 2010, the breadth and specific goals of these demonstrations have evolved, but each aims to advance delivery system transformation among safety net hospitals and other Medicaid providers through infrastructure development, service innovation and redesign, and population health improvements. More recent DSRIP demonstrations have also emphasized increasing provider participation in alternative payment models, which intend to reward improved outcomes over volume.

In the past few years, the Centers for Medicare & Medicaid Services (CMS) and state Medicaid agencies used two strategies to accelerate the shift toward rewarding value. One strategy focused on health care providers, and another on Medicaid managed care plans (MCPs).

- **Delivery system reform demonstrations.** Authorized by section 1115 waivers, these Medicaid demonstrations were designed to transform the delivery system by giving financial incentives to health care providers who serve Medicaid patients and the uninsured. Their goal was to deliver more coordinated care and to improve quality and population health outcomes. These demonstrations included DSRIP programs as well as similar delivery system reforms. Many of these demonstrations were designed to help prepare safety net providers, which serve disproportionate shares of Medicaid and uninsured patients, to participate in value-based payment (VBP) and alternative payment model (APM) arrangements, whether directly with the state or with Medicaid managed care plans (Heeringa et al. 2018). To sustain delivery system reforms after the demonstrations end, several states made a commitment to achieve specific VBP goals under the special terms and conditions (STCs) in section 1115 demonstrations. In some cases, they faced financial penalties for failing to meet the VBP goals.
- **Medicaid managed care plans (MCPs).** States are also advancing the adoption of VBP by requiring MCPs to implement APMs with providers or to use VBP for a specific share of payments to providers. Under federal rules, states can require MCPs to (a) implement certain types of VBP models to pay network providers, such as bundled payments, episode-based payments, or other methods that recognize value or outcomes instead of volume; and (b) participate in multi-payer or Medicaid-specific delivery system reforms, such as pay-for-performance, quality-based payments, or population-based payment models. Both types of payment arrangements, known as "state-directed payments," must meet certain criteria to be approved by CMS (Neale 2017).[1]

To advance VBP, many states are using delivery system reform demonstrations aimed at providers and VBP contract requirements for MCPs. Yet, there is little experience or evidence on how states can best coordinate the two initiatives to successfully meet VBP goals. Many questions remain unanswered:

- How long should delivery system reforms be in place before MCPs are required to achieve VBP goals, which depend on provider readiness?
- Which entities should be eligible to receive financial incentives, or face financial penalties, based on their ability to meet VBP goals and requirements?
- Does the degree of alignment in payment models and performance metrics across providers and MCPs affect the scale and speed of VBP adoption?

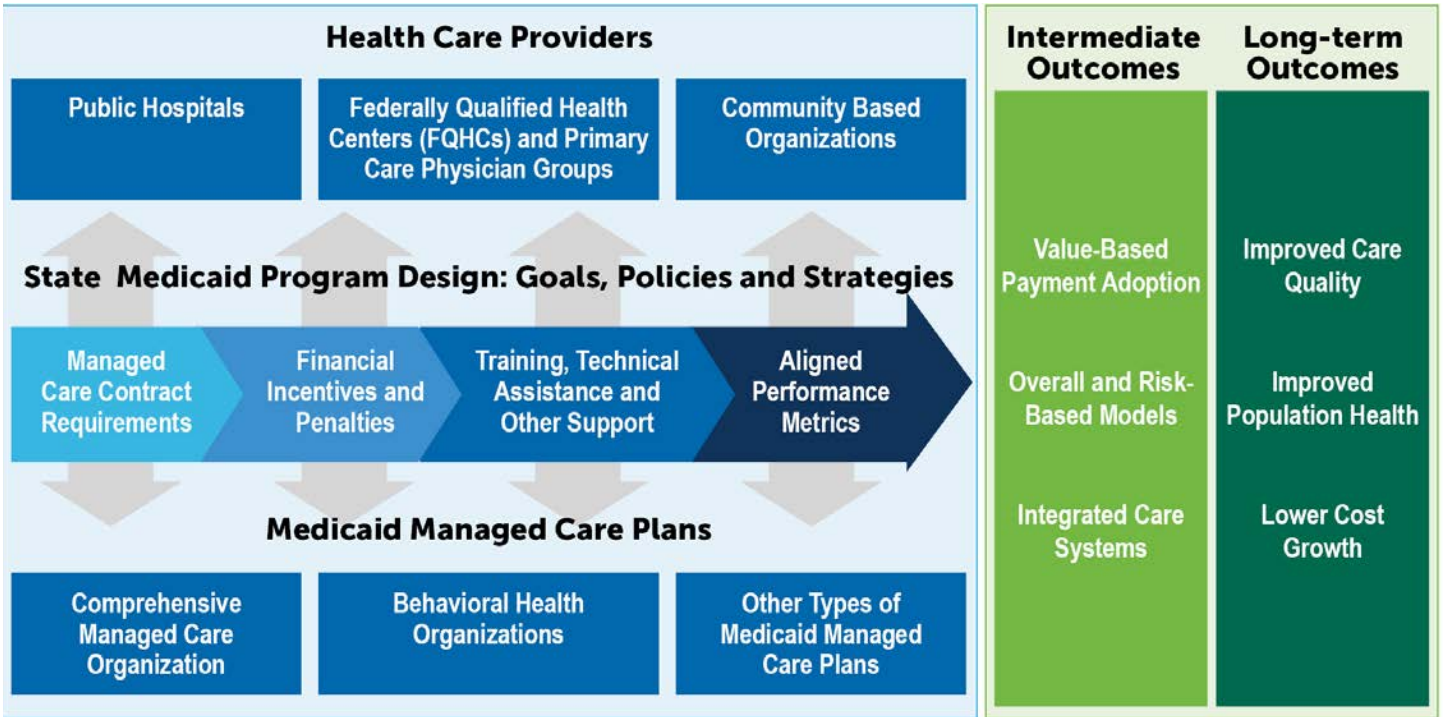
A conceptual framework (Figure I.1) shows how the interaction between various factors could speed the adoption of VBP by health care providers and MCPs. The framework is based on a systematic review of what determines VBP implementation success, including key design features and the context in which VBP programs are implemented (Damberg et al. 2014). The framework adds a dimension that is unique to Medicaid: the role that states play in setting the goals and rules for the use of VBP by payers (in this case, Medicaid MCPs) and providers, including contract requirements, payment models, and quality metrics. It theorizes that states can accelerate VBP adoption by setting common rules for both sets of organizations. In the long term, this can maximize the effect of payment incentives on quality of care, population health, and rates of cost growth.

> "Delivery system reform and value-based payment are two sides of the same coin; you have to have them both."
>
> –State policymaker

Other factors may impede progress towards VBP goals. For example, some states continue to make supplemental Medicaid payments to providers, which are typically lump sum payments made in addition to the standard base payment rate and are not based on services delivered to individuals (U.S. GAO 2016). Such payments may dampen the incentives for providers to negotiate VBP contracts with MCPs (Mann et al. 2016). State responses to new federal policies governing supplemental funds that "pass-through" MCPs to providers (CMS 2016) might also affect the degree to which these funds influence VBP progress. This issue is examined in a separate brief in this series (Lipson et al. 2019).

In this brief, we compare state Medicaid VBP goals and examine the policies used to advance the use of VBP through delivery system reform initiatives and MCP contract requirements. We

Figure I.1. Medicaid value-based payment: a conceptual framework



take a systematic look at how the incentives for providers making reforms to the delivery system are aligned with requirements for MCPs to achieve VBP goals in 10 states: Arizona, California, Massachusetts, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Texas, and Washington.

These states were selected after meeting two criteria: (1) they had active section 1115 demonstration waivers authorizing Medicaid delivery system reforms as of December 2017, and (2) they set specific VBP goals, either in section 1115 demonstration STCs or in Medicaid MCP contracts.[2] Table I.1 summarizes for each state (1) delivery system reforms, (2) demonstration periods, (3) where VBP goals are specified, and (4) the entities accountable for meeting VBP goals.

Data sources and methods. Between December 2017 and March 2018, we conducted a systematic analysis of similarities and differences in state program design features, based on a detailed review of publicly available state Medicaid policy and contract documents in the 10 study states. We extracted information from the following types of source documents: (1) Medicaid section 1115 waiver STCs; (2) attachments to the STCs that had more details about VBP; (3) model contracts between states and MCPs; (4) state VBP "roadmaps;" and (5) lists of performance metrics used in VBP programs. Sources and document dates for each state are listed in Appendix A. We also drew on interviews with state Medicaid officials and senior Medicaid managed care managers, which were conducted for a previous brief in this series, to understand why state officials made certain program design choices (Heeringa et al. 2018). State program staff reviewed a draft of this brief in June 2018 to check the accuracy of information about their state's policies and programs; except where noted, the data presented in this brief were accurate as of that date.

Roadmap to the report. Section II of this brief compares VBP goals and annual targets across the 10 states, including the share of VBP payments that involve higher levels of financial risk for providers, and describes which entities are accountable for meeting the goals. Section III compares key state policies and strategies to advance VBP, including managed care contract requirements and financial incentives, requirements of and support to safety net providers who engage in VBP arrangements, and alignment of performance metrics for providers and MCPs. Section IV explains how states planned to monitor their progress toward VBP goals. Section V discusses considerations in comparing states' success in advancing the use of VBP. Section VI concludes with implications for evaluations of the impact of VBP adoption on Medicaid costs, quality, and health outcomes.

DEFINITIONS AND TERMS USED IN THIS BRIEF

Value-based payment (VBP) refers to programs in which the state Medicaid agency holds providers or managed care plans accountable for the cost and quality of care.

Alternative payment models (APMs) are the specific payment arrangements and methods used in VBP programs—for example, whether providers receive bonuses for achieving quality or reaching goals on performance measures, whether they share savings for delivering services at lower cost, or whether they are at risk of incurring financial losses for not meeting specified quality and cost benchmarks.

VBP and APM have different meanings, but states use these terms interchangeably. For simplicity, we usually refer to both here as VBP, except when describing a specific state program that uses the term APM.

Managed care plans (MCPs), as defined by CMS, include comprehensive managed care organizations (MCOs), prepaid inpatient health plans and prepaid ambulatory health plans. Many states contract only with MCOs, but we use the term MCPs to cover all plan types, except when describing a specific state program that uses the term MCOs.

Table I.1. Profile of Medicaid section 1115 delivery system reform demonstrations, where VBP goals are specified, and which entities are accountable for meeting VBP goals in the 10 study states

Section 1115 Delivery System Reform Demonstrations				VBP Goals and Accountable Entities				
				Where VBP goals are specified		Entities accountable for meeting VBP goals		
State	Demonstration name (and delivery system reform program, if different)	Current demonstration period	Providers eligible to receive delivery system reform incentive payments	1115 STCs	Managed care contracts	State	Providers	MCPs
Arizona	AHCCCS (Arizona Health Care Cost Containment System) Targeted Investment Program	10/01/2016-9/30/2021	Primary care, behavioral health, and hospital providers, and integrated clinics co-located with probation or parole office	No	Yes			X
California	Medi-Cal 2020 and PRIME (Public Hospital Redesign and Incentives in Medi-Cal)	12/30/2015-12/31/2020	Designated public hospitals and district municipal public hospitals	Yes	No	X		
Massachusetts	MassHealth DSRIP	07/01/2017- 6/30/2022	ACOs, community partners, and community service agencies	Yes	Yes	X	*	
New Hampshire	Building Capacity for Transformation	01/05/2016- 12/31/2020	Integrated delivery networks and partner providers	Yes	Yes	DPHs		
New Mexico	Centennial Care Safety Net Care Pool - Hospital Quality Improvement Incentive (HQII) Pool	01/01/2014- 12/31/2023 (HQII ends 12/31/2021)	Qualifying hospitals (sole community provider hospitals and the state teaching hospital eligible to participate in 2014)	Yes	Yes	X	*	X
New York	Medicaid Redesign DSRIP	12/07/2016- 3/31/2021 04/14/2014-03/31/2020	Performing provider systems and partner providers	Yes	Yes		*	X
Oregon	Oregon Health Plan	01/12/2017-6/30/2022	Coordinated care organizations	Yes	Yes			X

Section 1115 Delivery System Reform Demonstrations				VBP Goals and Accountable Entities				
				Where VBP goals are specified		Entities accountable for meeting VBP goals		
State	Demonstration name (and delivery system reform program, if different)	Current demonstration period	Providers eligible to receive delivery system reform incentive payments	1115 STCs	Managed care contracts	State	Providers	MCPs
Rhode Island	Comprehensive Demonstration Health System Transformation Project	12/23/2013- 12/31/2023	Accountable entities	Yes	Yes	X		X
Texas	Healthcare Transformation and Quality Improvement Program DSRIP	01/01/2018-09/30/2022 Ends 09/2021	Regional healthcare partnership anchor entities and performing providers	No	Yes			X
Washington	Medicaid Transformation Project	01/09/2017- 12/31/2021	Accountable communities of health and partner providers; managed care organizations, and tribes	Yes	Yes	X		X

Source: Mathematica analysis of section 1115 demonstration STCs and state Medicaid contracts with MCPs.

ACO = accountable care organization

DSRIP = delivery system reform incentive payment

MCPs = managed care plans

STCs = special terms and conditions

VBP = value-based payment

* Massachusetts' ACOs, like other provider-based ACO models, are accountable for meeting total cost of care and quality metrics to qualify for shared savings, but the ACOs are not accountable for meeting specific VBP goals. New Mexico's HQII Pool, similar to DSRIP programs, allocates a portion of funds based on performance but does not require eligible hospitals to meet specific VBP targets. In New York, a few providers, such as those that participated in the New York State VBP pilot program, are also accountable for meeting specific VBP goals.

II. State VBP Goals

This section describes each state's annual VBP goals and targets, the payment models that count toward state VBP goals, the share of VBP arrangements that have to be in risk-based payment models, and the entities that are accountable for meeting these goals.

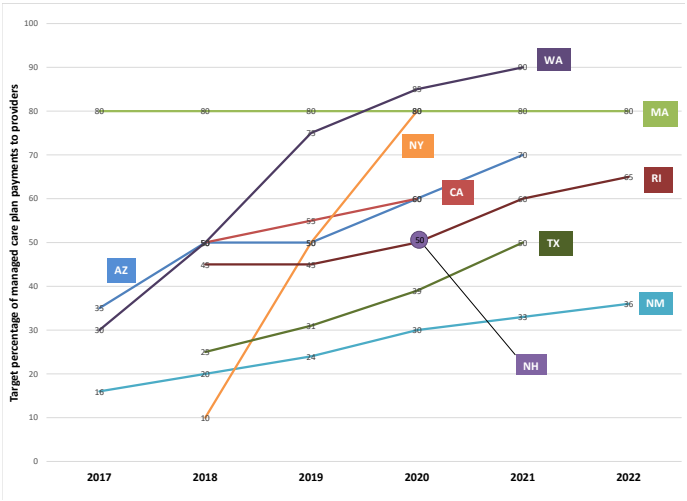
A. Annual VBP goals and targets

CMS and states consider a number of factors when they set Medicaid VBP goals. For example, policymakers often seek to align Medicaid goals with Medicare APM targets announced by CMS in January 2015: 30 percent of Medicare FFS payments tied to quality or value through APMs by the end of 2016, and 50 percent by the end of 2018 (Burwell 2015; CMS 2015). Aligning goals gives providers consistent financial incentives to improve care for all patients and can streamline reporting of quality measures (New York State Department of Health 2015; NAMD 2016). Medicaid officials may also set VBP goals that reflect the challenges safety net providers face when they take part in VBP arrangements, especially at higher levels of financial risk. For example, several states specify exceptions or different timetables for providers with little or no experience with pay-for-performance, shared savings, or capitated risk payment.[3]

At the time of this study, nine of the 10 study states established measurable VBP goals that applied to all MCPs, or to specified providers. Annual VBP targets for these entities, and the rate of change over time, varied substantially across the nine states (Figure II.1).

The one exception was Oregon, which required Medicaid MCPs—called coordinated care organizations (CCOs)—to implement APMs with network providers but allowed each CCO to establish its own targets regarding the total compensation paid to providers through APMs.[4] Beginning in July 2016, CCOs also were required to consistently track and monitor their progress toward increasing the percentage of compensation dedicated to APMs.[4] Starting in 2020, Oregon plans to set statewide and CCO-specific VBP payment targets to be achieved by the end of the demonstration period.

Figure II.1. State VBP target percentages by year



Source: Mathematica analysis of value-based payment (VBP) goals documented in 1115 demonstration special terms and conditions and managed care contracts.

Notes: For most states, the year listed corresponds to the demonstration year (DY), which matches the calendar year (CY). However, there are a few exceptions, including Arizona (CY17 corresponds to October 1, 2016 – September 30, 2017), Rhode Island (Contract Period 2 corresponds to 7/1/17 – 6/30/18), and New York (DY2 corresponds to 4/1/16 – 4/1/17).

Arizona established a 20 percent target in 2016, which is not shown on this chart. The Arizona targets pertain to Arizona Health Care Cost Containment System (AHCCCS) Complete Care, for non-disabled children and adults, and Arizona Long Term Care System (ALTCS) plans for elderly and disabled enrollees; different targets are set for plans serving other populations.

California's target is measured as the percentage of Medicaid patients assigned, or attributed, to designated public hospital systems that receive all or part of their care paid by a VBP arrangement with any MCP.

The first year of Massachusetts' alternative payment model (APM) target, also not shown on this chart, was July 2013, when it started at 25 percent, rising to 50 percent in July 2014, and 80 percent in July 2015, as required by a 2012 state law (Chapter 224).

Rhode Island's targets can also be met if the MCP demonstrates 5 percent increase from previous contract period until 2022, and then 10 percent increase from previous contract period after that.

Oregon is excluded from this chart because it had not yet set targets for Coordinated Care Organizations (CCOs) at the time of this study but planned to do so starting in 2020.

- **First-year targets.** In the first year of VBP timetables in eight states,[5] the target percentage of total payments made through qualifying VBP arrangements, or the percentage of patients/members whose care is delivered under VBP, ranged from 10 percent in New York to 80 percent in Massachusetts. The first year of Massachusetts' target was 2013 (not shown in Figure II.1), after the state enacted a law in 2012 requiring the Medicaid program to move from FFS to APMs, setting goals of 25 percent of eligible members in APM contracts in 2013, 50 percent in 2014 and 80 percent in 2015.
- **Final-year targets.** In the final year (2020, 2021, or 2022) of the VBP timetable in 9 of 10 states, the maximum target percentage of total payments to providers, or the target percentage of patients whose care is delivered under VBP arrangements, ranged from 36 percent in New Mexico to 90 percent in Washington.[6]

> "Moving to 90 percent of contracts being in VBP agreements by 2021 is a little bit optimistic, but in the current climate [in our state] and nationally, the only way to keep the system functional and able to serve underserved clients is to do arrangements like VBP."
>
> –State policymaker

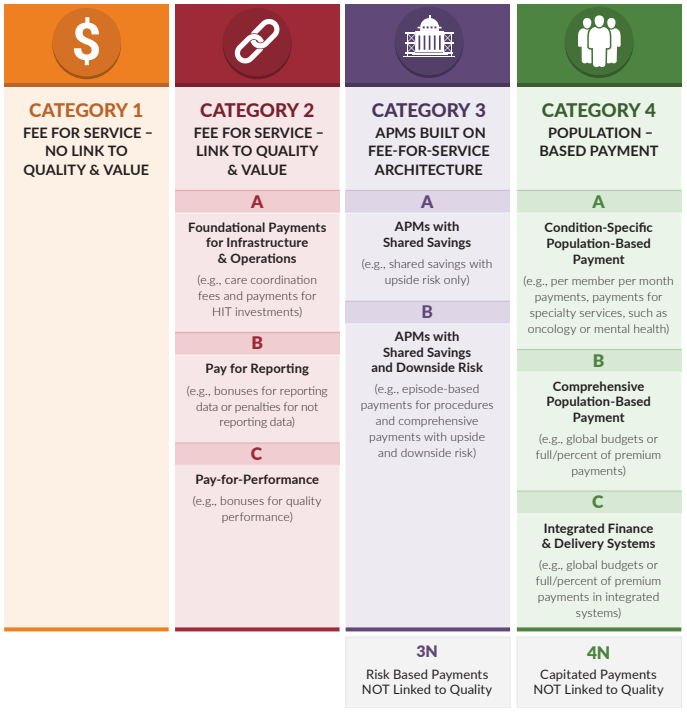
- **Time period and rate of change.** Six of the nine states that set annual percentage targets did so over a four- to six-year period. In the remaining three states, New Hampshire set a target for the final year only; California set targets for public hospitals over a three-year period; New York also set targets for MCPs over a three-year period. The slope, or rate of change over time, is steepest in New York, increasing from 10 percent in the first year of specified targets to 80 percent in the third year. However, like Massachusetts, the first year of New York's VBP targets occurred after three years of DSRIP investment, which gave providers time to transition to VBP. Washington also has a fairly steep rate of increase in the percentage targets, but it applies over a five-year period. Although California has a lower rate of increase, the initial percentage target was significantly higher than those in other states.

B. Defining payment models that count toward VBP goals

States typically specify the types of payment models and levels of risk that count toward meeting VBP goals. Many states have chosen to align these payment methods and models with those defined by the Health Care Payment Learning & Action Network (HCP-LAN), a federal initiative created in 2015 to support alignment of payment approaches across public and private sectors. Using a common framework and definitions for payment models makes it easier for providers and MCPs to align their efforts and helps states monitor progress toward VBP goals. The HCP-LAN APM framework (Figure II.2) defines four APM categories (HCP-LAN 2017a).

- **Category 1** is purely FFS and no payments are tied to quality.
- **Category 2** covers models built on FFS that pay providers to invest in infrastructure, report quality metrics, and achieve specified quality improvement targets. These models are similar to those used by state DSRIP and other types of delivery system reforms in that the funds support provider investments in primary care, information systems, and workforce training, and help build their capacity to track performance against quality benchmarks.
- **Category 3** includes two types of APMs: shared savings (upside shared savings only) and shared savings as well as downside risk.
- **Category 4** covers population-based payments, in which providers are paid a fixed amount for individuals with certain health conditions, or capitated payments covering a defined set of services or a global budget covering all services.

Figure II.2. Health Care Payment Learning & Action Network, APM framework



Source: http://hcp-lan.org/workproducts/apm-framework-onepager.pdf.
APM = alternative payment model

Although most states in this study have adopted the HCP-LAN framework to define what constitutes VBP for the purposes of meeting state goals, some states modified the HCP-LAN framework categories to fit the structure and goals of their VBP initiatives. For example, New York's VBP levels are based on the HCP-LAN framework but were modified to reflect the state's higher expectations for levels of risk (described below). New Mexico's APM levels also differ from those of HCP-LAN.[7]

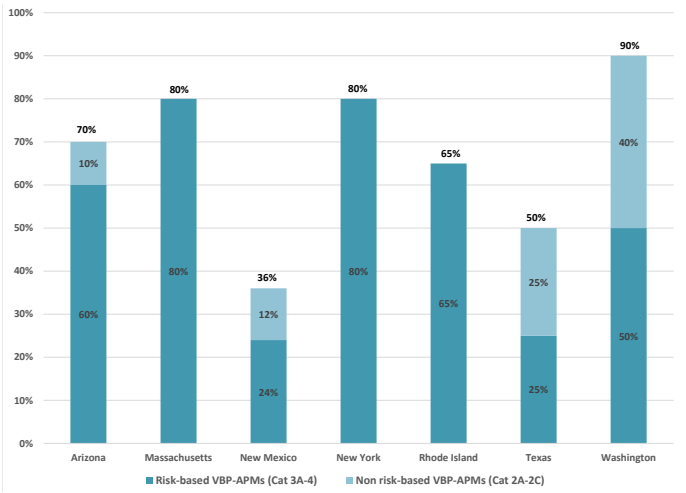
C. Risk-based VBP goals

Seven of the ten states set goals for the share of VBP payments that must be risk-based. In risk-based arrangements, providers can share in savings if they (1) meet both quality and total-cost-of-care benchmarks ("upside risk"), (2) are at risk of financial loss for not meeting benchmarks ("downside risk"), or (3) are paid on a per-member or per-patient amount for a defined set of services. These models correspond to those in categories 3 and 4 of the HCP-LAN APM framework (Figure II.2). Setting separate goals for risk-based VBP creates more ambitious targets

To compare states' risk-based goals, we calculated the percentage of payments required to be risk-based in the final year of each state's VBP timetable (Figure II.3). In Massachusetts, New York, and Rhode Island, risk-based models are the only ones that count toward VBP goals by the final year of the timetable, making them the most ambitious.

- Massachusetts defines qualifying payment models as (1) those in which managed care enrollees are attributed to a network provider, ACO, or other entity for the purposes of a shared savings/shared risk arrangement, (2) bundled payments, or (3) another APM model certified by the state.
- In New York, at least 80 percent of MCP payments to providers must be made through some form of risk-based arrangement, with 35 percent of payments at Levels 2 or 3, which correspond to HCP-LAN category 3B (shared savings and downside risk) and categories 4A, B, and C (population-based payment). The remaining payments must be at Level 1 which corresponds to category 3A (shared savings with upside risk only).
- In Rhode Island, 65 percent of managed care payments must be made through contracts with state-certified Accountable Entities, which are paid on a total-cost-of-care, shared savings model. At least 10 percent must be shared savings and downside risk (HCP-LAN category 3B) in the last two years of the timetable, but the remaining share in APM arrangements can be shared savings with upside risk only (category 3A); all non-risk infrastructure and pay-for-quality performance arrangements sunset as of June 30, 2020.

Figure II.3. State risk-based VBP goals for MCPs: percentages in risk- and non-risk models, by the final year of the VBP timetable



Source: Mathematica analysis of value-based payment (VBP) goals documented in 1115 STCs and managed care contracts, matched to corresponding Health Care Payment Learning Action Network (HCP-LAN) alternative payment model (APM) categories. This figure excludes study states that do not set specific targets for risk-based VBP arrangements (California and New Hampshire) and Oregon, which had not set VBP goals for all MCPs at the time of this study.

Notes: State VBP goals are expressed as the percentage of total Medicaid payments to providers by MCPs made through VBP models. Percentages represent the highest VBP targets in the last year of the timetable: 2020 in New York; 2021 in Arizona, Texas, and Washington; and 2022 in Massachusetts, New Mexico, and Rhode Island.

Although HCP-LAN category 3A models represent shared savings (that is, no downside risk), many states count these models as risk-based. This figure reflects this interpretation: all models that fit in categories 3 or 4 are considered risk-based.

Arizona's VBP target for risk-based arrangements in this chart applies only to AHCCCS Complete Care for non-disabled children and adults and ALTCS for elderly and people with physical disabilities; lower targets apply to plans serving other types of enrollees. New York's VBP target for a subset of risk-based models (category 3B and higher, which involve upside and downside risk) is 35 percent. The VBP target for managed long-term care plans is 15 percent in upside and downside risk sharing by 2020. In Texas, the overall VBP percentage must be 50 percent, but does not need to be 25 percent non-risk and 25 percent risk; it could all be risk-based arrangements.

New Mexico requires MCPs to meet VBP percentages at three levels, which vary by level of provider risk; MCPs may "substitute higher percentages in Level 2 and/or Level 3 for lower percentages in Level 1 as the overall minimum percentage targets (total for Level 1–3) are met for the contract year" (New Mexico managed care model contract Attachment 3.A). In Texas, the goal for risk-based arrangements in the last year of the timetable is at least half (25 percent) of the overall goal of 50 percent. Washington requires MCPs to make 50 percent of Medicaid payments in HCP-LAN Category 3A (shared savings with upside risk only) or higher, compared to 90 percent for all types of VBP.

D. Entities accountable for achieving VBP goals

MCPs and providers. Nationally, 69 percent of all Medicaid beneficiaries were enrolled in comprehensive managed care organizations (MCOs) in 2017, and all but one of the 10 study states had comprehensive MCO enrollment shares near or above this level (in Massachusetts, it was 45 percent) (CMS and Mathematica Policy Research 2019). Because the majority of Medicaid payments to providers are made through managed care, MCPs are commonly held accountable for achieving VBP goals. In three states, provider organizations as well as MCPs are accountable for meeting VBP goals, including Massachusetts, New Mexico, and New York. Although California holds designated public hospital systems (safety net hospitals eligible to receive DSRIP funds) accountable for meeting VBP goals, it planned to set such goals for MCPs in the future.

States. In 5 of the 10 study states, the state is also accountable for meeting VBP goals established in section 1115 demonstration STCs (Table II.1): California, Massachusetts, New York, Rhode Island, and Washington. These states are at risk for the loss of federal demonstration funds if they do not meet VBP goals, usually starting at the midpoint of the demonstration period. If the state loses demonstration funds, these losses are typically passed down to participating providers. Because providers share in the risk of potential funding losses, these statewide performance goals are meant to create shared accountability for VBP progress.

In three of the five states—California, New York, and Rhode Island—achievement of VBP targets is a distinct statewide performance goal. In Massachusetts and Washington, state accountability for meeting VBP goals is grouped with other statewide performance targets. For example, in Washington, up to 20 percent of annual federal DSRIP incentive funds are at risk in 2021 based on VBP goal achievement, in addition to statewide performance measures such as outpatient emergency department visits and antidepressant medication management.

Table II.1. Percentage of federal demonstration funds at risk based on state VBP performance

State	Statewide VBP goal by end of demonstration	Maximum percentage of funding at risk				
		2018	2019	2020	2021	2022
VBP goals						
California	60%		5%	5%		
New York	80-90%	5%	10%	20%		
Rhode Island	30%	15%	10%	10%		
VBP goals grouped with other statewide performance measures						
Massachusetts	45%*		5%	10%	15%	20%
Washington	90%		5%	10%	20%	

Source: Mathematica analysis of section 1115 demonstration special terms and conditions. This table excludes states that are not at risk of losing a share of federal demonstration funds if they do not meet VBP goals. Arizona is at risk of losing a portion of federal funding if the state does not meet performance measures and targets in the Targeted Investment Program, but this is not tied to achieving specific VBP goals.

* In Massachusetts and Rhode Island, VBP goals for purposes of state accountability differ from those that apply to MCPs. In Massachusetts, 45 percent of MassHealth ACO-eligible members must be attributed to ACOs, or receive service from providers paid under APMs (STC DSRIP Protocol Attachment N, pp. 49-50). In Rhode Island, MCPs must have at least three contracts (or 10 percent of covered lives) with certified Accountable Entities in an APM by 2018, and at least two contracts (or 20 percent of covered lives) must be in an approved APM by 2019, and at least three contracts (or 30 percent of covered lives) in an approved APM by 2020 (STCs Attachment T Deliverables Chart).

III. State Policies and Strategies to Advance VBP Adoption

In addition to delivery system reform demonstrations, states have many levers to promote VBP use by Medicaid MCPs and build the capacity of safety net providers to participate in VBP arrangements (CMS 2017). This section describes state policies and strategies that help MCPs and safety net providers meet each state's VBP goals. Specifically, we examine: (a) contract requirements and financial incentives that apply to MCPs; (b) requirements, financial incentives, and other types of support for safety net providers; and (c) alignment of performance metrics across providers and MCPs.

A. MCP requirements and financial incentives

MCP contract requirements. States vary in terms of how prescriptive they are regarding MCP VBP contract requirements. For example, New Mexico, New York, and Washington set standards or requirements regarding the types of payment arrangements that qualify toward the VBP goals and the percentage of MCP payments that must be tied to each level or category of APM. [8]

In contrast, Arizona, New Hampshire, Oregon, Rhode Island, and Texas give MCPs more discretion in the types of VBP models they can use. CCOs in Oregon, which are MCPs that in most cases cover non-overlapping regions in the state, are not yet subject to state-defined VBP targets but are expected to have CCO-specific targets starting in 2020; in the meantime, they must develop transformation plans to implement VBP arrangements, establish their own VBP improvement targets, and report on their progress. MCPs in Arizona were able to implement any combination of VBP payment models, including primary care incentives, shared savings, bundled and episodic payments, and capitation with performance-based elements, but that changed when targets for risk-based arrangements went into effect October 1, 2018 in the new contract. New Hampshire and Texas also give MCPs latitude to use different VBP models, based on examples provided by the state, although this may change in New Hampshire's next contract period. Although Rhode Island requires MCPs to devote a certain amount of their payments to Accountable Entities through a total-cost-of-care model, it also gives plans the discretion to use other VBP models to meet the overall VBP targets.

Beyond setting VBP targets and defining payment models, states may place additional requirements on MCPs (Table III.1) For instance, Massachusetts MCPs must submit detailed explanations of their VBP methodologies, including attribution algorithms, enrollee and utilization data, and payment bundling logic. As part of New York's VBP Innovator Program, the state requires MCPs to modify their contracts with certain providers that achieve Innovator status through a multi-department application process.[9]

MCP penalties. Seven of the 10 study states apply financial penalties if MCPs do not meet the annual VBP targets. Texas sets penalties of up to $0.10 per member per month if overall and risk-based VBP targets are not met; these penalties can be waived if the MCPs show "exceptional performance" on preventable hospitalizations and emergency department visits. Three states—Arizona, Rhode Island, and Washington—use, or intend to use, capitation withholds that can be earned back in part by meeting VBP goals. For example, Washington MCPs can earn back up to 25 percent of a 1 percent capitation withhold if they meet the annual VBP targets and qualifying provider incentive payments. (The remaining 75 percent of the 1 percent capitation withhold is tied to achieving quality improvement targets.) New York scales penalties to MCP spending; if less than 80 percent of their expenditure is in Level 1 or higher, and if less than 35 percent of a fully capitated MCP's expenditures are made via Level 2 or higher contracts in 2020, the state will apply a penalty of 2 percent on the marginal difference between 35 percent of MCP's expenditures and total expenditures in Level 2 or higher contracts.

MCP bonuses. Some states also award financial bonuses to stimulate faster adoption of VBP contracting by MCPs and reward plans that have more contracts at higher levels of risk. For instance, New York's 2018 rate-setting process increased capitation rates for MCPs that directed more provider payments into VBP arrangements at higher risk levels; MCPs could then decide how these incentives were shared with providers when advancing to VBP. However, New York also requires MCPs to submit all provider VBP contracts to the state for review and approval to ensure that providers do not take on more risk than is financially sustainable; the level of review depends on the degree of financial risk involved. Rhode Island created an incentive pool to reward plans that contracted with more than the minimally required number of Accountable Entities by August 2018; the MCOs could earn additional funds by performing well relative to a defined set of milestones.

Table III.1. Additional VBP requirements, penalties or withholds, and bonuses for MCPs

State	Requirements other than VBP percentage targets*	Penalties or withholds	Bonuses
Arizona	Direct enrollees to providers with VBP contracts	x	
California	**	**	**
Massachusetts	Provide VBP contract details and report on VBP payments		x
New Hampshire	Submit payment reform plans and reports		x
New Mexico	Develop VBP strategic plans	x	
New York	VBP contracting with providers***	x	x
Oregon	Develop VBP strategic plans		
Rhode Island	VBP contracts with accountable entities		x
Texas	Data sharing with providers to support VBP	x	
Washington	Develop VBP strategic plans	x	

* These are examples of MCP contract requirements, not a complete list.

** According to California's STCs, the state will include VBP requirements in its updated MCP model contract. Penalties and incentives that could be tied to these requirements are not yet clear.

*** New York requires MCPs to modify their contracts with VBP Innovator Program providers identified by the state. The program is for providers who are prepared for advanced Level 2 and Level 3 VBP models and who enter into the Total Care for General Population and/or Subpopulation arrangements described in New York's VBP roadmap.

B. Safety net provider requirements, financial incentives, and other support

Safety net providers, which serve a disproportionate share of Medicaid and/or uninsured patients, tend to have limited financial resources and socially and clinically complex patient populations. To ensure their financial viability and offset low Medicaid base payment rates, many states make different types of supplemental payments to safety net providers to compensate them for this shortfall (MACPAC 2015). Due to limited financial reserves and access to capital, many safety net providers with the exception of some large integrated health systems and some federally qualified health centers, lack the data, software, staff, and workflow processes needed to participate in VBP contracts (Bachrach et al. 2012; Crawford et al. 2015; McGinnis and Van Vleet 2012; Maxwell et al. 2014).

The incentive payments to providers made through delivery system reform demonstrations are intended, by design, to build the capacity of safety net providers to engage in VBP arrangements. For example, states gradually increase the share of incentive funds that are awarded based on provider performance. Typically, eligible providers start out by earning incentive payments for infrastructure investments and project implementation.[10] In subsequent years, they receive funds for reporting quality and other metrics, and in the final years of the demonstration, they are rewarded for their performance on these metrics. By the end of the demonstration period, the share of DSRIP funding tied to performance rises to 75 percent in Washington, 85 percent in New York, and 98 percent in California. To the extent that such payments substitute in full or in part the funds they received previously as supplemental payments, safety net providers face stronger incentives to improve quality and value (Heeringa et al. 2018).

In some states, as a condition of receiving funds available through delivery system reform demonstrations, eligible providers are also subject to VBP requirements. For example, DPHs in California are required to receive payment through a VBP contract with at least one MCP. Massachusetts requires ACOs that are eligible to receive DSRIP funds to submit plans describing how they will enter into VBP arrangements with their primary care providers. Rhode Island's certification process for Accountable Entities status requires providers to agree to participate in VBP arrangements; once the Accountable Entities execute a total cost of care contract, they are eligible to earn demonstration incentive funds. To spur providers to engage in VBP, New York allows MCPs that cannot achieve their VBP goals to pass on penalties to providers judged to be able but unwilling to enter into VBP arrangements.

Eight of the 10 study states take additional steps to prepare providers for VBP adoption—for example, by helping them to understand what it means to assume higher levels of financial risk and to create organizations that are legally allowed to contract with payers through risk-based payment models. Both individual providers and provider organizations may be eligible for this support. Examples of the latter are ACOs in Massachusetts, Integrated Delivery Networks (IDNs) in New Hampshire, and Accountable Entities in Rhode Island.

Support for safety net providers falls into three categories:(1) upfront funding to enable providers to develop a plan or invest in the infrastructure needed to enter into VBP arrangements, (2) incentive payments to reward providers for meeting VBP milestones or targets, and (3) non-financial support, including training sessions and work groups, technical assistance, and data analytic support (Table III.2). The amount of funding associated with each of these categories is as important as the type of support, but funding amounts were not readily available for all 10 states; consequently, we focused on the type of support offered.

Table III.2. Types of support states give to providers to support VBP, other than DSRIP or delivery system reform payments*

Source of support	Financial support for VBP infrastructure and planning		Reward for meeting VBP milestones	VBP Goals and Accountable Entities	
	Funds paid directly to providers	MCP-administered funds	DSRIP funds	Provided by state	Provided by MCPs
Massachusetts	X			X	
New Hampshire			X	X	
New Mexico	X				X
New York		X		X	
Oregon				X	
Rhode Island		X			
Texas					X
Washington	X		X	X	

*Arizona and California are not included in this table because the descriptions of state support in their delivery system reform demonstration documents were not detailed enough for us to determine what type of support is provided.

Financial support for VBP infrastructure and planning. Four states set aside a portion of demonstration funds to support accountable entities in building the infrastructure needed to accept higher levels of risk-based VBP. For example, Massachusetts' APM preparation fund gives providers funding to "develop, expand, or enhance shared governance structures and organizational integration strategies linking providers across the continuum of care" (Massachusetts DSRIP Protocol p. 96). Rhode Island awards incentive payments through MCPs to Accountable Entities, "to develop the governance, technology, skills, and capacity to enter into risk-based contracts with Medicaid MCOs" (Rhode Island EOHHS, Medicaid Infrastructure Incentive Program: Attachment L 2: Requirements for Medicaid Managed Care Organizations and Certified Accountable Entities, 2018). New York's Quality Improvement Program (QIP) provides funding to hospitals in severe financial distress so they can maintain operations and vital services while they work toward long-term sustainability. The state channels QIP funding through the MCPs and requires the MCPs to work with regional performing provider systems (PPS) and with qualifying hospitals to improve quality and prepare to enter into VBP contracts. QIP funding in state fiscal year 2017–2018 totaled nearly $455 million and was distributed to 10 MCPs paired with 25 hospitals (Felland et al. 2018).

Financial rewards for meeting VBP milestones. Two states, New Hampshire and Washington, reward provider organizations for meeting or exceeding performance milestones specifically related to VBP. In New Hampshire, IDNs are awarded performance-based incentive payments tied to four VBP milestones.[11] Washington offers funding to accountable communities of health (ACHs) to help providers in their regions prepare for VBP. Demonstration funding also supports an MCO Challenge Pool and an ACH Reinvestment Pool, which together make up 15 percent of the yearly available DSRIP funds to reward MCOs and ACHs that meet "exceptional standards of quality and patient experience" (Washington section 1115 waiver STCs pp. 28–29). ACHs, in turn, can use the funds to reward partnering providers undertaking new VBP arrangements within the region.

Non-financial support for VBP participation. Seven of the study states offer non-financial support to help safety net providers prepare for VBP, recognizing that funds are necessary but not sufficient to achieve ambitious VBP goals. To help safety net providers climb a steep learning curve, these states provide technical assistance, data and analytics support, and VBP training and work groups. For example, New York organized "VBP boot camps" for providers and MCPs to teach providers about VBP and share best practices, organized an on-line learning series known as VBP U, and made these materials publicly available on the state's VBP Resource Library website. In addition, New York created a data analytics tool for providers to compare the cost of various VBP arrangements, building on experience with VBP pilots. New York also developed an online VBP resource library and a data analytics tool for providers to compare the cost of various VBP arrangements. New Mexico and Texas contractually require MCPs to support providers through technical assistance and workgroups.

C. Alignment of performance metrics across providers and MCPs

States can help providers become more prepared to participate in VBP arrangements with MCPs by aligning performance metrics for the two sets of organizations. Alignment helps the two groups reduce the costs associated with data collection and measure reporting and focuses system-wide improvement efforts on quality goals that are important to each state. According to a survey on VBP in Washington State, both providers and health plan respondents identified "aligned quality measurements

and definitions" as one of the top enablers to VBP adoption (Washington Health Care Authority 2018).

For each of the 10 study states, we compared performance metrics for providers participating in delivery system reform demonstrations, with those used to hold Medicaid MCPs accountable for quality, usually through capitation withholds or bonuses. Among the 10 study states, four states have made concerted efforts to align the performance metrics of provider organizations and MCPs by using two strategies: (1) promoting integrated finance and delivery systems and (2) developing common measure sets for use in VBP arrangements between providers and MCPs in order to meet state VBP goals.

Integrated finance and delivery systems. In Massachusetts and Oregon, delivery system reform demonstrations have supported the creation of integrated finance and delivery systems. Such systems were recently recognized as a new category (4C) in the HCP-LAN APM framework because of their potential to promote alignment of value-based financial incentives among plans and providers. The integrated organizational structure increases the opportunity to align the performance metrics across the two types of organizations.

- Massachusetts' DSRIP program supports three types of ACOs. The most common of the three are accountable care partnership plans, which are MCPs vertically integrated with ACO delivery systems—creating a greater incentive for them to use the same performance metrics.[12] The state recently updated the slate of ACO quality measures, and all but one overlaps with those for which MCPs are held accountable. The exception is a health-related social needs screening measure that applies only to ACOs.

- Oregon's CCOs are also integrated finance and delivery systems. As risk-based MCPs, the CCOs contract with a network of providers to deliver a comprehensive set of physical, behavioral health, and dental services. Oregon CCOs are paid via a global budget and held to a set of 34 quality and access performance metrics specified in the demonstration waiver terms. CCOs are also held to a separate set of 17 state-specific incentive metrics; if they meet the targets or benchmarks, they can receive a bonus payment through a CCO Quality Pool. The state-specific metrics change somewhat from year-to-year (for example, by having higher benchmarks or new population health priorities) to encourage continuing improvement.

Developing common measure sets for VBP arrangements. New York and Washington have made great strides in developing common quality measure sets for use in VBP contracts between providers and MCPs.

- New York, which focused specifically on metrics for Medicaid VBP contracting, convened clinical advisory groups (CAGs) to recommend quality metrics for six VBP arrangements, including two episode-based arrangements (maternity and integrated primary care) and four population-based arrangements (total cost of care for general population, behavioral health subpopulation, HIV/AIDS subpopulation, and managed long-term care subpopulation.).[13] To select metrics, CAGs considered DSRIP quality metrics for system transformation and clinical improvement projects, Quality Assurance Reporting Requirements (QARR—the measures that have been used to reward Medicaid MCP quality since 1993), other nationally recognized metric sets such as Medicaid core sets and Healthcare Effectiveness Data and Information Set (HEDIS) measures, and condition-specific metrics such as those for HIV/AIDS. The CAGs reviewed metrics for relevance, reliability, validity, and feasibility and assigned them to three categories: (1) ready for use by VBP contractors, (2) requiring feasibility testing in VBP pilots, and (3) inappropriate for use. Because measure specifications change frequently, the CAGs reconvene annually to update the metric sets and consider the addition of new measures. The state may also form new CAGs to select measures for other conditions and groups (NY VBP Roadmap 2016).

> "The starting point for this Roadmap is sustaining the achieved DSRIP results. The overall goals of the DSRIP program and payment reform are the same: to improve population health and individual health outcomes and to reward high value care delivery. The selection of the VBP arrangements, and the selection of accompanying quality measures, therefore needed to be closely aligned."
>
> –New York VBP Roadmap

- Washington's Common Measure Set for Health Care Quality and Cost, initially developed by a coalition of public and private organizations in 2014 and regularly updated since then, serves to promote aligned measurement across public and private payers, health plans, hospitals, and physician groups, and "serves as the basis for purchasing health care based on better value." (Washington Health Alliance and Healthier Washington 2017). Among the 63 quality-related measures from the Common Measure Set, nine are used in Medicaid MCO contracts and 19 measures are used in a multi-payer pilot (Washington VBP Roadmap 2018).

Although both states seek to align quality measures for MCPs and providers participating in delivery system reform, complete alignment is not necessarily appropriate. For example, at the provider level, the number of beneficiaries to which certain measures apply may be too small to construct statistically valid and reliable measures. Conversely, some measures used in provider pay-for-performance programs are not appropriate for use with MCPs, if data to risk-adjust the measures at the plan level are not available.

IV. Monitoring Progress Toward VBP Goals

At the time of this study, the 10 study states collected (or planned to collect) standardized reports and data on the use of VBP models in a manner consistent with the states' definitions and expectations.[14] These reports are used for several purposes:

- To monitor progress relative to state-established goals and targets
- To determine whether MCPs and providers are fulfilling contractual requirements, are eligible for additional incentive payments (as applicable), or are subject to any penalties
- To prepare and submit quarterly and annual progress reports to CMS, if any of the section 1115 demonstration STCs concern VBP
- To conduct an evaluation of the degree to which state mandated VBP to providers by MCPs, which qualify as state-directed payments under 42 CFR 438.6(c)(1), achieve their quality improvement goals and objectives (Neale 2017)

Among the 8 states in this study that hold MCPs accountable for meeting specified VBP goals, the most common unit of measurement is the percentage of total Medicaid managed care payments to providers that are made through VBP arrangements.[15] In Massachusetts, enrollees are considered to be receiving care under a VBP arrangement if they are attributed for some portion of the contract year to a network provider, ACO, or other entity with a shared savings/shared risk, bundled payment, or global payment arrangement. California assesses DPH performance on meeting VBP goals based on the percentage of Medicaid patients assigned, or attributed to them, who receive all or part of their care through a VBP contract with any MCP.

Most states are developing reporting templates, many of them modeled on national VBP measurement frameworks, such as the one developed by HCP-LAN (HCP-LAN 2017a). However, most states have modified the tools to fit their own needs, particularly when state-defined VBP categories differ from those specified by HCP-LAN, or when states need more information to track which providers are participating in VBP arrangements and to assess compliance with MCP contract requirements. For example, in contrast with national VBP tracking efforts, state Medicaid agencies often want to understand how VBP contracts affect the financial stability of safety net providers and track payments to provider entities that were created to advance delivery system reforms, such as those in Rhode Island. In addition, the HCP-LAN survey does not ask health plans to report the share of payment tied to an incentive, only the overall amount. States that want to track the amount of payments specifically for quality bonuses (or penalties) or shared savings have had to modify their tools accordingly.

Initial versus ongoing data collection. To establish a baseline on each entity's use of VBP according to the states' definitions, many states conduct surveys for the period(s) before the performance of each MCP or provider is assessed against the VBP targets. Once the VBP targets become effective, most states create standardized templates for the MCPs, providers or other entities to complete on a specified schedule, annually or more often. To ensure that VBP arrangements are reported consistently, states commonly develop standard definitions and common formats for data files and narrative reports.[16]

For example, Texas developed a detailed report form, modeled on the HCP-LAN framework, which MCPs must use to prepare annual VBP reports starting in calendar year (CY) 2018.[17] The "VBP Data Collection Tool" contains five worksheets, including (1) definitions, (2) data on current value-based contracts, (3) narrative on current value-based contracts, (4) proposed or planned value-based contracts, and (5) a certification page. Plans must give detailed information about all value-based contracts with providers, including: VBP contract type, level of financial risk for the plan and/or providers, service delivery areas, provider service type, estimated number of members impacted, estimated total claims paid through VBP, whether a DSRIP partnership is involved, performance metrics used, and the frequency of VBP payment.

Common data elements and types of information collected in 8 of the 10 study states are summarized in Table IV.1.[18] All eight states with available information about their VBP monitoring reports collect the amounts and share of total MCP payments made to providers in each of the payment models defined by the state. These data are then used to determine whether the MCPs meet annual VBP goals. When MCPs can receive bonuses for exceeding the annual targets, or incur penalties for not meeting the goals, states may audit the reports to validate the data, as is done in Washington.

Five of the eight states also collect data on the number of Medicaid enrollees and/or providers covered by each VBP contract and payment model. Five states require MCPs to submit lists of VBP contracts with providers, and in some cases, they must submit the actual contracts. Four states require MCPs to submit annual plans describing VBP strategies and goals for the next contract year, and one state requires plans to submit a report on the effects of the previous year's activity, as well as lessons and challenges, which informs discussions between the state and each MCP about potential improvements and how to address any negative impacts on providers.

Table IV.1. Information included in MCPs' VBP reports

State	VBP plans, strategies, and goals	Amount of payments to providers in each defined payment model	VBP contracts with providers	Number of members and/or providers covered by each payment model or contract	Effects of VBP initiatives, lessons, and challenges
Arizona	X	X			X
Massachusetts		X	X	X	
New Hampshire	X	X		X	
New Mexico	X	X	X		
New York		X	X	X	
Rhode Island		X	X	X	
Texas	X	X	X	X	
Washington		X			

Source: Mathematica analysis of Medicaid managed care contracts and other state documents. Two study states—California and Oregon—are excluded from this table because detailed information on state reporting requirements was not available at the time of this study.

Monitoring challenges. As states gain experience with collecting and analyzing the information and data in VBP reports, it might be useful to compare the results with HCP-LAN reports that track national APM adoption across payers. For example, HCP-LAN has reported that health plans found it difficult to classify all payment arrangements into single categories and that it needed to take a "high-touch, interactive approach to ensure the classifications are appropriate as the data is collected" (HCP-LAN 2017b). States and Medicaid plans may face similar challenges distinguishing among the payment models that count toward state VBP goals, particularly if MCPs have multiple VBP contracts with large health systems. In addition, the HCP-LAN cautioned against making direct comparisons between health plans and across states due to differences in "market dynamics related to supply and demand, urban and rural environments, provider or plan readiness and the like." To the extent such differences exist within states and across provider classes and types, states might also need to consider the factors that help or hinder adoption of VBP in different regions and for different types of providers in the state.

In addition, Medicaid agencies are likely to face other challenges that HCP-LAN has not yet addressed. For example, HCP-LAN does not collect data on how VBP incentive payments flow to downstream providers, because health plans say they cannot track how health systems pay individual practitioners. HCP-LAN also excludes reporting of VBP for long-term services and supports and for dual-eligible beneficiaries. Moreover, the HCP-LAN reporting format counts total payments that are made through a VBP arrangement and does not track the percentage of payment linked to value and quality, such as pay-for-performance bonuses and shared savings payments. Understanding how Medicaid agencies tackle these challenges can offer useful lessons on how to track the use of VBP for specific types of safety net providers, Medicaid services, and beneficiary groups.

V. Comparing State Progress Toward VBP Goals

At the time this study was conducted, it was too early for most states to evaluate the extent to which the adoption of VBP had achieved their ultimate goals—improved quality and health outcomes for Medicaid beneficiaries and lower cost growth.[19]

However, results from a few states were available to determine change in the use of VBP by providers and MCPs, or progress toward state VBP goals as of 2018, when this study was conducted. States had just begun to collect information and report on the results of VBP progress. For example, New York reported that at the end of its third demonstration year (March 2018,) almost 35 percent of total MCP expenditures were made through qualifying VBP arrangements, exceeding its goal of 10 percent by that time. (New York State Department of Health 2018).[20]

During 2018 and 2019, most of the 10 study states planned to hold health plans, providers, or the state Medicaid agency accountable for reaching substantially elevated levels of VBP use. Five states—California, Massachusetts, New York, Rhode Island, and Washington—were expected to meet VBP targets specified in section 1115 demonstration STCs that tied federal funding to the state's achievement of VBP goals, and 2018 was the first year states were at risk of losing federal demonstration funds if they failed to reach these goals. In addition, 2017 was the first year that MCPs in 4 of the 10 states could lose a portion of capitation payments if they did not meet the goals. Information on how many MCPs met their goals, and how much they gained or lost in capitation withholds, is an important yardstick of progress.[21]

To make fair comparisons of states' success in meeting VBP goals, it is important to consider the design of each state's VBP

policies and strategies, including: (1) the levels of risk-based VBP required and the timeline for achieving the highest level; (2) whether the state, safety net providers, MCPs, or all three parties are financially accountable for reaching VBP goals; (3) the degree to which state policies and strategies align financial incentives, payment models, and performance metrics across safety net providers and Medicaid MCPs; and (4) the type and amount of support offered to safety net providers to engage in VBP, especially in payment models that come with higher financial risk.

Although each of these factors are likely to affect the pace of delivery system and payment reform in each state, many questions remain about the size of their effects on VBP adoption. For example, the mix of VBP goals and policies in these 10 states can be categorized as either ambitious or moderate (Table V.1). States with ambitious VBP goals tend to give both MCPs and providers bonuses for meeting or exceeding goals, provide financial support to safety net providers, and promote alignment of performance metrics across providers and MCPs. States with moderate VBP goals offer bonuses to MCPs or providers, but generally not both, apply no or minimal penalties for failure to achieve VBP goals, and provide non-financial support to providers.

When setting VBP goals, each state must make a careful assessment of safety net provider readiness, operating margins, and the health information technology capabilities needed to engage in VBP arrangements, particularly at higher levels of financial risk. States with more ambitious VBP goals that require safety net providers and other Medicaid providers to take on increasing levels of financial risk over time may accelerate the pace of change—or they may be basing those goals on unrealistic expectations and see progress lagging. On the other hand, states with more moderate goals may be more successful in achieving them if they have taken into account low levels of VBP adoption and the safety net providers' vulnerable financial positions. Consequently, as part of evaluating state progress, it is also important to monitor providers' operating margins and other measures of financial health to ensure the shift to VBP does not come at the expense of providers accepting more financial risk than they can manage.

Finally, when comparing states' progress towards VBP adoption, it also might be useful to assess whether giving all parties a financial stake in the outcome leads to greater success than only one. For example, in New York, the state and the PPSs that qualify for DSRIP incentive funds can receive a greater share of federal demonstration funds by meeting the VBP goals. MCPs in New York can also earn a greater share of the capitation withhold by meeting VBP goals and can pass on penalties to providers who are able but unwilling to enter into VBP arrangements. Thus, all three parties in the state stand to gain financially (or avoid loss) by meeting VBP goals. In contrast, Oregon, New Hampshire, and Texas, whose section 1115 demonstration STCs did not tie federal funding to state achievement of VBP goals, may have less impetus to achieve the goals, and performance may be variable across MCPs and providers.

Table V.1. Comparison of state value-based payment (VBP) goals and policies

State VBP goals and policies	Ambitious	Moderate
VBP goals, including the share of VBP that is risk-based	• Ambitious VBP goals to be reached within a few years • Separate goals for advanced models involving financial risk	• Moderate VBP goals that can take longer to achieve • Do not include advanced risk-based payment models
Bonuses (and/or penalties) to meet or exceed annual targets	• Apply to both managed care plans (MCPs) and providers • Penalties for not meeting goals increase over time	• Apply to MCPs or providers, but not both • No penalties, or minimal penalties, for not meeting goals
Type (and amount) of state support to safety net providers	• Both funding and non-financial support • Targeted funding in addition to DSRIP incentive payments	• Non-financial support only
Alignment of performance metrics	• Process for aligning performance metrics across MCPs and providers	• Allow each MCP to use its own quality and performance metrics

VI. Conclusion

As the results of state monitoring reports and evaluation studies emerge, it will become possible to examine how, and to what extent, states' success in advancing the use of VBP is associated with the strategies and program designs deployed.

- Do states that simultaneously align provider-led delivery reforms with managed care payment reform achieve higher levels of VBP adoption than states that wait until delivery reforms mature before they require MCPs to reform their payment methods?
- Do states with ambitious policies and strategies designed to accelerate the adoption of VBP achieve higher levels of VBP than states with moderate policies do?
- Do states that give all parties a shared financial stake in achieving VBP goals reach them more quickly?
- Do states with a mix of VBP features—such as common payment methods and quality metrics, and shared financial risk by all parties—achieve higher levels of VBP adoption than states that allow a thousand flowers to bloom and put the financial onus on MCPs alone?

Ultimately, payment reform is a means to an end, not the end itself. Higher rates of VBP adoption are the means by which state Medicaid agencies are striving to achieve their overall goals: better health care quality, improved health outcomes for the Medicaid populations, and sustainable cost growth. Findings from evaluations of these demonstrations will shed light on whether states that achieve higher levels of VBP also have better care quality and outcomes for Medicaid beneficiaries and lower per capita cost growth than states with lower levels of VBP adoption.

ACKNOWLEDGEMENTS

The authors extend sincere thanks to leaders in the 10 states examined in this brief, who carefully reviewed the information and ensured it accurately reflected the features of their Medicaid VBP initiatives, managed care contracts and delivery system reforms as of June 2018. We are also grateful to our colleagues at Mathematica, Jessica Heeringa and Maggie Samra, for constructive comments on earlier drafts.

ABOUT THE MEDICAID SECTION 1115 EVALUATION

In 2014, the Center for Medicaid and CHIP Services within the Centers for Medicare & Medicaid Services (CMS) contracted with Mathematica, IBM Watson Health, and the Center for Health Care Strategies to conduct an independent national evaluation of the implementation and outcomes of Medicaid section 1115 demonstrations. The purpose of this cross-state evaluation is to help policymakers at the state and federal levels understand the extent to which innovations further the goals of the Medicaid program, as well as to inform CMS decisions regarding future section 1115 demonstration approvals, renewals, and amendments.

The evaluation focuses on four categories of demonstrations: (1) delivery system reform incentive payment (DSRIP) demonstrations, (2) premium assistance, (3) beneficiary engagement and premiums, and (4) managed long-term services and supports (MLTSS). This issue brief is one in a series of short reports based on semiannual tracking and analyses of demonstration implementation and progress. The reports informed an interim outcomes evaluation in 2018 and will inform a summative evaluation report in 2020.

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Endnotes

[1] 42 Code of Federal Regulations (CFR) 438.6(c). State Medicaid agencies do not need CMS approval if they (1) require MCPs to use VBP but do not mandate a specific payment methodology, and (2)give MCPs discretion in negotiating the amount, timing, and mechanism of VBP arrangements with providers.

[2] Three states—Kansas, New Jersey, and Vermont—also had delivery system reform demonstrations operating under section 1115 authority as of December 2017. We excluded them from this study because they did not specify VBP goals or requirements, either in 1115 demonstration STCs or in MCP contracts. New Jersey was required to develop and submit a plan to CMS by June 30, 2018, describing how its DSRIP program will transition to an alternative payment system by June 30, 2020, but that plan was not available at the time this study was conducted.

[3] For example, LTSS may be excluded from VBP requirements and goals or granted lower targets. Arizona, for example, sets lower targets for Regional Behavioral Health Authorities and LTSS plans for people with developmental disabilities. New Hampshire excludes LTSS entirely, and New York excludes partially capitated managed long-term care plans from its Level 2 minimum targets. New York also excludes payments to specified types of "financially challenged providers" from VBP goal calculations.

[4] Oregon section 1115 demonstration STC 36 (p. 29–33), 2017 and CCO Contract, 2016, Exhibit B – Statement of Work – Part 6 – Alternative Payment Methodologies, p. 84; and Exhibit K – Attachment 1, Areas of Transformation, p. 199. The state planned to publish information in 2019 regarding each CCO's APM baseline, improvement targets, or systems for tracking and monitoring progress to increase APMs.

[5] New Hampshire set a target only for one year, 2020. Because that year coincides with the final year of the DSRIP waiver period, we regard it as the final year's target. Oregon had not set statewide VBP targets at the time of this study but planned to do so starting in 2020.

[6] New York's section 1115 waiver STC indicates that the state's ultimate goal is 80 to 90 percent (§39).

[7] New Mexico's Level 1 is defined as FFS with bonuses or incentives and/or withhold (at least 5 percent of provider payment); Level 2 is upside-only shared savings (but may include downside risk), and two or more bundled payments for episodes of care; and Level 3 is FFS or capitation with at least 5 percent risk sharing (upside and downside), and/or global or capitated payments with full risk.

[8] When states direct MCPs to implement specific value-based payment models, either for Medicaid alone or as part of multi-payer initiatives, CMS review and approval is needed to ensure they are based on the delivery and utilization of services provided to Medicaid beneficiaries, and on the quality and outcomes of care, as required by federal rules under [42 CFR 483.6(c)(1)]. Whether such arrangements qualify as "state-directed payments" depends on the specific terms and arrangements (Neale 2017).

[9] New York's VBP Innovator Program promotes early adoption of VBP arrangements by ACOs, Independent Practice Associations, or other providers, who can participate in risk-based (Levels 2 and 3) VBP arrangements starting in 2016, by rewarding participants with up to 95 percent of the total dollars that are otherwise paid to MCOs.

[10] In most DSRIP demonstrations, providers implement projects designed to improve clinical quality, care coordination, and population health.

[11] The APM milestones for IDNs include: (1) completion of a baseline assessment of current use of and capacity to use APMs among partners; (2) participation in the development of a statewide APM roadmap; (3) development of an IDN-specific roadmap for using APMs; and (4) achievement of IDN-specific measures in the roadmap that measure progress toward meeting APM goals, including financial, legal, and clinical preparedness and engagement with MCOs (New Hampshire section 1115 waiver STC 24 and Attachment C DSRIP Planning Protocol).

[12] The other two ACO models are (1) primary care ACOs, which are provider-led health care systems or provider-based organizations that contract directly with the Medicaid program using a shared savings and risk payment arrangement; and (2) MCO-administered ACOs, which are also provider-led health systems or provider-based organizations that contract with MCPs using a shared savings and risk payment arrangement.

[13] The Integrated Primary Care arrangement consists of primary care services and 14 chronic conditions, which were selected to allow primary care providers to reap the savings that accrue from better managing care for people with these conditions. Additional CAGs are selecting measures for two more population-based arrangements: for people with intellectual and developmental disabilities and for children.

[14] At the time of this study, some of the 10 states had not yet established specific reporting requirements, but indicated that MCPs or providers would have to submit any information needed for the state to monitor the use of VBP or APM arrangements.

[15] Oregon also expects to frame its VBP goals as a percentage of total compensation paid to providers attributed to alternate payment methods when it begins to hold CCOs accountable in 2020.

[16] Quality and performance metrics are usually reported in separate data files and systems, such as MCPs' submission of HEDIS and CAHPS measures, ACO quality measure reports, and other mechanisms.

[17] Texas MCPs also had to report their VBP contractual arrangements in CY 2017. Although there were no VBP targets for that time period, the experience was intended to prepare the plans to meet CY 2018 reporting requirements when the targets went into effect.

[18] A report by Bailit Health (2018) has more information on the approaches used in New York, Rhode Island, and Texas, as well as a few states not examined in this study, including Michigan and Pennsylvania.

[19] When states require MCPs to adopt specific payment methods for VBP-APM, they are required to plan and conduct evaluations measuring the degree to which these state-directed payments advance at least one goal or objective of the managed care quality strategy. However, the federal rule requiring such evaluations, 42 CFR 438.6(c)(2)(i)(D), does not take effect until the managed care program rating period beginning July 1, 2017.

[20] New York set its VBP goals without knowing the level of managed care plans' VBP contracting. A baseline survey later found that in CY 2014, before the demonstration began, 25 percent of MCP payments to providers were already made through VBP, well above the demonstration year 3 VBP target of 10 percent (Felland et al. 2018).

[21] Reporting on VBP arrangements may lag six months or more after the end of a contract year, so the results were not available at the time of this study.

Appendix A. State Documents

ARIZONA

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Executive Office of Health and Human Services. "Appendix P: MCO-Administered ACO Contract Specifications, Model MassHealth Managed Care Organization Contract."

NEW HAMPSHIRE

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NEW MEXICO

Centers for Medicare & Medicaid Services and New Mexico Human Services Department. "Centennial Care, Section 1115 Special Terms and Conditions." Approved November 18, 2014.

New Mexico Human Services Department. "Medicaid Managed Care Services Agreement." September 1, 2017.

New Mexico Human Services Department. “Centennial Care Contract Attachment [3.A]: Value Based Purchasing (VBP) Delivery System Improvement Targets.”

State of New Mexico Human Services Department. “Application for Renewal of Section 1115 Demonstration Waiver. Centennial Care Program: Centennial Care 2.0. Submitted December 5, 2017.

NEW YORK

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RHODE ISLAND

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Rhode Island Executive Office of Health and Human Services. “Transitioning to Alternative Payment Methodologies: Requirements for Medicaid Managed Care Organizations, Version 2.0.” Revised February 2018.

TEXAS

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WASHINGTON

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D-2.

NATUROPATHIC PHYSICIANS MEDICAL BOARD
Title 4 Chapter 18

Amend: R4-18-101, R4-18-106, R4-18-108, R4-18-110, R4-18-111

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 17, 2024**

SUBJECT: **NATUROPATHIC PHYSICIANS MEDICAL BOARD**
Title 4 Chapter 18

Amend: R4-18-101, R4-18-106, R4-18-108, R4-18-110, R4-18-111

Summary:

This regular rulemaking by the Naturopathic Physician Medical Board (Board) seeks to amend five (5) rules in Title 4, Chapter 18, Article 1 regarding definitional changes to better align with statutory requirements and to remove redundant definitions.

The proposed rule amendments arose following the Board's Five-Year Review Report (5YRR) of its rules in February 2023. The amendments seek to provide more clarity, conciseness, and understandability in the rules' definitions, and the amendments also seek to improve the effectiveness of the rules.

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

The Board cites both general and specific statutory authority.

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

The amended rules do not increase any existing fees or create a new 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 Board stated in the preamble that it did not utilize or rely on any study.

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

The Board claims there should be no economic, small business or consumer impact relating to the proposed changes to the rules. The purpose of the rulemaking is to remove redundant and unnecessary language and to clarify the rules. There are no anticipated costs; there are only benefits anticipated for stakeholders.

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

The Board states that there are no anticipated costs associated with any of the proposed amendments.

6. What are the economic impacts on stakeholders?

The Board identifies stakeholders as Board licensees, applicants, and the general public. There are no anticipated costs for stakeholders. Stakeholders are anticipated to benefit from clarified language.

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

No, the final rules are not a substantial change from the proposed rules, as the few changes appear to be minor corrections to typos. The following changes appear between the Notice of Proposed Rulemaking (NPR) and the Notice of Final Rulemaking (NFR):

1. NFR lists "entitle" instead of NPR's "entitled" under the description of changes for R4-18-106 (Please see **R4-18-106 description** under Section 6);
2. NFR lists "rather relies the accreditation" instead of NPR's "rather relies on the accreditation" for R4-18-108, which is also listed as "R4-108" (Please see **R4-18-108 description** under Section 6);
3. NFR lists "striking the language 'either a photocopy of facsimile'" instead of NPR's "striking the word 'either' and the language "photocopy or facsimile." for R4-18-111(B) (Please see **R4-18-106 description** of Section 6).

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

The Board stated that no comments were provided on any of the proposed rules.

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

The Board stated that the rules do not require a permit or license that must comply 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 Board indicated that the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking by the Board seeks to amend five (5) rules in Title 4, Chapter 18, Article 1 regarding definitional changes to better align with statutory requirements and to remove redundant definitions. The proposed rule amendments arose following the Board's Five-Year Review Report (5YRR) of its rules in February 2023. The amendments seek to provide more clarity, conciseness, and understandability in the rules' definitions, and the amendments also seek to improve the effectiveness of the rules.

The Board is seeking a standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

State Of Arizona
Naturopathic Physicians Medical Board
"Protecting the Public's Health"
1740 W. Adams, Ste. 3002 Phoenix, AZ 85007
Phone: 602-542-8242, Email: info@nd.az.gov Website nd.az.gov
Katie Hobbs - Governor

August 7, 2024

Governors Regulatory Review Counsel
100 N. 15th Avenue, Ste. 302
Phoenix, AZ 85007

Re: Notice of Final Rulemaking

Chairperson Sornsin and Members of the Council,

The State of Arizona Naturopathic Physicians Medical Board is requesting approval of the attached Notice of Final Rulemaking.

Pursuant to R1-6-201(A.)(1.), the following information is provided.

a. The close of the record relating to the rule was July 10, 2024
b. The removal of the definitions of "Device" and "Medical Student" were mentioned as a course of action in the February 2023 5- year review report.
c. The rule does not establish a new fee.
d. The rule does not contain a fee increase.
e. The rule does not request an immediate effective date.
f. The preamble reflects the Board did not rely on a study to justify the rule.
g. Implementation of the rule does not require an increase in Board staff.
h. Documents enclosed.

Notice of Final Rulemaking
Emails granting Board authority to proceed with the rulemaking submission
EIS

Regards,

Gail Anthony

Gail Anthony, Executive Director
State of Arizona Naturopathic Physician Medical Board
Gail.anthony@nd.az.gov
602 542-8242

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

PREAMBLE

1.	**Article, Part, or Section Affected (as applicable)**	**Rulemaking Action**
	R4-18-101	Amend
	R4-18-106	Amend
	R4-18-108	Amend
	R4-18-110	Amend
	R4-18-111	Amend

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

Authorizing statute: A.R.S. § 32-1504(A)

Implementing statute: A.R.S. § 32-1581(H)(1.), A.R.S. § 32-1504 (24.), A.R.S. § 32-1551, A.R.S. § 32-1501(8.)(A.),(B.), A.R.S. § 32-1528.

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):

The Agency requests a general effective date.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

The Agency requests a general effective date.

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. 3638, November 24, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 3667, December 1, 2023

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

Name: Gail Anthony, Executive Director

Address: State of Arizona Naturopathic Physicians Medical Board
1740 W. Adams, Ste. 3002
Phoenix, AZ 85007

Telephone: (602) 542-8242

E-mail: Gail.anthony@nd.az.gov

Web site: https://nd.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:

R4-18-101(6.) defines "Device" by referencing A.R.S. §32-1581(H)(1.). The rule is redundant and unnecessary. R4-18-101(13.) defines "medical student" by referencing A.R.S. § 32-1504 (24.). The rule is redundant and unnecessary. R4-18-106 outlines rules relating to rehearing or review of board decisions and provides 30 days for a written motion for rehearing to be filed with the Board. The rule states in part that any party who is aggrieved by a decision issued by the Board may file the motion. The language any party is confusing because a complainant in a board case or parties not under the jurisdiction of the board are not entitle to a rehearing. For clarity purpose, the language "under the jurisdiction of the board" should be inserted. R4-108 references titles and use of abbreviations. C. and D. of this rule references "Board approved school of naturopathic medicine", however the Board does not approve schools of naturopathic medicine but rather relies the accreditation process of recognized accrediting agencies as listed in A.R.S. 32-1501(8.)(A.),(B.). The Board seeks to clarify R4-18-108(E.). A person who holds a retired naturopathic medical license may reinstate the license, therefore the retirement of the license may not be permanent. The Board seeks to strike the word permanently. R4-18-110 (B) and R4-18-110 (D) include the language "business or institution". The Board seeks to strike the language from rule because it is not needed. The Board does not regulate businesses or institutions.

R4-18-111(B) requires notice of civil and criminal actions. The Board seeks to simplify the rule by striking the language "either a photocopy of facsimile".

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 Board 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:

There should be no economic, small business or consumer impact relating to the proposed changes to rule.

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

No changes.

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

The Notice of Proposed Rulemaking was filed with the Secretary of State on November 7, 2023. The notice appeared in the December 1, 2023 Arizona Administrative Register. The Board chose a 30-day comment period that closed December 30, 2023. No comments were received by the Board during the comment period.

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 a permit.

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

Not applicable.

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

The Board did not receive such an analysis from any person.

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

This rule does not incorporate any referenced material into the rule as specified in A.R.S.§ 41-1028.

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:

This rule was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 1. GENERAL PROVISIONS

R4-18-101. Definitions

In addition to the definitions in A.R.S. § § 32-1501 through 32-1581, the following definitions apply to this Chapter unless otherwise specified:

1. "Administrative completeness review" means the Board's process for determining that an applicant has provided, or caused to be provided, all of the application packet information and documentation required by statute or rule for an application for a license or a certificate.
2. "Applicant" means a person requesting from the Board an initial, temporary, or renewal license or certificate.
3. "Approved Specialty College or Program" means a post- doctoral training program that awards a medical specialist certificate, and is certified by a Specialty Board of Examiners, The American Association of Naturopathic Physicians ("AANP") or another professional association or, another state's licensing agency, and which is recognized by the Board.
4. "Chief medical officer" means a physician who is responsible for a clinical, preceptorship, internship, or postdoctoral training program's compliance with state and federal laws, rules, and regulations.
5. "Continuing medical education" or "CME" means courses, seminars, lectures, programs, conferences, and workshops related to subjects listed in A.R.S. § 32- 1525(B), that are offered or sanctioned by one of the organizations referenced in R4-18-205(B).
6. ~~"Device" means the same as in A.R.S. § 32-1581(H)(1).~~
7. 6. "Endorsement" means the procedure for granting a license in this state to an applicant who is currently licensed to practice naturopathic medicine by another state, district, or territory of the United States or by a foreign country that requires a written examination substantially equivalent to the written examination provided for in A.R.S. § 32-1525.
8. 7. "Facility" means a health care institution as defined in A.R.S. § 36-401, office or clinic maintained by a health care institution or by an individual licensed under A.R.S. Title 32, Chapter 13, 14, 17, or 29, office or public health clinic maintained by a state or county, office or clinic operated by a qualifying community health center under A.R.S. § 36-2907.06, or an office or clinic operated by a corporation, association, partnership, or company authorized to do business in Arizona under A.R.S. Title 10.

~~9.~~ 8. "Informed consent" means a document, signed by a patient or the patient's legal guardian, which contains the information in R4-18-802(A)(1), (A)(2), and (A)(3).

~~10.~~ 9. "Institutional review board" means a group of persons that is approved according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection, which reviews investigational or experimental protocols and approves their use on animals or humans for the purposes of protecting the subjects of the investigational or experimental protocol from undue harm and assures that the research and its review is carried out according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection.

~~11.~~ 10. "Internship" means clinical and didactic training by a doctor of naturopathic medicine certified by the Board according to A.R.S. § 32-1561.

~~12.~~ 11. "License" means a document issued by the Board that authorizes the individual to whom it is issued to practice naturopathic medicine.

~~13. "Medical student" means naturopathic medical student defined in A.R.S. § 32-1501(24).~~

~~14.~~ 12. "Medication" means the same as drug defined in A.R.S. § 32-1501(15) or natural substance defined in A.R.S. § 32- 1501(23).

~~15.~~ 13."National board" means any of the following:

a. The Federation of State Medical Licensing Boards,

b. The National Board of Chiropractic Examiners,

c. The National Board of Medical Examiners,

d. The National Board of Osteopathic Examiners, or

e. The North American Board of Naturopathic Examiners.

~~16.~~ 14. "Procedure" means an activity directed at or performed on an individual for improving health, treating disease or injury, or making a diagnosis.

~~17.~~ 15. "Protocol" means an explicit detailed plan of an experimental medical procedure or test that is approved by an institutional review board.

~~18.~~ 16. "Resident physician in training" means a person who holds a degree of doctor of naturopathic medicine and is certified by the Board to diagnose and treat patients under supervision in an internship, preceptorship, or a post doctoral training program.

~~19.~~ 17. "Substantive review" means the Board's process for determining whether an applicant for licensure, certification, or approval meets the requirements of A.R.S. Title 32, Chapter 14 and this Chapter.

~~20.~~ 18. "Verified" means a notarized form dated, and signed by the applicant, affirming the information provided in the application, including any accompanying documents sub- mitted by or on behalf of the applicant, is true and complete.

R4-18-102. Board Meetings; Elections; Officers

A. The Board shall hold a regular meeting in January and July of each year. The officers shall be elected at the January meeting of the Board by majority vote of the Board members present at that meeting. The Board chairman shall preside at all Board meetings. If the chairman is disqualified or unable to attend, the Board vice-chairman shall preside at the meeting. If the Board vice-chairman is disqualified or unable to attend, the Board secretary-treasurer shall preside at the meeting.

B. If an officer's position becomes vacant, the Board shall elect a member of the Board to complete the term of office that is vacant.

C. A Board member shall attend meetings scheduled by the Board. The Board may recommend to the Governor that a Board member who fails to attend three consecutive Board meetings be removed from the Board.

R4-18-103. Duties of Board Committees

A committee appointed by the Board chairman shall make a report to the Board based on the findings or investigations of the committee and may make recommendations for further action by the Board.

R4-18-104. Repealed

R4-18-105. Reserved

R4-18-106. Rehearing or Review of Decision

A. Except as provided in subsection (G), any party under the jurisdiction of the Board who is aggrieved by a decision issued by the Board regarding an appealable agency action, may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review. For purposes of this Section, a decision is considered served when personally delivered or five days after mailing by certified mail to the party at the party's last known residence or place of business.

B. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issue raised in the motion and may provide for oral argument.

C. A rehearing or review of a decision may be granted by the Board for any of the following reasons materially affecting the party's rights:

1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct of the Board or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
7. That the findings of fact or decision is not justified by the evidence, or is contrary to law.

D. The Board may affirm or modify its decision or grant a rehearing or review, to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.

E. Not later than 35 days after the date a decision is rendered, the Board may, on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the par- ties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. In either case, the order shall specify the grounds for rehearing and review.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for good cause.

G. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions under A.R.S. Title 12, Chapter 7, Article 6.

R4-18-107. Fees

A. Application fees are as follows:

1. Medical license, $225
2. Certificate to dispense, $225
3. Medical assistant certificate, $100
4. Clinical training certificate, $0.00
5. Preceptorship certificate, $100
6. Specialty certificate, $225

B. Arizona naturopathic jurisprudence examination, $30

C. Annual renewal fees are as follows:

1. Medical license, $165
2. Certificate to Dispense, $225
3. Medical assistant certificate, $150
4. Clinical training certificate, $0.00
5. Preceptorship certificate, $225
6. Renewal of Specialty certificate, $225

D. Late renewal fees are as follows:

1. Medical license $83
2. Certificate to dispense, $113
3. Medical assistant certificate, $75
4. Clinical training certificate, $0.00

5. Preceptorship certificate, $113

6. Specialty certificate, $113

E. Other fees are as follows:

1. For a duplicate license or certificate, $20

2. For photocopying Board records, documents, letters, applications, or files, $5 or $0.25 per page, whichever is greater.

3. For each audio tape or computer disk containing information requested, $25

4. For written verification of a license or certificate, $5

5. For the costs in locating a person who is licensed or certified, Actual cost incurred by the Board.

6. For each insufficient fund check, $25.

R4-18-108. Titles, Use of Abbreviations

A. A physician issued a license by the Board may use any of the following titles or abbreviations:

1. Doctor of Naturopathic Medicine,

2. N.M.D.,

3. Doctor of Naturopathy,

4. N.D.,

5. Naturopath,

6. Naturopathic Physician, or

7. Naturopathic Medical Doctor.

B. A physician issued a license, or a graduate of a school approved by the Board, shall not use any of the following titles or abbreviations:

1. Doctor of medicine (naturopathic),

2. M.D.(N.), or

3. M.D.(naturopathic).

C. An unlicensed graduate of ~~a Board~~ an approved school of naturopathic medicine as defined in A.R.S. § 32-1501(8)(a),(b)., who is certified by the Board to engage in preceptorship training shall use the designation "(Preceptee)" after any of the designations in subsection (A). The preceptee shall also ensure that any patient

treated by the preceptee signs an informed consent treatment form stating clearly that the preceptee is undergoing training, is not licensed, and identifying the name of the supervising physician.

D. An unlicensed graduate of ~~a Board~~ an approved school of naturopathic medicine as defined in A.R.S. § 32-1501(8)(a),(b)., who is certified by the Board to engage in internship training shall use the designation "(Intern)" after any of the designations in subsection (A). The intern shall ensure that any patient treated by the intern signs an informed consent treatment form stating clearly that the intern is under- going training, is not licensed and identifying the name of the supervising physician.

E. A person who is ~~permanently~~ retired from the practice of naturopathic medicine under A.R.S. § 32-1528 may use any of the designations listed in subsection (A) if that person also uses the designation "(Retired)" after each designation.

R4-18-109. Repealed

R4-18-110. Display of Licenses and Certificates; Notice of Change of Status; Student Identification

A. Each person licensed by the Board shall display that license, or a Board issued duplicate in a conspicuous place in each location in which the person conducts regular and ongoing patient care activity.

B. A person, ~~business, or institution~~ regulated by the Board shall notify the Board of any change in the information provided to the Board concerning a license or certificate application or its renewal, including changes in name, address, place of practice, or actions taken against the licensee, for any reason, in any court or by any governmental regulatory body.

C. Each person certified by the Board to engage in clinical training shall wear an identification card issued by the approved naturopathic medical school conducting the training that clearly identifies the person as a student, at all times that the person is involved in clinical training. An approved school may keep all certificates to engage in clinical training issued by the Board at a central location of the primary training facility, if it is easily available for public viewing.

D. Each person, ~~business, or institution~~ that is issued a certificate by the Board shall display that certificate or a Board issued duplicate, in a conspicuous place at each location in which the person, business, or institution conducts regular and ongoing business activity.

E. All notice requirements under this rule shall be in writing and made within 30 days of change of status.

R4-18-111. Notice of Civil and Criminal Actions

A. As required under A.R.S. § 32-3208, A person licensed or certified by the Board shall, within 10 days of receipt, notify the Board of any notice, subpoena, summons, or receipt of complaint, whether civil or criminal, arising directly or indirectly out of the person's conduct of the person's professional activities.

B. To provide notice to the Board a person licensed or certified by the Board shall provide ~~either~~ a ~~photocopy or facsimile~~ copy of the notice or other service or a letter advising the Board of the nature of the cause of action allegations made, and the date, time, and place where appearance is required

R4-18-112. Reserved

R4-18-113. Reserved

R4-18-114. Reserved

R4-18-115. Reserved

R4-18-116 Repealed

R4-18-117 Repealed

STATE OF ARIZONA
NATUROAPTHIC PHYSICIANS MEDICAL BOARD
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 32, PROFESSIONS AND OCCUPUCANTION
CHAPTER 14, ARTICLE 6.

1. **An identification of the proposed rulemaking**.
R4-18-101(6.) defines "Device" by referencing A.R.S. § 32-1584(H)(1.). The rule is redundant and unnecessary. R4-18-101(13.) defines "medical student" by referencing A.R.S. § 32-1504 (24.). The rule is redundant and unnecessary. R4-18-106 outlines rules relating to rehearing or review of board decisions and provides 30 days for a written motion for rehearing to be filed with the Board. The rule states in part that any party who is aggrieved by a decision issued by the Board may file the motion. The language any party is confusing because a complainant in a board case or parties not under the jurisdiction of the board are not entitle to a rehearing. For clarity purpose, the language "under the jurisdiction of the board" should be inserted. R4-18-108 references titles and use of abbreviations. C. and D. of this rule references "Board approved school of naturopathic medicine", however the Board does not approve schools of naturopathic medicine but rather relies the accreditation process of recognized accrediting agencies as listed in A.R.S. 32-1501(8.)(A.),(B.). The Board seeks to clarify R4-18-108(E.). A person who holds a retired naturopathic medical license may reinstate the license, therefore the retirement of the license may not be permanent. The Board seeks to strike the word permanently. R4-18-110 (B) and R4-18-110 (D) include the language "business or institution". The Board seeks to strike the language from rule because it is not needed. The Board does not regulate businesses or institutions. R4-18-111(B) requires notice of civil and criminal actions. The Board seeks to simplify the rule by striking the language "either a photocopy of facsimile".

2. **An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.**

Persons affected:
The rulemaking affects applicants, licensees and, the general public.

Cost Bearer:
There are no anticipated costs associated with any of the proposed amendments.

Beneficiaries:
Applicants, licensees and, the general public.

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 EIS 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.

There should be no economic impact to the agency. No new FTE's are required to implement the proposed rule changes.

(b.) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.
None apparent.

(c.) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.
None apparent.

4. **A general description of the probable impact on private and public employment in business, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**
No impact anticipated.

5. **A statement of the probable impact of the rulemaking on small business.**

(a.) An identification of the small business subject to the rulemaking.
None identified

(b.)Administrative/other costs required for compliance with the rulemaking.
None identified.

(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.
None identified

(d.)The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.
There is no cost associated with this rule to private persons or consumers.

6. **A statement of the probable effect on the state revenues.**
None apparent.

7. **A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**
None apparent.

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.
None identified.

ARTICLE 1. GENERAL PROVISIONS

R4-18-101. Definitions

In addition to the definitions in A.R.S. §§ 32-1501 through 32-1581, the following definitions apply to this Chapter unless otherwise specified:

1. "Administrative completeness review" means the Board's process for determining that an applicant has provided, or caused to be provided, all of the application packet information and documentation required by statute or rule for an application for a license or a certificate.
2. "Applicant" means a person requesting from the Board an initial, temporary, or renewal license or certificate.
3. "Approved Specialty College or Program" means a postdoctoral training program that awards a medical specialist certificate, and is certified by a Specialty Board of Examiners, The American Association of Naturopathic Physicians ("AANP") or another professional association or, another state's licensing agency, and which is recognized by the Board.
4. "Chief medical officer" means a physician who is responsible for a clinical, preceptorship, internship, or postdoctoral training program's compliance with state and federal laws, rules, and regulations.
5. "Continuing medical education" or "CME" means courses, seminars, lectures, programs, conferences, and workshops related to subjects listed in A.R.S. § 32-1525(B), that are offered or sanctioned by one of the organizations referenced in R4-18-205(B).
6. "Device" means the same as in A.R.S. § 32-1581(H)(1).
7. "Endorsement" means the procedure for granting a license in this state to an applicant who is currently licensed to practice naturopathic medicine by another state, district, or territory of the United States or by a foreign country that requires a written examination substantially equivalent to the written examination provided for in A.R.S. § 32-1525.
8. "Facility" means a health care institution as defined in A.R.S. § 36-401, office or clinic maintained by a health care institution or by an individual licensed under A.R.S. Title 32, Chapter 13, 14, 17, or 29, office or public health clinic maintained by a state or county, office or clinic operated by a qualifying community health center under A.R.S. § 36-2907.06, or an office or clinic operated by a corporation, association, partnership, or company authorized to do business in Arizona under A.R.S. Title 10.
9. "Informed consent" means a document, signed by a patient or the patient's legal guardian, which contains the information in R4-18-802(A)(1), (A)(2), and (A)(3).
10. "Institutional review board" means a group of persons that is approved according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection, which reviews investigational or experimental protocols and approves their use on animals or humans for the purposes of protecting the subjects of the investigational or experimental protocol from undue harm and assures that the research and its review is carried out according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection.
11. "Internship" means clinical and didactic training by a doctor of naturopathic medicine certified by the Board according to A.R.S. § 32-1561.
12. "License" means a document issued by the Board that authorizes the individual to whom it is issued to practice naturopathic medicine.
13. "Medical student" means naturopathic medical student defined in A.R.S. § 32-1501(24).
14. "Medication" means the same as drug defined in A.R.S. § 32-1501(15) or natural substance defined in A.R.S. § 32-1501(23).
15. "National board" means any of the following:
    a. The Federation of State Medical Licensing Boards,
    b. The National Board of Chiropractic Examiners,
    c. The National Board of Medical Examiners,
    d. The National Board of Osteopathic Examiners, or
    e. The North American Board of Naturopathic Examiners.
16. "Procedure" means an activity directed at or performed on an individual for improving health, treating disease or injury, or making a diagnosis.
17. "Protocol" means an explicit detailed plan of an experimental medical procedure or test that is approved by an institutional review board.
18. "Resident physician in training" means a person who holds a degree of doctor of naturopathic medicine and is certified by the Board to diagnose and treat patients under supervision in an internship, preceptorship, or a post doctoral training program.
19. "Substantive review" means the Board's process for determining whether an applicant for licensure, certification, or approval meets the requirements of A.R.S. Title 32, Chapter 14 and this Chapter.
20. "Verified" means a notarized form dated, and signed by the applicant, affirming the information provided in the application, including any accompanying documents submitted by or on behalf of the applicant, is true and complete.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended effective December 29, 1995 (Supp. 95-4). Amended Section corrected Supp. 96-4 to reflect adopted Section on file with the Office of the Secretary of State effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-102. Board Meetings; Elections; Officers

A. The Board shall hold a regular meeting in January and July of each year. The officers shall be elected at the January meeting of the Board by majority vote of the Board members present at that meeting. The Board chairman shall preside at all Board meetings. If the chairman is disqualified or unable to attend, the Board vice-chairman shall preside at the meeting. If the Board vice-chairman is disqualified or unable to attend, the Board secretary-treasurer shall preside at the meeting.

B. If an officer's position becomes vacant, the Board shall elect a member of the Board to complete the term of office that is vacant.

C. A Board member shall attend meetings scheduled by the Board. The Board may recommend to the Governor that a Board member who fails to attend three consecutive Board meetings be removed from the Board.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6).
Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-103. Duties of Board Committees

A committee appointed by the Board chairman shall make a report to the Board based on the findings or investigations of the committee and may make recommendations for further action by the Board.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-104. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by adding a new subsection (H) effective June 18, 1987 (Supp. 87-2). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-105. Reserved

R4-18-106. Rehearing or Review of Decision

A. Except as provided in subsection (G), any party who is aggrieved by a decision issued by the Board may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review. For purposes of this Section, a decision is considered served when personally delivered or five days after mailing by certified mail to the party at the party's last known residence or place of business.

B. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issue raised in the motion and may provide for oral argument.

C. A rehearing or review of a decision may be granted by the Board for any of the following reasons materially affecting the party's rights:

1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct of the Board or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
7. That the findings of fact or decision is not justified by the evidence, or is contrary to law.

D. The Board may affirm or modify its decision or grant a rehearing or review, to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.

E. Not later than 35 days after the date a decision is rendered, the Board may, on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. In either case, the order shall specify the grounds for rehearing and review.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for good cause.

G. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(25). Exemption from A.R.S. Title 41, Chapter 6 means the Board did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Board did not submit the rules to the Governor's Regulatory Review Council for review; and the Board was not required to hold public hearings on this Section (Supp. 99-3).

R4-18-107. Fees

A. Application fees are as follows:

1. Medical license, $225
2. Certificate to dispense, $225
3. Medical assistant certificate, $100
4. Clinical training certificate, $0.00
5. Preceptorship certificate, $100
6. Specialty certificate, $225

B. Arizona naturopathic jurisprudence examination, $30

C. Annual renewal fees are as follows:

1. Medical license, $165
2. Certificate to Dispense, $225
3. Medical assistant certificate, $150
4. Clinical training certificate, $0.00
5. Preceptorship certificate, $225
6. Renewal of Specialty certificate, $225

D. Late renewal fees are as follows:

1. Medical license $83
2. Certificate to dispense, $113
3. Medical assistant certificate, $75
4. Clinical training certificate, $0.00
5. Preceptorship certificate, $113
6. Specialty certificate, $113

E. Other fees are as follows:

1. For a duplicate license or certificate, $20
2. For photocopying Board records, documents, letters, applications, or files, $5 or $0.25 per page, whichever is greater.

3. For each audio tape or computer disk containing information requested, $25
4. For written verification of a license or certificate, $5
5. For the costs in locating a person who is licensed or certified, Actual cost incurred by the Board.
6. For each insufficient fund check, $25.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended as an emergency effective December 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Amended and adopted as a permanent rule effective June 18, 1987 (Supp. 87-2). Amended paragraph (3) effective November 10, 1988 (Supp. 88-4). Section repealed; new Section adopted by exempt rulemaking at 5 A.A.R. 2874, effective July 28, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by exempt rulemaking at 18 A.A.R. 1499, effective June 6, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 1986, effective September 16, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3). Amended by exempt rulemaking at 28 A.A.R. 2643 (October 7, 2022), effective November 13, 2022 (Supp. 22-3).

R4-18-108. Titles, Use of Abbreviations

A. A physician issued a license by the Board may use any of the following titles or abbreviations:
1. Doctor of Naturopathic Medicine,
2. N.M.D.,
3. Doctor of Naturopathy,
4. N.D.,
5. Naturopath,
6. Naturopathic Physician, or
7. Naturopathic Medical Doctor.

B. A physician issued a license, or a graduate of a school approved by the Board, shall not use any of the following titles or abbreviations:
1. Doctor of medicine (naturopathic),
2. M.D.(N.), or
3. M.D.(naturopathic).

C. An unlicensed graduate of a Board approved school of naturopathic medicine who is certified by the Board to engage in preceptorship training shall use the designation "(Preceptee)" after any of the designations in subsection (A). The preceptee shall also ensure that any patient treated by the preceptee signs an informed consent treatment form stating clearly that the preceptee is undergoing training, is not licensed, and identifying the name of the supervising physician.

D. An unlicensed graduate of a Board approved school of naturopathic medicine who is certified by the Board to engage in internship training shall use the designation "(Intern)" after any of the designations in subsection (A). The intern shall ensure that any patient treated by the intern signs an informed consent treatment form stating clearly that the intern is undergoing training, is not licensed and identifying the name of the supervising physician.

E. A person who is permanently retired under A.R.S. § 32-1528 may use any of the designations listed in subsection (A) if that person also uses the designation "(Retired)" after each designation.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-109. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-110. Display of Licenses and Certificates; Notice of Change of Status; Student Identification

A. Each person licensed by the Board shall display that license, or a Board issued duplicate in a conspicuous place in each location in which the person conducts regular and ongoing patient care activity.

B. A person, business, or institution regulated by the Board shall notify the Board of any change in the information provided to the Board concerning a license or certificate application or its renewal, including changes in name, address, place of practice, or actions taken against the licensee, for any reason, in any court or by any governmental regulatory body.

C. Each person certified by the Board to engage in clinical training shall wear an identification card issued by the approved naturopathic medical school conducting the training that clearly identifies the person as a student, at all times that the person is involved in clinical training. An approved school may keep all certificates to engage in clinical training issued by the Board at a central location of the primary training facility, if it is easily available for public viewing.

D. Each person, business, or institution that is issued a certificate by the Board shall display that certificate or a Board issued duplicate, in a conspicuous place at each location in which the person, business, or institution conducts regular and ongoing business activity.

E. All notice requirements under this rule shall be in writing and made within 30 days of change of status.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-111. Notice of Civil and Criminal Actions

A. A person licensed or certified by the Board shall, within 10 days of receipt, notify the Board of any notice, subpoena, summons, or receipt of complaint, whether civil or criminal, arising directly or indirectly out of the person's conduct of the person's professional activities.

B. To provide notice to the Board a person licensed or certified by the Board shall provide either a photocopy or facsimile copy of the notice or other service or a letter advising the Board of the nature of the cause of action allegations made, and the date, time, and place where appearance is required.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-112. Reserved

R4-18-113. Reserved

R4-18-114. Reserved

R4-18-115. Reserved

R4-18-116. Repealed

Historical Note
Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-117. Repealed

Historical Note
Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 2. LICENSES; SPECIALIST CERTIFICATES; CONTINUING MEDICAL EDUCATION; RENEWAL

R4-18-201. Jurisprudence Examination
In addition to the requirements of R4-18-202 or R4-18-203, every applicant for licensure shall take and pass the Arizona Naturopathic Jurisprudence Examination, administered by the Board, with a minimum score of 75%. The examination shall consist of multiple-choice and true-false questions. If an applicant passes the jurisprudence examination to obtain a clinical training certificate under R4-18-501 and is under the continuous regulation of the Board after obtaining the clinical training certificate, the applicant is not required to take the examination again.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-202. License by Examination
In addition to the requirements of R4-18-201, an applicant for licensure by examination shall meet the requirements of A.R.S. Title 32, Chapter 14 and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified; and shall include the following information;
   a. Applicant's full name and any former names used by the applicant;
   b. Applicant's place and date of birth;
   c. Applicant's Social Security number;
   d. Applicant's home, business, and e-mail addresses;
   e. Applicant's home, business, and cell phone numbers;
   f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
   g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
   h. The date applicant took and passed the required NPLEX examinations of Part I; Biomedical examination, Part II; Clinical Science examination, Part II; Core Clinical Science Examination, and the Clinical Elective examinations in acupuncture, and minor surgery. The date applicant took and passed the examination in Arizona naturopathic jurisprudence that is administered by the Board. Applicant must have taken and passed all the required examinations within a five-year period immediately preceding the date of application submission to the Board;
   i. A list of all license or certificates issued or denied by any agency. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status, and whether or not any disciplinary actions are pending or have ever been taken;
   j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
   k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency;
   l. Whether applicant has ever been disciplined by any agency for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
   m. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
   n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
   o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States or country;
   p. Whether applicant has ever been found medically incompetent;
   q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
   r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
   s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A copy of the applicant's complete NPLEX examination record, to be sent directly to the Board by the North American Board of Naturopathic Examiners ("NABNE") or its successor;
3. A complete transcript sent directly to the Board from the approved school of naturopathic medicine from which the applicant graduated. The transcript shall include the date of graduation and the date of completion of clinical training;
4. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;
5. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, and;
6. The fees specified in R4-18-107.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-203. License by Endorsement
In addition to the requirements of R4-18-201, an applicant for licensure by endorsement shall meet the requirements of A.R.S. Title 32, Chapter 14, and provide the Board:

32-1501. Definitions

(Paragraph 31, subdivision (yy) was added with a 1998 Prop. 105 clause pursuant to L15, Ch. 256)

In this chapter, unless the context otherwise requires:

1. "Accepted therapeutic purpose" means treatment of a disease, injury, ailment or infirmity that is competent and generally recognized as safe and effective.

2. "Active license" means a current valid license to practice naturopathic medicine.

3. "Adequate medical records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, describe the treatment, accurately document the results, indicate advice and cautionary warning provided to the patient and provide sufficient information for a similarly qualified practitioner to assume continuity of the patient's care at any point in the course of treatment.

4. "Approved clinical training program" or "clinical training program" means a program for naturopathic medical students in which the training occurred or is being conducted by or in conjunction with an approved school of naturopathic medicine.

5. "Approved internship program" or "internship" means that the program in which the training occurred or is being conducted has been approved for internship training for physicians or for graduates of a school of naturopathic medicine by the board or was approved or accredited by an educational or professional association recognized by the board or by another state's or country's licensing agency recognized by the board.

6. "Approved postdoctoral training" or "postdoctoral training" means that the program in which the training occurred or is being conducted has been approved for specialty training or for graduate medical education in naturopathic medicine by the board or approved or accredited by an educational or professional association recognized by the board or by another state's or country's licensing agency recognized by the board.

7. "Approved preceptorship program" or "preceptorship" means that the program in which the training occurred or is being conducted has been approved for preceptorship training for physicians or for graduates of a school of naturopathic medicine by the board or was approved or accredited by an educational or professional association recognized by the board or by another state's or country's licensing agency recognized by the board.

8. "Approved school of naturopathic medicine" or "school of naturopathic medicine" means a school, college or university determined by the board to have an educational program that meets standards prescribed by the council on naturopathic medical education, or its successor agency, and that offers a course of study that, on successful completion, results in the awarding of the degree of doctor of naturopathic medicine and whose course of study is either of the following:

(a) Accredited or a candidate for accreditation by an accrediting agency recognized by the United States secretary of education as a specialized accrediting agency for schools of naturopathic medicine or its successor.

(b) Accredited or a candidate for accreditation by an accrediting agency recognized by the council for higher education accreditation or its successor.

9. "Board" means the naturopathic physicians medical board.

10. "Chelation therapy" means an experimental medical therapy to restore cellular homeostasis through the use of intravenous, metal-binding and bioinorganic agents such as ethylene diamine tetraacetic acid. Chelation

therapy does not include experimental therapy used to treat heavy metal poisoning.

11. "Completed application" means that the applicant paid the required fees and supplied all documents and information as requested by the board and in a manner acceptable to the board.

12. "Controlled substance" means a drug, substance or immediate precursor in schedules I through V of title 36, chapter 27, article 2 or the rules adopted pursuant to title 36, chapter 27, article 2.

13. "Direct supervision" means that a physician who is licensed pursuant to this chapter or chapter 13, 17 or 29 of this title:

(a) Is physically present and within sight or sound of the person supervised and is available for consultation regarding procedures that the physician has authorized and for which the physician remains responsible.

(b) Has designated a person licensed pursuant to this chapter or chapter 13, 17 or 29 of this title to provide direct supervision in the physician's absence.

14. "Doctor of naturopathic medicine" or "doctor" means a natural person who is licensed to practice naturopathic medicine under this chapter.

15. "Drug" has the same meaning prescribed in section 32-1901 but does not include:

(a) Intravenous administration of legend drugs, except for:

(i) Vitamins, chelation therapy and drugs used in emergency resuscitation and stabilization.

(ii) Minerals.

(iii) Nutrients. For the purposes of this item, "nutrient" means a substance that provides nourishment for growth or metabolism and that is manufactured and supplied for intravenous use by a manufacturer registered with the United States food and drug administration or compounded by a pharmacy licensed by the Arizona state board of pharmacy.

(b) Controlled substances listed as schedule I or II controlled substances as defined in the federal controlled substances act of 1970 (21 United States Code section 802), except morphine, any drug that is reclassified from schedule III to schedule II after January 1, 2014 and any homeopathic preparations that are also controlled substances.

(c) Cancer chemotherapeutics classified as legend drugs.

(d) Antipsychotics.

16. "General supervision" means that the physician is available for consultation regarding procedures that the physician has authorized and for which the physician remains responsible.

17. "Legend drug" means any drug that is defined by section 503(b) of the federal food, drug, and cosmetic act and under which definition its label is required to bear the statement "Rx only".

18. "Letter of concern" means a nondisciplinary advisory letter that is issued by the board to a person who is regulated under this chapter and that states that while there is insufficient evidence to support disciplinary action the board believes that the person 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 person's license, certificate or registration.

19. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs a person who is regulated under this chapter that the person's conduct violates state or federal law but does not require the board

to restrict the person's license, certificate or registration because the person's conduct did not result in harm to a patient or to the public.

20. "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.

21. "Medical assistant" or "naturopathic medical assistant" means a person who is certified by the board as a medical assistant, who assists a doctor of naturopathic medicine and who may perform delegated procedures that are commensurate with the assistant's education and training under the direct supervision of a doctor of naturopathic medicine and that do not include diagnosing, designing or modifying established treatment programs or those procedures prohibited by the board or by this chapter.

22. "Medically incompetent" means a person who is licensed, certified or registered pursuant to this chapter and who lacks sufficient naturopathic medical knowledge or skills, or both, to a degree that is likely to endanger the health of patients.

23. "Natural substance" means a homeopathic, botanical, nutritional or other supplement that does not require a prescription pursuant to federal law before it is prescribed, dispensed or otherwise furnished to a patient and that is prescribed by a physician who is licensed pursuant to this chapter to enhance health, prevent disease or treat a medical condition diagnosed by the physician.

24. "Naturopathic medical student" means a person who is enrolled in a course of study at an approved school of naturopathic medicine.

25. "Naturopathic medicine" means medicine as taught in approved schools of naturopathic medicine and in clinical, internship, preceptorship and postdoctoral training programs approved by the board and practiced by a recipient of a degree of doctor of naturopathic medicine licensed pursuant to this chapter.

26. "Nurse" means a person who is licensed pursuant to chapter 15 of this title.

27. "Physician" means a doctor of naturopathic medicine who is licensed pursuant to this chapter.

28. "Practice of naturopathic medicine" means a medical system of diagnosing and treating diseases, injuries, ailments, infirmities and other conditions of the human mind and body, including by natural means, drugless methods, drugs, nonsurgical methods, devices, physical, electrical, hygienic and sanitary measures and all forms of physical agents and modalities.

29. "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.

30. "Specialist" means a physician who has successfully completed approved postdoctoral training, who is certified by a specialty board of examiners recognized by the board and who is certified by the board to practice the specialty pursuant to this chapter.

31. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either of these may otherwise be required by law.

(b) Engaging in any dishonorable conduct reflecting unfavorably on the profession.

(c) 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 of the felony or misdemeanor.

(d) Habitual intemperance in the use of alcohol or any substance abuse.

(e) Engaging in the illegal use of any narcotic or hypnotic drugs, or illegal substances.

(f) Engaging in conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Impersonating another doctor of naturopathic medicine or any other practitioner of the healing arts.

(h) Falsely acting or assuming to act as a member, an employee or an authorized agent of the board.

(i) Procuring or attempting to procure a license or a certificate pursuant to this chapter by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or agency.

(j) Having professional connection with or lending one's name to enhance or continue the activities of an illegal physician or an illegal practitioner of any healing art.

(k) Representing that a manifestly incurable disease, injury, ailment or infirmity can be permanently cured, or falsely or fraudulently representing that a curable disease, injury, ailment or infirmity can be cured within a stated time.

(l) Offering, undertaking or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, treatment, medicine, substance, device or instrumentality.

(m) Refusing to divulge to the board on demand the means, method, treatment, medicine, substance, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity.

(n) Giving or receiving, or aiding or abetting the giving or receiving of, rebates, either directly or indirectly.

(o) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of naturopathic medicine or any naturopathic treatment method.

(p) Engaging in immorality or misconduct that tends to discredit the naturopathic profession.

(q) Having a license refused, revoked or suspended by any other state, district or territory of the United States or any other country, unless it can be shown that this action was not due to reasons that relate to the ability to safely and skillfully practice as a doctor of naturopathic medicine or to any act of unprofessional conduct in this paragraph.

(r) Engaging in any conduct or practice that is contrary to recognized standards of ethics of the naturopathic profession, any conduct or practice that does or might constitute a danger to the health, welfare or safety of the patient or the public, or any conduct, practice or condition that does or might impair the ability to safely and skillfully practice as a doctor of naturopathic medicine.

(s) Failing to observe any federal, state, county or municipal law relating to public health as a physician in this state.

(t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate this chapter or board rules.

(u) Committing false, fraudulent, deceptive or misleading advertising or advertising the quality of a medical or health care service by a physician or by the physician's staff, employer or representative.

(v) Failing or refusing to maintain adequate medical records on a patient or failing or refusing to make medical records in the physician's possession promptly available to another physician or health care provider who is licensed pursuant to chapter 7, 8, 13, 15, 17 or 29 of this title on request and 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.

(w) Referring a patient to a diagnostic or treatment facility or prescribing goods and services without disclosing in writing to the patient that the physician has a pecuniary interest in the facility, goods or services to which the patient is referred or prescribed. This subdivision does not apply to a referral by one physician or practitioner to another physician or practitioner within a group of physicians or practitioners practicing together.

(x) Engaging in sexual intimacies with a patient in the course of direct treatment.

(y) Failing to dispense drugs and devices in compliance with article 4 of this chapter.

(z) Administering, dispensing or prescribing any drug or a device for other than an accepted therapeutic purpose.

(aa) Falsely representing or holding oneself out as being a specialist or representation by a doctor of naturopathic medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or that standing is not current.

(bb) Delegating professional duties and responsibilities to a person if the person has not been approved or qualified by licensure or by certification to perform these duties or responsibilities.

(cc) Failing to appropriately supervise a naturopathic medical student, a nurse, a medical assistant, a health care provider or a technician who is employed by or assigned to the physician during the performance of delegated professional duties and responsibilities.

(dd) Using experimental forms of diagnosis or treatment without adequate informed consent of the patient or the patient's legal guardian and without conforming to 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.

(ee) Failing to furnish information in a timely manner to the board or investigators or representatives of the board if this information is legally requested by the board and 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.

(ff) Failing to report in writing to the board evidence that a person who is licensed, certified or registered pursuant to this chapter is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice or assist in the practice of naturopathic medicine.

(gg) Conducting or engaging in an internship or preceptorship in naturopathic medicine without being approved and registered by the board for that internship or preceptorship.

(hh) Signing a blank, undated or predated prescription form.

(ii) Engaging in conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm or death to a patient.

(jj) Knowingly making a false or misleading statement in oral testimony to the board on a form required by the board or in written correspondence to the board, including attachments to that correspondence.

(kk) The failure of a physician who is the chief medical officer, the executive officer or the chief of staff of an internship, a preceptorship or a clinical training program to report in writing to the board that the privileges of a doctor of naturopathic medicine, a naturopathic medical student or a medical assistant have been denied, limited, revoked or suspended because that doctor's, student's or assistant's actions appear to indicate that the person is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to safely engage or assist in the practice of naturopathic medicine.

(ll) Having action taken against a doctor of naturopathic medicine by a licensing or regulatory board in another jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of naturopathic medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that licensing or regulatory board 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, otherwise limiting, restricting or monitoring a licensee or placing a licensee on probation by that licensing or regulatory board.

(mm) Having sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of naturopathic medicine or restricting that person's ability to obtain financial remuneration.

(nn) Violating any formal order, probation, consent agreement or stipulation issued or entered into by the board pursuant to this chapter.

(oo) Refusing to submit to a body fluid examination pursuant to a board investigation of alleged substance abuse by a doctor of naturopathic medicine.

(pp) 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 this effect.

(qq) Obtaining a fee by fraud, deceit or misrepresentation.

(rr) 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 required 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 was entered into before the service was provided.

(ss) 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.

(tt) Using a controlled substance unless it is prescribed by another physician for use during a prescribed course of treatment.

(uu) Prescribing, dispensing or administering anabolic androgenic steroids for other than therapeutic purposes.

(vv) Except in an emergency or urgent care situation, prescribing or dispensing a controlled substance to a member of the naturopathic physician's immediate family.

(ww) 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 examination of that person or has previously established a doctor-patient relationship. The physical examination may be conducted through telehealth as defined in section 36-3601 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 licensee who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional.

(ii) An emergency medical situation 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, a public health emergency, an infectious disease outbreak or an 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 by a licensee through a telehealth program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(xx) If medical treatment is considered experimental or investigational, failing to include in a patient's record a consent to treatment document that is signed by the patient or the patient's parent or legal guardian and that indicates that the patient or the patient's parent or legal guardian has been informed of the risk of any treatment to be provided and the expected cost of that treatment.

(yy) When issuing a written certification as defined in section 36-2801, failing or refusing to include in the adequate medical records of a patient a copy of all of the following:

(i) The medical records relied on by the physician to support the diagnosis or confirmed diagnosis of the patient's debilitating medical condition.

(ii) The written certification.

(iii) The patient's profile on the Arizona board of pharmacy controlled substances prescription monitoring program database.

(zz) Dispensing a schedule II controlled substance that is an opioid.

32-1504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary or proper for the administration of this chapter.

2. Administer and enforce all provisions of this chapter and all rules adopted by the board under the authority granted by this chapter.

3. Adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.

4. Adopt rules for the approval of schools of naturopathic medicine. The board may incorporate by reference the accrediting standards for naturopathic medical schools published by accrediting agencies recognized by the United States department of education or recognized by the council for higher education accreditation.

5. Adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, naturopathic graduate medical education and naturopathic continuing medical education programs. The rules for naturopathic continuing medical education programs shall require at least ten hours each year directly related to pharmacotherapeutics.

6. Periodically inspect and evaluate clinical, internship, preceptorship and postdoctoral training programs and naturopathic graduate medical education programs and randomly evaluate naturopathic continuing medical education programs.

7. Adopt rules relating to the dispensing of natural substances, drugs and devices.

8. Adopt rules necessary for the safe administration of intravenous nutrients. These rules shall identify and exclude substances that do not meet the criteria of nutrients suitable for intravenous administration.

9. Adopt and use a seal.

10. Have the full and free exchange of information with the licensing and disciplinary boards of other states and countries and with the American association of naturopathic physicians, the Arizona naturopathic medical association, the association of naturopathic medical colleges, the federation of naturopathic medical licensing boards and the naturopathic medical societies of other states, districts and territories of the United States or other countries.

B. The board may:

1. Adopt rules that prescribe annual continuing medical education for the renewal of licenses issued under this chapter.

2. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.

3. Adopt rules relating to naturopathic medical specialties and determine the qualifications of doctors of naturopathic medicine who may represent or hold themselves out as being specialists.

4. If reasonable cause exists to believe that the competency of an applicant or a person who is regulated by the board is in question, require that person to undergo any combination of physical, mental, biological fluid and laboratory tests.

5. Be a dues paying member of national organizations that support licensing agencies in their licensing and regulatory duties and pay the travel expenses involved for a designated board member or the executive director

to represent the board at the annual meeting of these organizations.

6. Adopt rules for conducting licensing examinations required by this chapter.

7. Delegate to the executive director the board's authority pursuant to sections 32-1509 and 32-1551.

32-1528. Retired licensee; waiver of fees; reinstatement

A. The board may waive a physician's annual renewal fee if the physician has paid all past fees and presents an affidavit to the board that the physician has permanently retired from the practice of naturopathic medicine.

B. A physician whose annual renewal fee has been waived by the board and who is permanently retired from the practice of naturopathic medicine is not required to comply with any continuing medical education requirements of this chapter.

C. If a retired physician who has had the annual renewal fee waived by the board engages in the practice of naturopathic medicine, the physician is subject to the same penalties that are imposed under this chapter on a person who practices naturopathic medicine without a license or without being exempt from licensure.

D. The board may reinstate a retired physician to active practice on payment of the annual renewal fee as prescribed in section 32-1527 and, if requested by the board, on presentation of evidence satisfactory to the board that the applicant for reinstatement of a retired license is professionally able to engage or assist in the practice of naturopathic medicine and possesses the professional knowledge required.

E. If an applicant for reinstatement of a retired license has not been licensed and actively practicing in a jurisdiction of the United States or Canada in the three years immediately preceding the application, the board may issue a limited license that requires a period of general or direct supervision by another licensed naturopathic physician not to exceed one year.

32-1551. Disciplinary action; duty to report; investigatory powers; immunity; hearing; appeal; notice

A. The board on its own motion may investigate any evidence that appears to show that a doctor of naturopathic medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to engage safely in the practice of naturopathic medicine. Any person may, and a doctor of naturopathic medicine, the Arizona naturopathic medical association, a component society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of naturopathic medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to engage safely in the practice of naturopathic medicine. The board or the executive director shall notify the doctor as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of naturopathic medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The board or, if delegated by the board, the executive director shall require any combination of mental, physical or oral or written medical competency examinations and conduct necessary investigations including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under this section. These examinations may include biological fluid testing and psychological or psychiatric evaluation. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of naturopathic medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program.

F. If after completing its investigation the board believes that the information is or may be true, it may request a formal interview with the doctor. If the doctor refuses the invitation or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds the information provided under this section is not of sufficient

seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.

2. File a letter of concern.

3. File a letter of reprimand.

4. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

5. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary license suspension for not to exceed twelve months, restriction of the doctor's license to practice naturopathic medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter including noncompliance with the terms of probation, a consent agreement or a stipulated agreement.

6. Enter into an agreement with the doctor to restrict or limit the doctor's practice or medical activities in order to rehabilitate, retrain or assess the doctor, protect the public and ensure the physician's ability to safely engage in the practice of naturopathic medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection E of this section.

7. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board finds that the information provided in an investigation warrants suspension or revocation of a license issued under this chapter, it must initiate formal proceedings pursuant to title 41, chapter 6, article 10.

H. Any doctor of naturopathic medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of naturopathic medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension or revocation of a license or any combination of these under any conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

I. If the naturopathic physicians board of medical examiners acts to modify any doctor's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

J. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

K. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

L. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail.

M. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of naturopathic medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

N. The board may administer the oath to all witnesses and shall keep a written transcript of all oral testimony submitted at the hearing and the original or a copy of all other evidence submitted. The board may waive the technical rules of evidence at any hearing conducted under this section.

O. Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from decisions of the board pursuant to title 12, chapter 7, article 6.

VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 56th Legislature, 1st Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 56th Legislature, 2nd Regular Session, which convenes in January 2024.

DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

32-1581. Dispensing of natural substances, drugs and devices; conditions; civil penalty; dispensing minerals; rules; definitions

A. A doctor of naturopathic medicine may dispense a natural substance, a drug, except a schedule II controlled substance that is an opioid, or a device to a patient for a condition that is being diagnosed or treated by the doctor if:

1. The doctor is certified to dispense by the board and the certificate has not been suspended or revoked by the board.

2. The natural substance, drug or device is dispensed and properly labeled with the following dispenser information:

(a) The dispensing doctor's name, address and telephone number and a prescription number or other method of identifying the prescription.

(b) The date the natural substance, drug or device is dispensed.

(c) The patient's name.

(d) The name and strength of the natural substance, drug or device, directions for proper and appropriate use and any cautionary statements for the natural substance, drug or device. If a generic drug is dispensed, the manufacturer's name must be included.

3. The dispensing doctor enters into the patient's medical record the name and strength of the natural substance, drug or device dispensed, the date the natural substance, drug or device is dispensed and the therapeutic reason.

4. The dispensing doctor keeps all prescription-only drugs, controlled substances and prescription-only devices in a secured cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency, a doctor of naturopathic medicine who dispenses a natural substance, drug or device without being certified to dispense by the board is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and may be prohibited from further dispensing for a period of time as determined by the board.

by the board.

C. Before dispensing a natural substance, drug or device pursuant to this section, the treating doctor shall give the patient or the patient's legal guardian a written prescription and must inform the patient or the patient's legal guardian that the prescription may be filled by the prescribing doctor or the pharmacy of the patient's choice. If the patient chooses to have the medication dispensed by the doctor, the doctor must retrieve the written prescription and place it in a prescription file kept by the doctor.

D. A doctor of naturopathic medicine shall provide direct supervision of a nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a doctor of naturopathic medicine is present and makes the determination as to the necessary use or the advisability of the natural substance, drug or device to be dispensed.

E. The board shall enforce this section. The board shall adopt rules regarding the dispensing of a natural substance, drug or device, including the labeling, recordkeeping, storage and packaging of natural substances, that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. This section does not prevent a licensed practical or professional nurse employed by a doctor of naturopathic medicine from assisting in the delivery of natural substances, drugs and devices in accordance with this chapter.

G. Before prescribing or dispensing a mineral to a patient, the treating physician shall perform necessary clinical examinations and laboratory tests to prevent toxicity due to the excessive intake of magnesium, calcium and other minerals. The board shall adopt rules necessary for the safe administration of minerals. These rules shall require prior certification of a physician who prescribes or dispenses minerals to a patient.

H. For the purposes of this section:

1. "Device" means an appliance, apparatus or instrument that is administered or dispensed to a patient by a doctor of naturopathic medicine.

2. "Dispense" means the delivery by a doctor of naturopathic medicine of a natural substance, drug or device to a patient and only for a condition being diagnosed or treated by that doctor, except for free samples packaged for individual use by licensed manufacturers or repackagers, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the natural substance, drug or device for delivery to the treating doctor's own patient.

D-3.

BOARD OF PHARMACY
Title 4, Chapter 23, Article 11

Amend: Article 11, R4-23-1102, R4-23-1103, R4-23-1104, R4-23-1105

Repeal: R4-23-1101, R4-23-1104.01, R4-23-1106

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 12, 2024**

SUBJECT: **BOARD OF PHARMACY**
Title 4, Chapter 23, Article 11

Amend: Article 11, R4-23-1102, R4-23-1103, R4-23-1104, R4-23-1105

Repeal: R4-23-1101, R4-23-1104.01, R4-23-1106

Summary:

This regular rulemaking from the Arizona Board of Pharmacy (Board) seeks to amend one (1) article and four (4) sections and repeal three (3) sections in Title 4, Chapter 23, Article 11. The Arizona Board of Pharmacy protects the health, safety, and welfare of Arizona citizens by regulating the practice of pharmacy and the distribution, sale, and storage of prescription medications and devices and non-prescription medications. A.R.S. § 32-1923.01 governs regulation of pharmacy technicians and pharmacy technician trainees and the rules in Article 11 implement the statutory requirements for pharmacy technicians and pharmacy technician trainees. The Board is making changes to update the rules to make them consistent with legislative changes to A.R.S. § 32-1923.01(B), which requires pharmacy technician trainees to register with the Board rather than be licensed by the Board. The Board is also repealing unnecessarily prescriptive requirements in several Sections and addressing the issues identified in the June 2024 5YRR.

The Board is seeking the standard 60-day delayed effective date.

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 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 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 determined the rulemaking has minimal economic impact because it makes only non-substantive changes to improve clarity, reduce regulatory burdens, and provide consistency with statute. It is noted that requiring a pharmacy technician trainee to register with the Board rather than be licensed by the Board results from a statutory change rather than this rulemaking.

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

Because the rulemaking is neither intrusive nor costly, the Board did not consider alternative methods.

6. What are the economic impacts on stakeholders?

Pharmacy technicians, pharmacy technician trainees, pharmacy permittees, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking. The rulemaking results only in benefits for pharmacy permittees by repealing unnecessarily prescriptive requirements and allowing pharmacy permittees flexibility in how they choose to fulfill an existing requirement.

The Board determined that the following minor changes would have minimal economic cost and benefit for those affected: Pharmacy technicians have more than one examination approved by the Board; Pharmacy technician trainees do not have to purchase a wall license; Pharmacy technician trainees who leave a training program are provided written evidence of the hours of training completed and tasks for which competence was demonstrated; Pharmacy permittees have flexibility regarding policies and procedures addressing tasks performed by pharmacy technicians and pharmacy technician trainees; Pharmacy permittees have flexibility regarding a pharmacy technician training program; and Pharmacy permittees have flexibility regarding a pharmacy technician drug compounding

training program.

Private persons, consumers, state revenues, private and public employment, and political subdivisions are not affected by the rulemaking.

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

ARS §41-1057(D)(7) states the Council shall not approve the rule unless "[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices."

The Board states that a comment was received from Lauren Paul, Executive Director of Pharmacy Regulatory Affairs for CVS Pharmacy, who brought the Board's attention to a drafting error. The Board failed to remove references to technology assisted verification in other rules, when R4-23-1104.01, dealing with technology-assisted verification, was deleted.

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

The Board states that a comment was received from Lauren Paul, Executive Director of Pharmacy Regulatory Affairs for CVS Pharmacy, who brought the Board's attention to a drafting error. The Board failed to remove references to technology assisted verification in other rules, when R4-23-1104.01, dealing with technology-assisted verification, was deleted. The Board updated the proposed rule with this amendment.

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 R4-23-1102 and R4-23-1103 qualify for an exception under A.R.S. § 41-1037(A)(2) as an issuance of an alternative type of permit, license or authorization is specifically authorized by state 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 indicates that there is no corresponding federal law to these rules.

11. Conclusion

This regular rulemaking from the Arizona Board of Pharmacy seeks to amend one article and four sections and repeal three sections in Title 4, Chapter 23, Article 11. As indicated above, this rulemaking does not establish or increase a fee and the Board adequately addressed the public comment received. The Board is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.

Arizona State Board of Pharmacy

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August 19, 2024

Ms. Jessica Klein, 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. Klein:

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, 2024, 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).

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to a 5YRR submitted to the Council on June 10, 2024.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

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

F. Certification regarding studies: I certify the preamble accurately discloses the Board did not review or rely on a study 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 none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   3. Economic, Small Business, and Consumer Impact Statement;
   4. Public comments

Sincerely,

Kamlesh Gandhi
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on:

August 15, 2024

2.

Article, Part, or Section Affected (as applicable)	Rulemaking Action
Article 11	Amend
R4-23-1101	Repeal
R4-23-1102	Amend
R4-23-1103	Amend
R4-23-1104	Amend
R4-23-1104.01	Repeal
R4-23-1105	Amend
R4-23-1106	Repeal

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

Authorizing statute: A.R.S. § 32-1904(A)(1)
Implementing statute: A.R.S. §§ 32-1923.01, 32-1924, and 32-1925

4. The effective date of the rule:

As specified under A.R.S. § 41-1032(A), the rule becomes effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State. The effective date is (to be filled in by *Register* editor).

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 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 the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 2239, Issue Date: July 5, 2024, Issue Number: 27, File number: R24-123
Notice of Proposed Rulemaking: 30 A.A.R. 2159, Issue Date: July 5, 2024, Issue Number: 27, File number: R24-116

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

Name: Kamlesh Gandhi
Address: 1110 W Washington Street, Ste. 260, Phoenix, AZ 85007
Telephone: (602) 771-2727
E-mail: kgandhi@aspharmacy.gov
Web site: www.azpharmacy.gov

7. 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 non-substantive changes to clarify the rules and make them consistent with a legislative change to A.R.S. § 32-1923.01(B), which went into effect on July 1, 2023. The statutory change requires pharmacy technician trainees to register with the Board rather than be licensed by the Board. The Board is also reducing regulatory burdens by repealing unnecessarily prescriptive requirements in several Sections. Additional changes address issues identified in a 5YRR submitted to the Council on June 10, 2024.

8. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

9. 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

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

The Board determined the rulemaking has minimal economic impact because it makes only non-substantive changes to improve clarity, reduce regulatory burdens, and provide consistency with statute.

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

As a result of a comment submitted by Lauren Paul, Executive Director of Pharmacy Regulatory Affairs for CVS Pharmacy, R4-23-1104(B)(3) and (4) were repealed and conforming changes made to subsequent subsections. This change, which resulted from a drafting error, is not substantial under the terms of A.R.S. § 41-1025.

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

A comment was received from Lauren Paul, Executive Director of Pharmacy Regulatory Affairs for CVS Pharmacy. She called the Board's attention to a drafting error. Although the Board deleted R4-23-1104.01 dealing with technology-assisted verification of product in the Notice of Proposed Rulemaking, the Board failed to delete R4-23-1104(B)(3) and (4), which reference technology-assisted verification of product. The Board appreciates Ms. Paul's review of the Notice of Proposed Rulemaking and made the changes identified.

Ms. Paul also indicated R4-23-402(A)(12) references technology-assisted verification of product. That subsection cannot be repealed in this rulemaking but the Board made note of the need to address it in a future rulemaking.

13. 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:

Not applicable

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. The registration and license addressed in R4-23-1102 and R4-23-1103 are provided only to individuals qualified under A.R.S. § 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 of any rule in this 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:

Not applicable

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

Not applicable

15. 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

16. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 11. PHARMACY TECHNICIANS; PHARMACY TECHNICIAN TRAINEES

Section

R4-23-1101. ~~Licensure and Eligibility~~ Repealed

R4-23-1102. Pharmacy Technician Licensure

R4-23-1103. Pharmacy Technician Trainee ~~Licensure~~ Registration

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

R4-23-1104.01. ~~Technology-assisted Verification of Product~~ Repealed

ARTICLE 11. PHARMACY TECHNICIANS; PHARMACY TECHNICIAN TRAINEES

R4-23-1101. ~~Licensure and Eligibility~~ Repealed

~~**A.** License required. A person shall not work as a pharmacy technician or pharmacy technician trainee in Arizona, unless the person possesses a pharmacy technician or pharmacy technician trainee license issued by the Board.~~

~~**B.** Eligibility.~~

~~1. To be eligible for licensure as a pharmacy technician trainee, a person shall:~~
~~a. Be of good moral character,~~
~~b. Be at least 18 years of age, and~~
~~c. Have a high school diploma or the equivalent of a high school diploma.~~
~~2. To be eligible for licensure as a pharmacy technician, a person shall:~~
~~a. Meet the requirements of subsection (B)(1),~~
~~b. Complete a pharmacy technician training program that meets the standards prescribed in R4-23-1105, and~~
~~c. Pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination.~~

~~**C.** A pharmacy technician delinquent license. Before an Arizona pharmacy technician license will be reinstated, a pharmacy technician whose Arizona pharmacy technician license is delinquent for five or more consecutive years shall furnish to the Board satisfactory proof of fitness to be licensed as a pharmacy technician and pay all past due biennial renewal fees and penalty fees. Satisfactory proof includes:~~

~~1. For a person with a delinquent license who is practicing as a pharmacy technician out of state with a pharmacy technician license issued by another jurisdiction:~~
~~a. Proof of current, unrestricted pharmacy technician licensure in another jurisdiction; and~~
~~b. Proof of employment as a pharmacy technician during the last 12 months; or~~
~~2. For a person with a delinquent license who did not practice as a pharmacy technician within the last 12 months:~~
~~a. Take and pass a Board-approved pharmacy technician examination, and~~
~~b. Complete 20 contact hours or two CEUs of continuing education activity sponsored by an approved provider, including at least two contact hours or 0.2 CEUs of continuing education activity in pharmacy law.~~

R4-23-1102. Pharmacy Technician Licensure

A. License required. A person shall not work as a pharmacy technician in Arizona unless the person possesses a license issued by the Board. A licensed pharmacy technician shall maintain the certificate of licensure, which is in good standing, at the practice site for inspection by the Board or its designee or review by the public. A license issued by the Board is not transferable.

~~**A.**~~**B.** Eligibility. An applicant for licensure as a pharmacy technician, as defined at A.R.S. § 32-1901, shall provide the Board proof the applicant is eligible under ~~R4-23-1101(B)(2)~~ A.R.S. § 32-1923.01(A), including documentation ~~that~~ the applicant:

1. ~~Completed a pharmacy technician training program that meets the standards prescribed in R4-23-1105(B)(2); and~~ Passed a Board-approved pharmacy technician examination;
2. ~~Passed the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination;~~ Passed the Foreign Pharmacy Graduate Equivalency Examination, if applicable; or
3. Graduated from a Board-approved pharmacy school.
3. ~~Meets the requirements of R4-23-1105(D)(1) or (2).~~

~~**B.**~~**C.** Application.

1. An applicant for licensure as a pharmacy technician 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,
      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.

~~**C.**~~**D.** Licensure.

1. If an applicant is found to be ineligible for pharmacy technician 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 pharmacy technician 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" or "active" status on the Board's license verification site may begin practice as a pharmacy technician ~~before receiving the certificate of licensure~~. An applicant shall not practice as a pharmacy technician if the Board's license verification site indicates any status other than "open" or "active."

~~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 technician until the Board office issues a certificate of licensure as specified in subsection (C)(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~~.

~~D.~~**E.** License renewal.

1. To renew a license, a pharmacy technician 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 pharmacy technician license is suspended and the licensee shall not practice as a pharmacy technician. The 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.~~ Continuing education requirement. Under A.R.S. § 32-1925(H), continuing professional education is mandatory for a licensee.
   a. The Board shall accept continuing education hours awarded only by an approved provider.
   b. The Board shall not renew a pharmacy technician license unless the licensee successfully completes 20 continuing education hours during the two years since the licensee's last renewal date and attests to that on the biennial renewal form.
   c. Special continuing education requirements. If applicable, during each two-year license period, a pharmacy technician:
      i. Shall not administer a vaccine under R4-23-1104(B)(5) unless the pharmacy technician has successfully completed two continuing education hours relating to administration of vaccines; and
      ii. As described under A.R.S. §32-1925(H), shall successfully complete two continuing education hours regarding remote dispensing site pharmacy practices.
   d. A pharmacy technician licensee is exempt from the continuing education requirement in subsection (E)(3)(b) between the time of initial licensure and first renewal.
   e. A pharmacy technician licensee shall maintain for five years continuing education records that indicate the number of hours successfully completed and the approved provider of each continuing education. The pharmacy technician licensee shall make the records available to the Board on request.
   f. The Board shall deem failure to comply with the continuing education requirements as unprofessional conduct and grounds for disciplinary action under A.R.S. § 32-1927.01.
   g. A pharmacy technician who is aggrieved by a Board decision concerning continuing education may request a hearing before the Board.

F. Delinquent license for five or more consecutive years. The Board shall reinstate a delinquent Arizona pharmacy technician license only if the individual furnishes satisfactory proof of fitness to be licensed as a pharmacy technician and pays all fees for the two most recent renewal periods and penalty fees. Satisfactory proof includes:

1. For an individual who is practicing as a pharmacy technician out-of-state with a pharmacy technician license issued by another jurisdiction:
   a. Proof of current, unrestricted pharmacy technician licensure in another jurisdiction; and
   b. Proof of employment as a pharmacy technician during the last 12 months; or
2. For an individual who did not practice as a pharmacy technician within the last 12 months:
   a. Take and pass a Board-approved pharmacy technician examination, and
   b. Complete 20 continuing education hours.

~~E.~~**G.** Time frames for pharmacy technician licensure and license renewal. The Board office shall follow the time frames established in R4-23-202(F).

~~F.~~**H.** Verification of license. A pharmacy permittee or pharmacist-in-charge shall not ~~permit~~ allow a person to practice as a pharmacy technician until the pharmacy permittee or pharmacist-in-charge verifies the person is currently licensed by the Board as a pharmacy technician.

R4-23-1103. Pharmacy Technician Trainee ~~Licensure~~ Registration

A. Registration required. As indicated under A.R.S. § 32-1923.01, a person shall not work as a pharmacy technician trainee in Arizona unless the person has registered with the Board. A registered pharmacy technician trainee shall maintain the registration certificate at the practice site for inspection by the Board or its designee or review by the public. Registration as a pharmacy technician trainee is not transferable.

~~A.~~B. Eligibility. An applicant for ~~licensure~~ a 36-month, non-renewable registration as a pharmacy technician trainee shall provide the Board proof the applicant is eligible under ~~R4-23-1101(B)(1)~~ A.R.S. § 32-1923.01(B).

~~B.~~C. Application.

1. An applicant for ~~licensure~~ a 36-month, non-renewable registration as a pharmacy technician trainee shall:
   a. Submit a completed application electronically ~~or manually~~ on a form ~~furnished by the Board~~ available on the Board's website, and
   b. Submit with the application form:
      i. The documents specified in the application form, and
      ii. The ~~licensure~~ registration 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.

~~C.~~D. ~~Licensure~~ Registration.

1. If an applicant is found to be ineligible for registration as a pharmacy technician trainee ~~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 registration as a pharmacy technician trainee ~~licensure~~ under statute and rule, the Board office shall issue a certificate of ~~licensure and a wall license~~ registration. An applicant who is assigned a ~~license~~ registration number and ~~who has been~~ granted "open" or "active" status on the Board's ~~license verification site~~ website may begin practice as a pharmacy technician trainee ~~before receiving the certificate of licensure~~. An applicant shall not practice as a pharmacy technician trainee if the Board's website indicates any status other than "open" or "active."
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 technician trainee until the Board office issues a certificate of licensure as specified in subsection (C)(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.~~
5. ~~A pharmacy technician trainee license is valid for 36 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass a Board-approved pharmacy technician examination before the pharmacy technician trainee's license expires is not eligible for licensure as a pharmacy technician and shall not practice as a pharmacy technician or pharmacy technician trainee. The Board has approved the following pharmacy technician examinations:~~
   ~~a. Pharmacy Technician Certification Board (PTCB) Exam, and~~
   ~~b. Exam for the Certification of Pharmacy Technicians (ExCPT).~~

~~D.~~E. Time frames for pharmacy technician trainee ~~licensure~~ registration. The Board office shall follow the time frames established in R4-23-202(F).

~~E.~~F. Verification of ~~license~~ registration. A pharmacy permittee or pharmacist-in-charge shall not ~~permit~~ allow a person to practice as a pharmacy technician trainee until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently ~~licensed~~ registered by the Board as a pharmacy technician trainee.

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

A. Permissible tasks of a pharmacy technician trainee. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee ~~licensed~~ registered under R4-23-1103 may assist an intern or pharmacist with the following when applicable to the pharmacy practice site:

1. Record on the original prescription order the serial number of the prescription medication and date dispensed;
2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
3. Record information in the refill record or patient profile;
4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;

5. Type and affix a label for the prescription medication. A pharmacist or intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
8. Prepackage drugs in accordance with R4-23-402(A); and
9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.

B. Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:

1. Perform the tasks listed in subsection (A);
2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist or intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;
3. ~~Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D);~~
4. ~~If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or intern shall verify the accuracy of the label as described under R4-23-402(A)(12);~~
5. ~~5.~~3. Administer a vaccine when:
   a. Administration of the vaccine is done under an order that complies with A.R.S. § 32-1974 and R4-23-411;
   b. ~~c.~~b. Administration of the vaccine is delegated by and done under the supervision of a pharmacist on duty who is certified under A.R.S. § 32-1974 to administer vaccines; and
   c. ~~d.~~c. There is documentation by the permittee that the pharmacy technician has completed the following:
      i. A practical training program that is approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique and recognition and treatment of emergency reactions to vaccines; and
      ii. Current certification in basic cardiopulmonary resuscitation.
6. ~~6.~~4. Perform a task not related to professional judgment if the task is delegated to the pharmacy technician by the pharmacist on duty after the pharmacist on duty ensures the pharmacy technician is trained to do the task and there is documentation by the permittee of the training; and
7. ~~7.~~5. A pharmacist on duty shall not delegate or attempt to delegate the following tasks to a pharmacy technician:
   a. Administering an emergency medication,
   b. Counseling a patient,
   c. Conducting a drug utilization review,
   d. Performing any task that requires the exercise of clinical judgment,
   e. Issuing a prescription order,
   f. Receiving a new prescription order for a controlled substance, or
   g. Transferring by telephone an existing prescription order for a controlled substance.

C. ~~A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.~~

D.C. Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist or intern in accordance with R4-23-402 or R4-23-653 unless otherwise allowed by rule.

E.D. A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.

F.E. Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, ~~and~~ revise, and enforce, in the manner described in R4-23-653(A), ~~and comply with~~ policies and procedures ~~outlined in subsection (C) for~~ addressing tasks to be performed by the pharmacy technician ~~and~~ or pharmacy technician trainee ~~tasks~~ that are consistent with state and federal law and the site at which the pharmacy technician or pharmacy technician trainee will be employed.

G. ~~A pharmacy permittee or pharmacist-in-charge shall ensure policies and procedures required under subsection (F) include the following:~~

1. ~~For all practice sites:~~
   a. ~~Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;~~
   b. ~~Employment performance expectations for a pharmacy technician and pharmacy technician trainee;~~

c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
d. Pharmacist and patient communication;
e. Reporting, correcting, and avoiding medication and dispensing errors;
f. Security procedures for:
i. Confidentiality of patient prescription records, and
ii. The pharmacy area;
g. Automated medication distribution system;
h. Compounding procedures for pharmacy technicians; and
i. Brief overview of state and federal pharmacy statutes and rules;
2. For community and limited-service pharmacy practice sites:
a. Prescription dispensing procedures for:
i. Accepting a new written prescription order,
ii. Accepting a refill request,
iii. Selecting a drug product,
iv. Counting and pouring,
v. Labeling, and
vi. Obtaining refill authorization; and
b. Computer data entry procedures for:
i. New and refill prescriptions,
ii. Patient's drug allergies,
iii. Drug-drug interactions,
iv. Drug-food interactions,
v. Drug-disease state contraindications,
vi. Refill frequency,
vii. Patient's disease and medical condition,
viii. Patient's age or date of birth and gender, and
ix. Patient profile maintenance; and
3. For hospital pharmacy practice sites:
a. Medication order procurement and data entry,
b. Drug preparation and packaging,
c. Outpatient and inpatient drug delivery, and
d. Inspection of drug storage and preparation areas and patient care areas.

R4-23-1104.01 Technology-assisted Verification of Product Repealed

A. By complying with this Section, the permittee of a retail, institutional, or limited-service pharmacy may implement a technology-assisted verification of product program that allows a pharmacy technician licensed under R4-23-1102 and qualified under subsection (D) to perform final product verification.

B. Written program description required. Before implementing a technology-assisted verification of product program the permittee of a retail, institutional, or limited-service pharmacy shall prepare a written program description that includes the following:
1. Responsibility of both the pharmacist in charge and permittee to ensure compliance with this Section;
2. Responsibility of the permittee to design, implement, and monitor a process that ensures the accuracy and safety of the product dispensed;
3. Duties of a verification technician;
4. The training necessary to qualify and remain qualified as a verification technician;
5. The monitoring and evaluation procedures to be used to ensure competency of the verification technician; and
6. Prohibition of a verification technician performing a final accuracy check of a completed prescription label.

C. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall:
1. Post the written program description required under subsection (B) in the pharmacy area;
2. Provide a copy of the written program description to the pharmacist in charge and verification technician;
3. Obtain the signature of the pharmacist in charge and verification technician on a copy of the written program description and place the signed copy in the personnel file of the pharmacist in charge and verification technician;
4. Ensure scanning technology used in the technology-assisted verification program captures both product and patient information; and

5. ~~Update the written program description as needed and repeat subsections (C)(1) through (4) after each update.~~

D. ~~Verification technician training: The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a pharmacy technician does not perform the duties of a verification technician unless the pharmacy technician has the following qualifications:~~

1. ~~Is licensed under R4-23-1102;~~
2. ~~Has at least 1,000 hours of pharmacy technician work experience in the same kind of pharmacy practice site in which the technology-assisted verification of product will be performed;~~
3. ~~Completes a training program that includes at least the following:~~
   a. ~~Role of a verification technician in the dispensing process,~~
   b. ~~Legal requirements of a verification technician,~~
   c. ~~How to use the technology-assisted verification system,~~
   d. ~~Primary causes of medication errors, and~~
   e. ~~Identifying and resolving dispensing errors; and~~
4. ~~Completes at least four hours of the continuing education required under R4-23-1106 on patient safety.~~

E. ~~The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure the pharmacy practice site has a computer data storage and retrieval system that meets the standards in R4-23-408(B).~~

F. ~~The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician verifies only the following:~~

1. ~~A product with scanning technology that identifies product, or~~
2. ~~A robotically prepared unit dose product.~~

G. ~~The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician does not verify the following:~~

1. ~~A product that involves a combination of drugs resulting from compounding or mixing two or more ingredients or products,~~
2. ~~A product that involves or results from an alteration of a drug, or~~
3. ~~A DEA schedule II controlled substance.~~

H. ~~The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall perform an unannounced evaluation of the competency of a verification technician at least twice a year and take steps to remediate any deficiencies identified including removing verification duties from the technician.~~

I. ~~The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall maintain the following records:~~

1. ~~Date the pharmacy technician was designated as a verification technician,~~
2. ~~Date the pharmacy technician completed the training required under subsection (D)(3),~~
3. ~~Dates and results of the evaluations conducted under subsection (H), and~~
4. ~~Date and reason for any disciplinary action against the verification technician arising from performing the duties of a verification technician.~~

J. ~~A verification technician shall wear identification that includes the title "Verification Technician" while on duty.~~

K. ~~As used in this Section, the term "verification technician" means an individual who:~~

1. ~~Is qualified under subsection (D),~~
2. ~~Uses a combination of scanning technology and visual confirmation to verify a product prepared to be dispensed is the product prescribed and indicated on the prescription label, and~~
3. ~~Performs verification of work performed by other pharmacy technicians before a pharmacist or graduate or pharmacy intern working under the supervision of a pharmacist performs the final accuracy check required under R4-23-402(A).~~

R4-23-1105. Pharmacy Technician Trainee Training Program~~,~~; Pharmacy Technician Drug Compounding Training Program~~, and Alternative Pharmacy Technician Training~~

A. Nothing in this Section prevents additional offsite training of a pharmacy technician.

B. Pharmacy technician trainee training program.

1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, revise, and enforce, in the ~~same~~ manner described in R4-23-653(A), ~~and comply with~~ a pharmacy technician trainee training program that is based on the needs of the individual pharmacy and designed to prepare the pharmacy technician trainee to pass a Board-approved national certification examination.
2. ~~A pharmacy permittee or pharmacist-in-charge shall ensure the pharmacy technician trainee training program includes training guidelines that:~~
   a. ~~Define the specific tasks a pharmacy technician trainee is expected to perform,~~

~~b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician trainee's competency, and~~

~~c. Address the policies and procedures specified in R4-23-1104(C) and the permissible activities specified in R4-23-1104(A).~~

~~3. A pharmacist-in-charge shall:~~

~~a. Document the date a pharmacy technician trainee successfully completed the training program, and~~

~~b. Maintain the documentation required in this subsection for inspection by the Board or its designee.~~

~~4. A pharmacy technician trainee shall perform only those tasks, listed in R4-23-1104(A), for which training and competency has been demonstrated.~~

C. Pharmacy technician drug compounding training program.

1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, revise, and enforce, in the ~~same~~ manner described in R4-23-653(A), ~~and comply with~~ a pharmacy technician drug compounding training program based on the needs of the individual pharmacy~~:~~.

~~2. A pharmacy permittee or pharmacist-in-charge shall ensure the pharmacy technician drug compounding training program includes training guidelines that:~~

~~a. Define the specific tasks a pharmacy technician is expected to perform,~~

~~b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician's competency, and~~

~~c. Address the following procedures and tasks:~~

~~i. Area preparation,~~

~~ii. Component preparation,~~

~~iii. Aseptic technique and product preparation,~~

~~iv. Packaging and labeling, and~~

~~v. Area cleanup;~~

~~3.~~2. A pharmacist-in-charge shall:

a. Document the date a pharmacy technician successfully completed the pharmacy technician drug compounding training program, and

b. Maintain the required documentation ~~required in this subsection~~ for inspection by the Board or its designee.

~~**D.** Alternative pharmacy technician training.~~

~~1. An individual who has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist in charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.~~

~~2. An individual who has completed a pharmacy technician certificate program and has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy~~.

~~3. A pharmacist-in-charge shall:~~

~~a. Document the date an individual licensed under subsection (D)(1) or (2) successfully completed the on-the-job training program as part of the individual's employment orientation as required under subsection (D)(1) or (2), and~~

~~b. Maintain the documentation required in this subsection for inspection by the Board or its designee.~~

~~**E.**~~**D.** A pharmacy technician shall perform only those tasks, listed in R4-23-1104(B), for which training and competency has been demonstrated.

~~**F.**~~**E.** If a pharmacy technician trainee leaves a training program described under subsection (B)~~, (C), or (D)~~ before successfully completing the training program, the pharmacist-in-charge shall provide the pharmacy technician trainee ~~pharmacy technician~~ with written documentation of the hours of training completed and the tasks for which competence was demonstrated ~~by the pharmacy technician~~.

R4-23-1106. ~~Continuing Education Requirements~~ Repealed

A. General. According to A.R.S. § 32-1925(H), the Board shall not renew a pharmacy technician license unless the licensee has during the two years preceding the application for renewal:

1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider, as defined in R4-23-110, and
2. A pharmacy technician licensee is exempt from the continuing education requirement in subsection (A)(1) between the time of initial licensure and first renewal.

B. Special continuing education requirement. During each license renewal period, a pharmacy technician shall not administer a vaccine under R4-23-1104(B)(5) unless the pharmacy technician has participated in at least two contact hours of continuing education activity approved by the Accreditation Council for Pharmacy Education and related to administration of vaccines.

C. Valid CEUs. The Board shall:

1. Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. Accept CEUs accrued during only the two-year period immediately before licensure renewal;
3. Not allow CEUs accrued in a biennial renewal period to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy related topics in a continuing education activity sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.

D. Continuing education records and reporting CEUs. A pharmacy technician shall:

1. Maintain continuing education records that:
   a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
   b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

E. The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.

F. A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

Lauren Paul, RPh, PharmD, MS
Executive Director, Pharmacy Regulatory Affairs
CVS Pharmacy

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July 31, 2024

Kamlesh Gandhi
Executive Director
Arizona State Board of Pharmacy
1110 W. Washington St, Suite 260
Phoenix, AZ 85007
Via Email: kgandhi@azpharmacy.gov

Re: Proposed Amendments to Title 4, Chapter 23, Article 11 Pharmacy Technicians; Pharmacy Technician Trainees

Dear Executive Director Gandhi and Members of the Arizona State Board of Pharmacy,

I am writing to you in my role as Executive Director of Pharmacy Regulatory Affairs for CVS Health and its family of pharmacies. CVS Health, the largest pharmacy health care provider in the United States, is uniquely positioned to provide care with diverse access points to patients in the state of Arizona through our integrated offerings across the spectrum of pharmacy care. CVS Health appreciates the opportunity to submit comments on proposed rule amendments noticed for Title 4, Chapter 23, Article 11 Pharmacy Technicians; Pharmacy Technician Trainees. We would also like to thank the Board for their vigilance to continuously improve the laws and regulations that guide pharmacists, pharmacy interns, pharmacy technicians and trainees serving Arizona patients.

CVS Health supports the amendments made to this article, bringing consistency in rule due to legislative change made in 2023 as well as reducing regulatory burden by repealing unnecessary prescriptive language. Additionally, we applaud the Board for affirming that the act of product verification does not require professional judgement and is a task which can be delegated to a pharmacy technician when the individual is trained. Because of this determination, we are also supportive of repealing R4-23-1104.01 technology-assisted verification of product (TAPV).

In review of the proposed amendments, we did identify two areas of references to TAPV inadvertently remaining in R4-23-1104(B)(3) and (4) and suggest those be struck for consistency. Finally, we did find reference to TAPV in R4-23-402(A)(12) and suggest the Board also strike this reference as you continue rule revisions for Articles in Chapter 23.

Suggested Language

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

B. Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:

1. Perform the tasks listed in subsection (A);

2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist or intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;

~~3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D);~~

~~4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or intern shall verify the accuracy of the label as described under R4-23-402(A)(12);~~

~~5~~3. Administer a vaccine when:

a. Administration of the vaccine is done under an order that complies with A.R.S. § 32-1974 and R4-23-411;

~~c.~~ b. Administration of the vaccine is delegated by and done under the supervision of a pharmacist on duty who is certified under

A.R.S. § 32-1974 to administer vaccines; and

~~d.c.~~ There is documentation by the permittee that the pharmacy technician has completed the following:

i. A practical training program that is approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique and recognition and treatment of emergency reactions to vaccines; and

ii. Current certification in basic cardiopulmonary resuscitation.

~~6~~4. Perform a task not related to professional judgment if the task is delegated to the pharmacy technician by the pharmacist on duty after the pharmacist on duty ensures the pharmacy technician is trained to do the task and there is documentation by the permittee of the training; and

~~7~~5. A pharmacist on duty shall not delegate or attempt to delegate the following tasks to a pharmacy technician:

a. Administering an emergency medication,

b. Counseling a patient,

c. Conducting a drug utilization review,

d. Performing any task that requires the exercise of clinical judgment,

e. Issuing a prescription order,

f. Receiving a new prescription order for a controlled substance, or

g. Transferring by telephone an existing prescription order for a controlled substance.

CVS Health appreciates the opportunity to provide feedback and submit comments on the proposed rules. Should the Board have any questions, please do not hesitate to contact me.

Sincerely,

Lauren Paul, PharmD, RPh, MS

Lauren Paul, PharmD, RPh, MS
Executive Director, CVS Health

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT1

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

   The Board is making non-substantive changes to clarify the rules in Article 11 and make them consistent with a legislative change to A.R.S. § 32-1923.01(B), which went into effect on July 1, 2023. The statutory change requires pharmacy technician trainees to register with the Board rather than be licensed by the Board. The Board is also reducing regulatory burdens by repealing unnecessarily prescriptive requirements in several Sections. Additional changes address issues identified in a 5YRR submitted to the Council on June 10, 2024.

   As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained on January 2, 2024. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided on August 15, 2024.

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

      Until the rulemaking is completed, the Board's rules regarding pharmacy technician trainees will continue to be inconsistent with statute and the rules will continue to be unnecessarily prescriptive.

   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 the Board to have rules that are inconsistent with statute and unnecessarily prescriptive.

   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 unnecessarily prescriptive requirements will no longer exist.

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

   The Board determined the rulemaking will have minimal economic impact because it makes only non-substantive changes to improve clarity, reduce regulatory burdens, and provide

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)).

consistency with statute. Requiring a pharmacy technician trainee to register with the Board rather than be licensed by the Board results from a statutory change rather than this rulemaking.

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, Ste. 260, Phoenix, AZ 85007
   Telephone: (602) 771-2727
   E-mail: kgandhi@aspharmacy.gov
   Web site: www.azpharmacy.gov

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

   Pharmacy technicians, pharmacy technician trainees, pharmacy permittees, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking. The Board currently licenses 11,404 pharmacy technicians, registers 7,980 pharmacy technician trainees, and permits 2,844 pharmacy permittees.

   The following minor changes have minimal economic cost and benefit for those affected:

   - Pharmacy technicians have more than one examination approved by the Board;
   - Pharmacy technician trainees do not have to purchase a wall license;
   - Pharmacy technician trainees who leave a training program are provided written evidence of the hours of training completed and tasks for which competence was demonstrated;
   - Pharmacy permittees have flexibility regarding policies and procedures addressing tasks performed by pharmacy technicians and pharmacy technician trainees;
   - Pharmacy permittees have flexibility regarding a pharmacy technician training program; and
   - Pharmacy permittees have flexibility regarding a pharmacy technician drug compounding training program.

   The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. The Board has the benefit of rules that are consistent with statute and minimally regulatory.

5. Cost-benefit analysis:

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

The Board is the only state agency affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not need additional full-time employees to implement and enforce the rulemaking.

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

No political subdivision is directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:

Pharmacy permittees are businesses directly affected by the rulemaking. Their benefits are described in item 4. The rulemaking imposes no new costs on pharmacy permittees.

6. Impact on private and public employment:

The rulemaking has no impact on private or public employment.

7. Impact on small businesses:

a. Identification of the small business subject to the rulemaking:

Some of the pharmacy permittees affected by the rulemaking are small businesses.

b. Administrative and other costs required for compliance with the rulemaking:

The rulemaking results only in benefits for pharmacy permittees. The benefits result from repealing unnecessarily prescriptive requirements and allowing pharmacy permittees flexibility in how they choose to fulfill an existing requirement.

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

Because the impact on small businesses is positive, the Board did not consider ways to reduce the impact. The rulemaking imposes no new costs on businesses regardless of size.

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

The rulemaking does not directly affect private persons or consumers.

9. Probable effects on state revenues:

The rulemaking has no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

Because the rulemaking is neither intrusive nor costly, the Board did not consider alternative methods.

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.

4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:

(a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.

(b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.

(c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.

5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.

6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for

licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.

7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.

8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.

9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board, Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

13. Open an investigation only if the identifying information regarding a complainant is provided or the information provided is sufficient to conduct an investigation.

14. Provide notice to an applicant, licensee or permittee using only the information provided to the board through the board's licensing database.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for modernization of pharmacy practice, experimentation or technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, email address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is

evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(b) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(c) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(d) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board may issue nondisciplinary civil penalties or delegate to the executive director the authority to issue nondisciplinary civil penalties. The nondisciplinary civil penalties shall be prescribed by the board in rule and issued using a board-approved form. If a licensee or permittee fails to pay a nondisciplinary civil penalty that the board has imposed on it, the board shall hold a hearing on the matter. In addition to any other nondisciplinary civil penalty adopted by the board, either of the following acts or omissions that is not an imminent threat to the public health and safety is subject to a nondisciplinary civil penalty:

1. An occurrence of either of the following:

(a) Failing to submit a remodel application before remodeling a permitted facility.

(b) Failing to notify the board of the relocation of a business.

2. The occurrence of any of the following violations or any of the violations adopted by the board in rule, with three or more violations being presented to the board as a complaint:

(a) The licensee or permittee fails to update the licensee's or permittee's online profile within ten days after a change in contact information, address, telephone number or email address.

(b) The licensee fails to update the licensee's online profile within ten days after a change in employment.

(c) The licensee fails to complete the required continuing education for a license renewal.

(d) The licensee fails to update the licensee's online profile to reflect a new pharmacist in charge within fourteen days after the position change.

(e) The permittee fails to update the permittee's online profile to reflect a new designated representative within ten days after the position change.

(f) The licensee or permittee fails to notify the board of a new criminal charge, arrest or conviction against the licensee or permittee in this state or any other jurisdiction.

(g) The licensee or permittee fails to notify the board of a disciplinary action taken against the licensee or permittee by another regulating agency in this state or any other jurisdiction.

(h) A licensee or permittee fails to renew a license or permit within sixty days after the license or permit expires. If more than sixty days have lapsed after the expiration of a license or permit, the licensee or permittee shall appear before the board.

(i) A new pharmacist in charge fails to conduct a controlled substance inventory within ten days after starting the position.

(j) A person fails to obtain a permit before shipping into this state anything that requires a permit pursuant to this chapter.

(k) Any other violations of statute or rule that the board or the board's designee deems appropriate for a nondisciplinary civil penalty.

E. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

F. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1923.01. Pharmacy technicians; pharmacy technician trainees; qualifications; remote dispensing site pharmacies

A. An applicant for licensure as a pharmacy technician must:

1. Be at least eighteen years of age.

2. Have a high school diploma or the equivalent of a high school diploma.

3. Complete a training program prescribed by board rules.

4. Pass a board-approved pharmacy technician examination.

B. An applicant to register as a pharmacy technician trainee must:

1. Be at least eighteen years of age.

2. Register with the board via an online application.

C. Before a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall:

1. Complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

2. Have at least one thousand hours of experience working as a pharmacy technician in an outpatient pharmacy setting under the direct supervision of a pharmacist.

D. A pharmacy technician working at a remote dispensing site pharmacy:

1. Shall maintain an active, nationally recognized pharmacy technician certification approved by the board.

2. May not perform extemporaneous sterile or nonsterile compounding but may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

32-1924. Licenses; fees; rules; signatures; registration; online profiles

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.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 9

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 17, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16, Article 9

Summary

This One-Year Review Report (1YRR) from the Department of Health Services (Department) relates to ten (10) rules in Title 9, Chapter 16, Article 9 regarding Doula Certification. Laws 2021, Ch. 282 permitted the Department to adopt rules to establish standards and requirements for individuals who wish to obtain a state doula certification. These rules were adopted through an exempt rulemaking which became effective August 1, 2023.

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 has reviewed the current rules and proposes to amend seven (7) rules to improve effectiveness, clarity, and to reduce the regulatory burden imposed on doulas as outlined in more detail in the report. The Department proposes to submit final rulemaking to the Council by March 2025.

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

The Department cites both general and specific authorizing statutes for these rules.

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

At the time of promulgation, this Article was exempt from preparing an economic, small business, and consumer impact statement through exempt rulemaking and subsequently through expedited rulemaking. The Department believes the rules in this Article have a positive impact because the rules explain the requirements and procedures for applying for a doula certification as well as the scope of practice. Costs incurred by the Department are meaningful but not readily quantifiable. The Bureau of Special Licensing, a unit within the Department that is responsible for the enforcement of the rules in this Article, consists of eight staff members, and the Department does not anticipate making any changes to the allotted full-time employment. There are no political subdivisions affected by these rules. Initial or recertification costs to individuals applying for doula certification are estimated as minimal. Furthermore, to help reduce licensing costs, a license is valid for three years. A person applying for a doula certification requires a valid fingerprint clearance card; however, the Department cannot process applications for doula certification as applicants at this time because they are not able to comply with the fingerprint clearance card requirement due to the Department not receiving approval from the Federal Bureau of Investigation. Hence, the Department does not have any metrics or data to present with a one-year review.

Stakeholders are identified as the Department, individuals seeking doula certification, certified doulas seeking reimbursement for services rendered, individuals seeking services provided by a doula, and the general public.

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

According to the Department, the benefits of the rule outweigh the costs, as the current rule poses the minimum cost and burden on the public. The Department established fees under A.R.S. § 36-766.06 that the Department determined imposed the least burden and costs for the program. The costs of processing the application for doula certifications are necessary to achieve the underlying objectives and statutory requirements.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The agency has not received any written comments regarding the rules.

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

The Department determined that the rules are clear, concise, and understandable to the public with the following exceptions:

- **R9-16-901**
  - Would like to move Subsection (1) to R9-16-907 where it would be more appropriate and clear
  - Would like to move Subsection (14) to R9-16-902 where it would be more appropriate and clear for the term used
- **R9-16-906**
  - Amending Subsection (B) to read "may" instead of "shall" will clarify the section, and amending "and" to "or" at the end of the list will improve clarity
  - Creating a new subsection that informs applicants and certified doulas that the Department may deny an application or suspend or revoke a certification if the doula does not correct deficiencies in an investigation or if a detailed plan for corrective action includes false or misleading information from the doula.
  - Potentially amending the heading of the Section once proposed amendments are made to Section (B)
- **R9-16-907**
  - Amending the rule to include the authorizing statute defining administrative completeness review time-frame, substantive review time-frame, and overall time-frame.
  - Amending Subsection (B)(2)(a) to remove "certificate" from "certificate application"
- **Table 9.1**
  - Amending to include "change application" and it's time-frames to the table
  - Amending the applicable Section to each match each type of application
  - The table currently addresses "initial" and "renewal" applications; amending the heading from "Type of approval" to "Type of application" would provide more clarity
- **R9-16-908 & R9-16-909**
  - Amending to provide more clarity on the requirements for the doulas creating their own duplicate certificates if the certificates are not being revised

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

The Department determined that the rules are consistent with other rules and statutes with two exceptions:

- **R9-16-902**
  - Remove "neonatal" from "neonatal resuscitation" in R9-16-902(B)(4)(d) to better align with the requirements for "cardiopulmonary resuscitation" described in A.R.S. § 36-766.03(A)(3).
- **R9-16-906**
  - Amend the section to clarify that the Department may, not shall, deny, suspend, or revoke a doula certification in accordance with A.R.S. § 36-766.04(C).

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

The agency reviewed the rules for effectiveness and found all were effective except for the following rules:

- **R9-16-908 & R9-16-909**
  - These rules would be more effective and less burdensome if the Department removed requirements related to duplicate certificates and replaced them with the more accurate reference to a revised certificate. The Department anticipates that doula certification will be part of the Licensing Management System by the end of 2024.

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

The Department indicated that one (1) rule is not enforced as written:

- **R9-16-906(D)**
  - Subsection (D) states that a tribal government must comply with this rule; however, A.R.S. § 36-766.04(C) says "... tribal actions by a tribal government are deemed to be the final decision in accordance with this section."
  - Amending the rule to clarify the Department may deny, suspend, or revoke a doula certification as described in A.R.S. § 36-766.04(C) would enhance statutory compliance and enforcement

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 indicated that no federal statutes apply to the rules.

10. Has the agency completed any additional process required by law?

The Department indicated this section does not apply.

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

The Department indicated that, under A.R.S. § 41-1037(A)(2), a general permit is not applicable, specifically, "[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute."

12. Conclusion

This 1YRR from the Department concerns ten (10) rules in 9 A.A.C. 16, Article 9 regarding doula certification and application for certification. The proposed rule amendments appear to reduce the regulatory burden on doulas and pose no additional costs to the doulas. The Department indicates that it plans to submit final rulemaking to the Council by March 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

July 10, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 16, Article 9, One-Year-Review Report

Dear Ms. Klein:

Please find enclosed the One-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 16, Article 9, which is due on or before August 1, 2024.

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

For questions about this Report, please contact Angie Trevino at angelica.trevino@azdhs.gov or (480) 589-0298.

Sincerely,

Stacie Gravito Digitally signed by Stacie Gravito
Date: 2024.07.10 09:10:47 -07'00'

Stacie Gravito
Director's Designee

SG:at

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

One-Year-Review Report

Title 9. Health Services

Chapter 16. Department of Health Services – Occupational Licensing

Article 9. Doula Certification

Due: August 1, 2024

Submitted: July 10, 2024

1. Authorization of the rule by existing statutes:

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

Implementing statutes: A.R.S. §§ 36-766.01, 36-766.02, and 36-766.03

2. The objective of each rule:

Rule	Objective
R9-16-901 Definitions	The objective of this rule is to establish definitions to assist the reader in understanding the unique terms used in this Article.
R9-16-902. Doula Eligibility and Doula Scope of Practice	The objective of this rule is to indicate who may provide doula services and to detail eligibility criteria to apply for a doula certification.
R9-16-903. Certification Initial Application	The objective of this rule is to specify the information the applicant is required to submit when applying for a doula certification.
R9-16-904. Certification Renewal	The objective of this rule is to specify the requirements when a doula is applying for the renewal of certification.
R9-16-905. Continuing Education	The objective of this rule is to specify continuing education requirements.
R9-16-906. Enforcement	The objective of this rule is to list the actions the Department may take and specify the criteria the Department will consider when determining a disciplinary action.
R9-16-907. Time-frames	The objective of this rule is to detail the time-frame requirements according to A.R.S. § 41-1072.
Table 9.1 Time-frames (in calendar days)	The objective of this table is to summarize the time-frame durations used by the Department when reviewing applications, such as initial and renewal applications.
R9-16-908. Changes Affecting a Certificate;	The objective of this rule is to list the changes that affect the certification and must be reported to the Department; and the requirements for requesting a duplicate certificate.

Request for a Duplicate Certificate	
R9-16-909. Fees	The objective of this rule is to outline the fee requirements.

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

Rule	Explanation
R9-16-908 and R9-16-909	Since the certification of doulas is anticipated to be part of the Department's Licensing Management System, certificate holders will be able to print their own duplicate certificates, but not if the certificate is being revised. Therefore, the rules would be more effective and less burdensome if requirements related to duplicate certificates were removed from the rules and replaced with the more accurate reference to a revised certificate. The Department anticipates that doula certification will be part of the Licensing Management System by end of 2024.

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

Rule	Explanation
R9-16-902	A.R.S. § 36-766.03(A)(3) requires an applicant for certification to complete cardiopulmonary resuscitation; however, R9-16-902(B)(4)(d) requires "neonatal resuscitation." The requirement for "neonatal" resuscitation should be removed. With the removal of the neonatal requirement then this subsection (B)(4)(d) should be removed as R9-16-902(B)(4)(c) addresses the requirement for cardiopulmonary resuscitation as stated in the statute.
R9-16-906	Subsection (D) is not consistent with A.R.S. § 36-766.04(C). The rule as written states that a tribal government must comply with this rule; however, statute says "... tribal actions by a tribal government are deemed to be the final decision in accordance with this section." This subsection needs to be rewritten to clarify that the Department may deny, suspend, or revoke a doula certification as described in A.R.S. § 36-766.04(C).

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

Rule	Explanation
R9-16-906	R9-16-906(D) is not enforced as written. Please see explanation under #4 of this report. The Department proposes to amend the rule and clarify that the Department may deny, suspend, or revoke a doula certification as described in A.R.S. § 36-766.04(C).

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

Rule	Explanation
R9-16-901	Subsection (1): Though the definition of "Administrative completeness review time-frame" in R9-16-901(1) is clear, concise, and understandable, this definition is better suited under R9-16-907 (Time-frames) where other time-frames are addressed.

	Subsection (14): In addition to the definition of "Evaluation" not being clear, the definition may be better suited under R9-16-902 where the term is used.
R9-16-906	Subsection (B) should amend the term "shall" to "may" for clarity; the criteria listed under this subsection may vary by circumstance. Subsequently, the "and" at the end of the list should be changed to "or." The rule could be clearer if a new subsection was created to inform applicants or certified doulas that the Department may deny an application or suspend or revoke a certificate if a certified doula does not correct the deficiencies identified during an investigation and as detailed in a plan of correction or a certified doula provides false or misleading information to the Department. The Department may also consider making corresponding amendments to elaborate on "plan of correction." The Department is proposing similar amendments to other Articles in 9 A.A.C. 16. Upon making the proposed amendments in subsection (B), the Department will consider amending the heading of this Section for clarity.
R9-16-907	This Section could be improved by including the statute that describes administrative completeness review time-frame, substantive review time-frame, and overall time-frame. For consistency purposes "certificate application" should be changed to "application" in subsection (B)(2)(a).
Table 9.1	Table 9.1 could be clearer by adding "change application" and it's time-frames to the table. The table could also be clearer by adding the applicable Section to each type of application. The table currently addresses "initial" and "renewal" applications. Furthermore, for clarity purposes the Department proposes to amend the heading "Type of approval" to "Type of application" as the column pertains to the type of "application."
R9-16-908 and R9-16-909	These Sections could be clearer as described in #3 of this report. Upon making the proposed amendments in these Sections, the Department will consider amending the heading of R9-16-908 for clarity.

7. Has the agency received written criticisms of the rules within the last year? **Yes ___ No __X__**

8. Economic, small business, and consumer impact comparison (summary):

The Department of Health Services (Department) adopted the rules covered in this one-year-review report under 9 A.A.C. 16, Article 9 in August 2023. This Article was exempt from preparing an economic, small business, and consumer impact statement when the rules were promulgated through exempt rulemaking and subsequently through expedited rulemaking.

Arizona Revised Statutes (A.R.S.) § 36-766.02 authorizes the Department to adopt rules to establish standards and requirements for individuals who wish to obtain a state doula certification. The Department has adopted rules for state-certified doulas in Arizona Administrative Code, Title 9, Chapter 16, Article 9. Though state certification to provide doula services is not required in Arizona, the public may benefit from having a list of certified doulas to help them determine whether to choose a doula who is certified or not certified. Additionally, the public is informed of the criteria required to become a certified doula. Certified doulas can also submit

reimbursement for services through Arizona Health Care Cost Containment System (AHCCCS).

Those impacted by these rules include the Department, individuals seeking doula certification, certified doulas seeking reimbursement for services rendered, individuals seeking services provided by a doula, and the general public. The Department believes the rules in this Article have a positive impact because the rules explain the requirements and procedures for applying for a doula certification as well as the scope of practice. Furthermore, pursuant to A.R.S. § 36-766.07, a person is not required "to be certified by the department in order to practice as doula in this state." The Department will maintain a list of certified doulas that will be available to the public. The Department believes the rules support the statute and provide further guidance.

For the purpose of this Article costs/revenue scale is defined as follows: minimal when less than $1000, moderate when between $1000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost or benefit was "significant" when meaningful or important, but not readily subject to quantification. Costs incurred by the Department are significant; given the Department's organization, the costs associated with the responsibilities of this Article are not readily quantifiable. The Bureau of Special Licensing is a bureau/unit within the Department that is responsible for the enforcement of the rules in this Article. This bureau has one Section Chief, one Deputy Bureau Chief, two Licensing Program Managers, and three licensing coordinators that manage the licensing or certification of nine licensing or certification types, of which doula certification is included. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted. There are no political subdivisions affected by these rules. Initial or recertification costs to individuals applying for doula certification are estimated as minimal. Furthermore, to help reduce licensing costs, a license is valid for three years.

According to A.R.S. § 36-766.01, a person applying for doula certification "requires a valid fingerprint clearance card issued pursuant to Title 41, Chapter 12, 3.1." Fingerprint clearance cards are processed by the Department of Public Safety (DPS); however, the Federal Bureau of Investigation (FBI) must first approve for DPS to run a background check for doula certification. At this time, DPS has not received such approval and therefore, cannot process any applications for fingerprint clearance cards. In turn, the Department cannot process applications for doula certification as applicants at this time are not able to comply with the fingerprint clearance card statutory requirement. As a result, the Department at this time does not have any metrics or data to present with this report.

Pursuant to A.R.S. § 36-766.06, fees collected by the Department to process certification applications are deposited in a "segregated account in the health services licensing fund established by section 36-414." As of the time of this report, the Department has not collected any fees for doula certification.

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

10. If applicable, that the agency completed any additional process required by law, including the requirement for the agency to publish otherwise exempt rules or provide the public with an opportunity to comment on the rules.

Not applicable

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

The Department of Health Services (Department) believes the current rules pose the minimum cost and burden on the regulated public. As authorized by A.R.S. § 36-766.06 the Department established fees that the Department determined imposed the least burden and costs for this self-funded program. The costs for the processing of applications for doula certification are necessary to achieve the underlying objectives and statutory requirements.

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

Federal laws do not apply to 9 A.A.C. 16, Article 9.

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

The Department believes that under A.R.S. § 41-1037(A)(2) that a general permit is not applicable.

14. Proposed course of action:

The Department of Health Services (Department) has reviewed the current rules and proposes to amend the rules to address the issues identified in this report. The Department proposes to submit final rulemaking to the Council by March 2025.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 2552 (September 30, 2022), effective November 7, 2022 (Supp. 22-3).

ARTICLE 9. DOULA CERTIFICATION

R9-16-901. Definitions

In addition to the definitions in A.R.S. § 36-766, the following definitions apply in this Article unless otherwise specified:

1. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
2. "Applicant" means an individual who submits an application and required documentation for approval to practice as a certified doula.
3. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. "Certification" means an approval granted to individuals who meet the qualifications, including education and training requirements, in this Article for certified doulas.
5. "Certified doula" means the same as "state-certified doula" in A.R.S. § 36-766.
6. "Client" means an individual receiving doula services provided by a certified doula.
7. "Code of ethics agreement" means the document submitted to the Department by an applicant that agrees to the general ethics and compliance of the standards of practice, and doula scope of practice of a certified doula.
8. "Continuing education" means a course that provides training and instruction that is designed to develop or improve a certified doula's professional competence in areas directly related to the practice of a doula.
9. "Core competencies" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
   a. Entrepreneurship,
   b. Standards of practice and ethics,
   c. The childbirth processes,
   d. Parental engagement,
   e. Postpartum care,
   f. Grief,
   g. Trauma-informed care,
   h. Cultural doula practices,
   i. Anatomy and physiology, and
   j. HIPAA.
10. "Course" means a workshop, seminar, lecture, conference, or class.
11. "Department" means the same as in A.R.S. § 36-101.
12. "Doula scope of practice" includes:
    a. Providing care coordination, coaching, and social support;
    b. Providing emotional support of the individuals parenting choices;
    c. Providing encouragement and positive affirmations;
    d. Advocating for parents;
    e. Assessing the needs of the family;
    f. Providing newborn care hands-on education and care including:
       i. Normal newborn behavior,
       ii. Newborn appearance,
       iii. Sleep habits,
       iv. Feeding,
       v. Bathing, and
       vi. Dressing the baby;
    g. Infant feeding support;
    h. Cord and circumcision care;
    i. Establishing a routine;
    j. Organizing the nursery and home; and
    k. Sibling education and transition.
13. "Documentation" means information in written, photographic, electronic or other permanent form.
14. "Evaluation" means the assessment of the client in order to provide doula services.
15. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, according to U.S. Public Law 104-191.
16. "Licensed midwife" has the same meaning as "midwife" in A.R.S. § 36-751 and is licensed by the Department to provide midwifery services.
17. "Medical provider" means an individual licensed in the state of Arizona as a:
    a. "Physician" as defined in A.R.S. §§ 32-1401, 32-1501, or 32-1800;
    b. "Certified nurse midwife" as defined in A.R.S. § 32-1601; or
    c. "Clinical nurse specialist" as defined in A.R.S. § 32-1601.
18. "Observing" means to witness:
    a. The provision of doula services to a client, or
    b. A demonstration of how to provide doula services to a client.
19. "Organization" means a person specified in A.R.S. § 1-215, and includes a tribal government.
20. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
21. "Physical health services" means information and care provided by licensed health professionals consistent with practices specified in A.R.S. § 32-3201.
22. "Postpartum" means the six-week period following delivery of a newborn and placenta.
23. "Training and instruction" means educational activities that develop and improve an individual's professional competence in areas related to the practice as a certified doula specified in A.R.S. § 36-766.03 and specific to the delivery of services identified in the doula scope of practice and core competencies specified in this Article.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-902. Doula Eligibility and Doula Scope of Practice

A. An individual may provide doula services in Arizona without obtaining certification as a certified doula specified in this Article.

B. An individual is eligible to apply for certification as a certified doula, if the individual:
1. Is 18 years of age or older;
2. Has at least a high school diploma or high school equivalency diploma;
3. Has training or education covering at least one of the following:
   a. Completion of at least 30 hours of in-person instruction or a combination of in-person and online

instruction in core competency specified in this Article; or

b. Community training in non-western doula practices, as determined by the Department, documentation confirming that core competencies have been met through culturally specific training or education subject to Department review; or

c. Other related individualized or experiential training or education that is subject to review by the Director;

4. Has written documentation of:
   a. Observing at least one birth after completing the training or education specified in subsection (B)(3), signed and dated by the medical provider or licensed midwife who assisted the laboring mother;
   b. Attending a minimum of three births while serving as the primary doula, including evaluations from the laboring mother and from the medical provider or licensed midwife who assisted the laboring mother;
   c. Completing first aid and adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association;
   d. Completing neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
   e. A code of ethics agreement as prescribed by the Department, and
   f. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
5. Meets the requirements of core competencies as specified in R9-16-901(9) and certified doula scope of practice as specified in R9-16-901(12); and
6. Submits an initial doula application in a Department-provided format to the Department.

C. Proof that an individual has current certification from a nationally recognized doula organization may substitute for requirements in subsections (B)(3).

D. An individual who does not meet the requirements in subsections (B)(3) and (4)(a) and (b), but who has been practicing as a doula in this state for at least five years before September 29, 2021, may be eligible to be a certified doula if the individual has:
1. Proof of current certification from a nationally recognized doula organization; and
2. Three letters of recommendation from medical providers or licensed midwives who have worked with the individual within the preceding two years and can attest to the individual's competency in providing doula services.

E. A certified doula shall not provide physical health services or behavioral health services, as defined in A.R.S. § 36-401 to a client.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1). Amended by final expedited rulemaking at 29 A.A.R. 3431 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-16-903. Certification Initial Application

A. An applicant for a doula certification shall submit to the Department:
1. An application in a Department-provided format that contains:
   a. The applicant's name, date of birth, home address, telephone number, and email address;
   b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
   c. Whether the applicant has completed high school or a high school equivalency program;
   d. Whether the applicant is or has been certified as a doula in another state or country;
   e. Whether the applicant has had a certification or license revoked or suspended by any state within the previous two years;
   f. Whether the applicant is currently ineligible for certification or licensure in any state because of a revocation or suspension;
   g. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice as a doula;
   h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under A.R.S. § 41-1075;
   i. An attestation that the information submitted is true and accurate; and
   j. The applicant's signature and date of signature;
2. If applicable, a list of all states and countries in which the applicant is or has been certified as a doula;
3. If a certificate or license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
   a. The date of the revocation or suspension,
   b. The state or jurisdiction of the revocation or suspension, and
   c. An explanation of the revocation or suspension;
4. If the applicant is currently ineligible for any occupational certificate or license in any state because of a revocation or suspension, documentation that includes:
   a. The date of the ineligibility for certification or license,
   b. The state or jurisdiction of the ineligibility for certification or license, and
   c. An explanation of the ineligibility for certification or license;
5. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's practice as a doula, documentation that includes:
   a. The date of the disciplinary action,
   b. The state or jurisdiction of the disciplinary action,
   c. An explanation of the disciplinary action, and
   d. Any other applicable documents, including a legal order or settlement agreement;
6. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080;
7. As applicable, documentation that demonstrates compliance with:
   a. R9-16-902(B)(3) and (4),
   b. R9-16-902(C), or
   c. R9-16-902(D); and
8. A fee specified in R9-16-909(A) and (B).

B. In lieu of the documentation required in R9-16-902(B)(3), and (4)(a) and (b), an applicant may submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current certification, including:

a. The certification number of each current certification, and
b. The date each current certification was issued;
2. Documentation of the professional certificate or license issued to the applicant by each state in which the applicant holds a professional certificate or license;
3. A statement, signed and dated by the applicant, attesting that the applicant:
a. Has been certified or licensed in another state for at least one year, with a scope of practice consistent of a certified doula;
b. Has met minimum education requirements specified in this Article;
c. Has not voluntarily surrendered a certification or license in any other state or country while under investigation for unprofessional conduct; and
d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.

C. The Department shall review the application and required documentation for certification as a certified doula according to R9-16-907 and Table 9.1.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1). Amended by final expedited rulemaking at 29 A.A.R. 3431 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-16-904. Certification Renewal

A. From the date of issuance, a doula certification is valid for three years.

B. At least 30 calendar days and not more than 90 calendar days before the expiration date of a certification, an applicant for renewal of certification shall submit to the Department:
1. The following information in a Department-provided format:
a. The applicant's name, home address, telephone number, and email address;
b. The applicant's certification number and date of expiration;
c. Whether the applicant has had, within three years before the renewal application date, a certificate suspended or revoked by any state;
d. An attestation that:
i. The applicant has completed at least 15 hours of continuing education, as required in R9-16-905; and
ii. The documentation of the completed continuing education is available upon the Department's request;
e. Whether the applicant agrees to allow the Department to submit supplemental request for information under R9-16-907(C);
f. An attestation that the information submitted as part of the renewal application packet is true and accurate; and
g. The applicant's signature and date of signature;
2. If the applicant has had a certificate suspended or revoked, as specified according to subsection (B)(1)(c), documentation that includes:
a. The date of the revocation or suspension,
b. The state or jurisdiction of the revocation or suspension, and
c. An explanation of the revocation or suspension; and
3. A fee specified in R9-16-909(C).

C. An applicant who does not submit the documentation and the fee according to subsection (B) shall apply for a new certificate according to R9-16-903.

D. The Department shall review the application and required documentation for renewal certification as a doula according to R9-16-907 and Table 9.1.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1). Amended by final expedited rulemaking at 29 A.A.R. 3431 (October 27, 2023), with an immediate effective date of October 4, 2023 (Supp. 23-4).

R9-16-905. Continuing Education

A. A certified doula shall complete 15 hours of continuing education hours within the three years prior to renewing certification specified in A.R.S. § 36-766.01.

B. Continuing education shall:
1. Directly relate to doula core competencies as specified in R9-16-901(9) including services, skills, and knowledge that:
a. Facilitates access to quality of care delivery and health outcomes for clients receiving services; and
b. Expands health and wellness in diverse communities to reduce health disparities;
2. Have educational objectives that exceed an introductory level of knowledge related to doula core competencies and scope of practices; and
3. Consist of courses related to core competencies, such as:
a. Health and social service systems, including disease prevention to help manage health conditions;
b. Health promotion education;
i. Health literacy and cross-cultural communication;
ii. Referrals and providing follow-up;
iii. Individual support and coaching; and
iv. Outreach methods and strategies;
c. Client and community assessment;
d. Health education for behavior change;
e. Provide direct services;
f. Home visits to provide education, assessment, and social support; and
g. Support, advocacy, and health system navigation for clients.

C. A continuing education course developed, endorsed, or sponsored by the Department according to A.R.S. § 36-766.09(B) is available at www.azdhs.gov.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-906. Enforcement

A. The Department may deny, suspend, or revoke a certificate holder's certification, permanently or for a fixed period of time specified in A.R.S. § 36-766.04 and this Article.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,
2. The severity of the violation,

3. The danger to public health and safety,
4. The number of violations,
5. The number of clients affected by the violations,
6. The degree of harm to the consumer,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder may appeal an enforcement action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

D. If a certified doula is employed by a tribe and appears to have violated this Article according to A.R.S. § 36-766.04(C), the tribal government having jurisdiction and following tribal ordinances and policies shall:

1. Review and determine whether the certified doula has violated this Article; and
2. Provide the Department with a written determination of whether denied, suspended, or revoked, including specific penalties from disciplinary actions taken by the tribal government.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-907. Time-frames

A. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the overall time-frame.

1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the administrative completeness review time-frame.

1. The administrative completeness review time-frame begins the date the Department receives an application required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
   a. If a certificate application is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the application.
   b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
   c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the substantive review time-frame, which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
   a. The Department may make one comprehensive written request for additional information or documentation; and
   b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or approval.

D. An applicant who is denied certification may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

Table 9.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to a Comprehensive Written Request
Initial Application	A.R.S. § 36-766.02	60	30	30	30	30
Certification Renewal	A.R.S. § 36-766.02	60	30	30	30	30

Historical Note

New Table 9.1, Time-Frames (in calendar days) made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-908. Changes Affecting a Certificate; Request for a Duplicate Certificate

A. A certified doula shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:

1. The certified doula's home address, telephone number, or email address, including the new home address, telephone number, or email address; and
2. The certified doula's name, including a copy of one of the following with the certified doula's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal documents establishing the certified doula's new name.

B. A certificate holder may obtain a duplicate certificate by submitting to the Department a written request for a duplicate certificate in a Department-provided format that includes:
1. The certified doula's name and address,
2. The certified doula's certification number and expiration date,
3. The certified doula's signature and date of signature, and
4. A duplicate certificate fee specified in R9-16-909.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-909. Fees

A. An applicant shall submit to the Department for a doula certification, a $100 nonrefundable initial application fee.
B. An applicant shall submit to the Department for a doula certification, a $200 initial certification fee.
C. A certified doula shall submit to the Department for a renewal certification, a $200 nonrefundable renewal fee.
D. The fee for a duplicate certificate is $25.
E. An applicant for initial certification is not required to submit the applicable fee in subsections (A) and (B) if the applicant, as part of the applicable application in R9-16-903, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.
F. Subject to the availability of Department funding, an applicant may receive a discounted fee for an initial application, initial certification, or renewal certification.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

ARTICLE 10. OUT-OF-STATE TELEHEALTH PROVIDERS

R9-16-1001. Definitions

In addition to the definitions in A.R.S. § 36-3601, the following definitions apply in this Article unless otherwise stated:
1. "Applicant" means an individual who is licensed in another state and seeking the Department's approval of registration as a registered health care provider.
2. "Client" means an individual who is examined or treated by a registered health care provider.
3. "Department" means the same as in A.R.S. § 36-101.
4. "Health care decision maker" means an individual designated to make a medical decision on behalf of a client receiving telehealth services.
5. "Health care services" means assessment, diagnosis, consultation, or treatment, consistent with A.R.S. Title 32, Chapter 28; A.R.S. Title 36, Chapter 6, Article 7; or A.R.S. Title 36, Chapter 17, provided to a client.
6. "Informed consent" means documented verbal, electronic, or written permission, given by a client or the client's health care decision maker, for the client to receive health care services from a registered health care provider according to A.R.S. Title 36, Chapter 36, and this Article.
7. "License" means a valid and current agency permit, certificate, approval, registration, or similar form of permission required by law that is issued by a state authorizing an individual to provide health care services consistent with;
   a. A.R.S. Title 32, Chapter 28, for radiologic technology;
   b. A.R.S. Title 36, Chapter 6, for licensed midwifery; or
   c. A.R.S. Title 36, Chapter 17, for audiologists, hearing aid dispensers, speech-language pathologists, and speech-language pathologist assistants.
8. "Registered health care provider" means an individual who:
   a. Resides and holds a current and valid license in another state, and
   b. Has been approved by the Department to provide telehealth services in Arizona.
9. "Telehealth services" means health care services provided through telehealth.

Historical Note
New Section made by final rulemaking at 30 A.A.R. 695 (April 5, 2024), effective May 13, 2024 (Supp. 24-1).

R9-16-1002. Initial Application

A. An applicant for initial registration to provide telehealth services in Arizona shall submit to the Department an application that contains:
1. The following information in a Department-provided format:
   a. The applicant's name, home address, telephone number, and email address;
   b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
   c. The type of telehealth registration the applicant is requesting;
   d. Information about the license held by the applicant, including the:
      i. State or jurisdiction that issued the license,
      ii. The license number, and
      iii. The license date of expiration;
   e. The name of the applicant's professional liability insurance company, including whether the insurance policy covers claims occurring in Arizona;
   f. The name, address, telephone number, email address, and, if applicable, business name of the applicant's statutory agent in Arizona;
   g. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction and, if so:
      i. The date of the conviction,
      ii. The state or jurisdiction of the conviction,
      iii. An explanation of the crime of which the applicant was convicted, and
      iv. The disposition of the case;
   h. Whether the applicant has had a license revoked or suspended;
   i. Whether the applicant has had a disciplinary action taken against the applicant's license by any state or jurisdiction and, if so:
      i. The date of the disciplinary action,

36-766.01. Application for certificate; certification; fingerprint clearance card; renewal; continuing education

A. A person may apply to the director for a certificate to practice as a state-certified doula on a form prescribed by the director and shall furnish the information required by the director.

B. The director shall grant a certificate to a doula who:

1. Meets the qualifications prescribed by this article and rules adopted pursuant to this article.

2. Pays the applicable fees. The director shall prescribe by rule a sliding fee scale for all fees required by this article and rules adopted pursuant to this article.

3. Possesses a valid fingerprint clearance card issued pursuant to title 41, chapter 12, 3.1.

C. A doula certificate is valid for three years and may be renewed every three years by applying to the director and paying the applicable fees.

D. A person shall file an application for renewal at least thirty days and not more than ninety days before the date the current doula certificate expires. A state-certified doula must complete fifteen hours of related continuing education and submit documentation of completion with the renewal application.

36-766.02. Powers and duties of director; rules; waiver

A. The director, by rule, shall:

1. Outline the scope of practice and the core competencies of state-certified doulas regarding the skills and areas of knowledge that are essential to expand health and wellness, to reduce health disparities and to promote culturally relevant practices within diverse communities.

2. Describe and define reasonable and necessary minimum qualifications, including those prescribed in section 36-766.03.

3. Adopt standards and requirements to establish state-certified doula education and training programs in this state.

4. Adopt standards to approve or accept continuing education courses for renewing state-certified doula certificates.

5. Establish criteria for granting, denying, suspending and revoking state-certified doula certificates in order to protect the public health and safety.

B. The director may consult with subject matter experts from an integrated public health program at a higher education institution located in this state regarding the development of rules prescribed by this section.

C. The director may adopt rules:

1. That are necessary to administer and enforce this article.

2. That allow for reciprocity agreements, including with the Indian health service.

D. The director shall waive the minimum training and education requirements for certification for applicants who provide documentation of current certification with a nationally recognized doula organization.

36-766.03. Applicant requirements; education and training; alternate certification

A. An applicant for certification under this article shall do all of the following:

1. Provide one of the following:

(a) Documentation of completing at least thirty hours of in-person instruction or a combination of in-person and online instruction in core competency topics that may include the following:

(i) Entrepreneurship.

(ii) Standards of practice and ethics.

(iii) The childbirth process.

(iv) Parental engagement.

(v) Postpartum care.

(vi) Grief.

(vii) Trauma-informed care.

(viii) Cultural doula practices.

(ix) Anatomy and physiology.

(b) For doulas who are from a community trained in non-western doula practices as determined by the director, documentation confirming that core competencies have been met through culturally specific training or education that is subject to review by the director.

(c) Other related individualized or experiential training or education that is subject to review by the director.

2. Provide department-approved written documentation of both of the following:

(a) Observing at least one birth after training is completed.

(b) Attending at least three births while serving as the primary doula support person and receiving a department-approved and acceptable evaluation from the laboring mother and from the medical provider who assisted the laboring mother.

3. Complete instruction on first aid and cardiopulmonary resuscitation.

4. Submit a code of ethics agreement as prescribed by the director.

B. An individual who does not qualify for state certification under this article but who has been practicing as a doula in this state for at least five years before September 29, 2021 may apply to the department for certification if the individual submits all of the following:

1. Proof of current certification from a nationally recognized doula organization in lieu of proof of the minimum qualifications prescribed in this article and rules adopted pursuant to this article.

2. Three letters of recommendation from health care professionals who have worked with the applicant within the preceding two years and can attest to the applicant's competency in providing doula services.

Senate Engrossed

doulas; voluntary certification

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 282

SENATE BILL 1181

AN ACT

AMENDING TITLE 36, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING SECTIONS 41-619.51, 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; RELATING TO PUBLIC HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 36, chapter 6, Arizona Revised Statutes, is amended by adding article 7.2, to read:

ARTICLE 7.2. DOULAS

36-766. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

3. "DOULA" MEANS A TRAINED NONMEDICAL PROFESSIONAL WHO MAY PROVIDE CONTINUOUS PHYSICAL, EMOTIONAL AND INFORMATIONAL SUPPORT TO FAMILIES BEFORE, DURING AND AFTER CHILDBIRTH FOR A PERIOD OF ONE YEAR AFTER BIRTH OR IN THE CASE OF LOSS AND WHO MAY SERVE AS A LIAISON BETWEEN THE BIRTH PARENTS AND MEDICAL AND SOCIAL SERVICES STAFF TO IMPROVE THE QUALITY OF MEDICAL, SOCIAL AND BEHAVIORAL OUTCOMES.

4. "PRACTICE AS A STATE-CERTIFIED DOULA" MEANS A STATE-CERTIFIED DOULA WHO PROVIDES SERVICES IN ACCORDANCE WITH THE CORE COMPETENCIES SPECIFIED BY THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE.

5. "STATE-CERTIFIED DOULA" MEANS A DOULA TO WHOM THE DEPARTMENT HAS ISSUED A CERTIFICATE TO PRACTICE AS A STATE-CERTIFIED DOULA IN THIS STATE.

36-766.01. Application for certificate; certification; fingerprint clearance card; renewal; continuing education

A. A PERSON MAY APPLY TO THE DIRECTOR FOR A CERTIFICATE TO PRACTICE AS A STATE-CERTIFIED DOULA ON A FORM PRESCRIBED BY THE DIRECTOR AND SHALL FURNISH THE INFORMATION REQUIRED BY THE DIRECTOR.

B. THE DIRECTOR SHALL GRANT A CERTIFICATE TO A DOULA WHO:

1. MEETS THE QUALIFICATIONS PRESCRIBED BY THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE.

2. PAYS THE APPLICABLE FEES. THE DIRECTOR SHALL PRESCRIBE BY RULE A SLIDING FEE SCALE FOR ALL FEES REQUIRED BY THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE.

3. POSSESSES A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, 3.1.

C. A DOULA CERTIFICATE IS VALID FOR THREE YEARS AND MAY BE RENEWED EVERY THREE YEARS BY APPLYING TO THE DIRECTOR AND PAYING THE APPLICABLE FEES.

D. A PERSON SHALL FILE AN APPLICATION FOR RENEWAL AT LEAST THIRTY DAYS AND NOT MORE THAN NINETY DAYS BEFORE THE DATE THE CURRENT DOULA CERTIFICATE EXPIRES. A STATE-CERTIFIED DOULA MUST COMPLETE FIFTEEN HOURS OF RELATED CONTINUING EDUCATION AND SUBMIT DOCUMENTATION OF COMPLETION WITH THE RENEWAL APPLICATION.

36-766.02. Powers and duties of director; rules; waiver

A. THE DIRECTOR, BY RULE, SHALL:

1. OUTLINE THE SCOPE OF PRACTICE AND THE CORE COMPETENCIES OF STATE-CERTIFIED DOULAS REGARDING THE SKILLS AND AREAS OF KNOWLEDGE THAT

ARE ESSENTIAL TO EXPAND HEALTH AND WELLNESS, TO REDUCE HEALTH DISPARITIES AND TO PROMOTE CULTURALLY RELEVANT PRACTICES WITHIN DIVERSE COMMUNITIES.

2. DESCRIBE AND DEFINE REASONABLE AND NECESSARY MINIMUM QUALIFICATIONS, INCLUDING THOSE PRESCRIBED IN SECTION 36-766.03.

3. ADOPT STANDARDS AND REQUIREMENTS TO ESTABLISH STATE-CERTIFIED DOULA EDUCATION AND TRAINING PROGRAMS IN THIS STATE.

4. ADOPT STANDARDS TO APPROVE OR ACCEPT CONTINUING EDUCATION COURSES FOR RENEWING STATE-CERTIFIED DOULA CERTIFICATES.

5. ESTABLISH CRITERIA FOR GRANTING, DENYING, SUSPENDING AND REVOKING STATE-CERTIFIED DOULA CERTIFICATES IN ORDER TO PROTECT THE PUBLIC HEALTH AND SAFETY.

B. THE DIRECTOR MAY CONSULT WITH SUBJECT MATTER EXPERTS FROM AN INTEGRATED PUBLIC HEALTH PROGRAM AT A HIGHER EDUCATION INSTITUTION LOCATED IN THIS STATE REGARDING THE DEVELOPMENT OF RULES PRESCRIBED BY THIS SECTION.

C. THE DIRECTOR MAY ADOPT RULES:

1. THAT ARE NECESSARY TO ADMINISTER AND ENFORCE THIS ARTICLE.

2. THAT ALLOW FOR RECIPROCITY AGREEMENTS, INCLUDING WITH THE INDIAN HEALTH SERVICE.

D. THE DIRECTOR SHALL WAIVE THE MINIMUM TRAINING AND EDUCATION REQUIREMENTS FOR CERTIFICATION FOR APPLICANTS WHO PROVIDE DOCUMENTATION OF CURRENT CERTIFICATION WITH A NATIONALLY RECOGNIZED DOULA ORGANIZATION.

36-766.03. Applicant requirements; education and training; alternate certification

A. AN APPLICANT FOR CERTIFICATION UNDER THIS ARTICLE SHALL DO ALL OF THE FOLLOWING:

1. PROVIDE ONE OF THE FOLLOWING:

(a) DOCUMENTATION OF COMPLETING AT LEAST THIRTY HOURS OF IN-PERSON INSTRUCTION OR A COMBINATION OF IN-PERSON AND ONLINE INSTRUCTION IN CORE COMPETENCY TOPICS THAT MAY INCLUDE THE FOLLOWING:

(i) ENTREPRENEURSHIP.

(ii) STANDARDS OF PRACTICE AND ETHICS.

(iii) THE CHILDBIRTH PROCESS.

(iv) PARENTAL ENGAGEMENT.

(v) POSTPARTUM CARE.

(vi) GRIEF.

(vii) TRAUMA-INFORMED CARE.

(viii) CULTURAL DOULA PRACTICES.

(ix) ANATOMY AND PHYSIOLOGY.

(b) FOR DOULAS WHO ARE FROM A COMMUNITY TRAINED IN NON-WESTERN DOULA PRACTICES AS DETERMINED BY THE DIRECTOR, DOCUMENTATION CONFIRMING THAT CORE COMPETENCIES HAVE BEEN MET THROUGH CULTURALLY SPECIFIC TRAINING OR EDUCATION THAT IS SUBJECT TO REVIEW BY THE DIRECTOR.

(c) OTHER RELATED INDIVIDUALIZED OR EXPERIENTIAL TRAINING OR EDUCATION THAT IS SUBJECT TO REVIEW BY THE DIRECTOR.

2. PROVIDE DEPARTMENT-APPROVED WRITTEN DOCUMENTATION OF BOTH OF THE FOLLOWING:

(a) OBSERVING AT LEAST ONE BIRTH AFTER TRAINING IS COMPLETED.

(b) ATTENDING AT LEAST THREE BIRTHS WHILE SERVING AS THE PRIMARY DOULA SUPPORT PERSON AND RECEIVING A DEPARTMENT-APPROVED AND ACCEPTABLE EVALUATION FROM THE LABORING MOTHER AND FROM THE MEDICAL PROVIDER WHO ASSISTED THE LABORING MOTHER.

3. COMPLETE INSTRUCTION ON FIRST AID AND CARDIOPULMONARY RESUSCITATION.

4. SUBMIT A CODE OF ETHICS AGREEMENT AS PRESCRIBED BY THE DIRECTOR.

B. AN INDIVIDUAL WHO DOES NOT QUALIFY FOR STATE CERTIFICATION UNDER THIS ARTICLE BUT WHO HAS BEEN PRACTICING AS A DOULA IN THIS STATE FOR AT LEAST FIVE YEARS BEFORE THE EFFECTIVE DATE OF THIS SECTION MAY APPLY TO THE DEPARTMENT FOR CERTIFICATION IF THE INDIVIDUAL SUBMITS ALL OF THE FOLLOWING:

1. PROOF OF CURRENT CERTIFICATION FROM A NATIONALLY RECOGNIZED DOULA ORGANIZATION IN LIEU OF PROOF OF THE MINIMUM QUALIFICATIONS PRESCRIBED IN THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE.

2. THREE LETTERS OF RECOMMENDATION FROM HEALTH CARE PROFESSIONALS WHO HAVE WORKED WITH THE APPLICANT WITHIN THE PRECEDING TWO YEARS AND CAN ATTEST TO THE APPLICANT'S COMPETENCY IN PROVIDING DOULA SERVICES.

36-766.04. Denial, suspension or revocation of certificate; hearings; tribal jurisdiction

A. THE DIRECTOR MAY DENY, SUSPEND OR REVOKE THE CERTIFICATE OF ANY STATE-CERTIFIED DOULA WHO:

1. VIOLATES ANY PROVISION OF THIS ARTICLE OR RULE ADOPTED PURSUANT TO THIS ARTICLE.

2. INDULGES IN CONDUCT OR A PRACTICE THAT IS DETRIMENTAL TO THE PUBLIC HEALTH OR SAFETY.

B. THE DEPARTMENT MAY DENY, SUSPEND OR REVOKE A STATE-CERTIFIED DOULA CERTIFICATE. AFTER RECEIVING NOTIFICATION OF THE DENIAL, SUSPENSION OR REVOCATION, THE APPLICANT OR STATE-CERTIFIED DOULA MAY REQUEST A HEARING TO REVIEW THE DENIAL, SUSPENSION OR REVOCATION AND, IF REQUESTED, THE DEPARTMENT SHALL CONDUCT THE HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

C. A STATE-CERTIFIED DOULA WHO IS EMPLOYED BY AN INDIAN TRIBE AND WHO VIOLATES THIS SECTION SHALL BE UNDER TRIBAL GOVERNMENT JURISDICTION. IF THE STATE-CERTIFIED DOULA IS DETERMINED TO HAVE VIOLATED THIS SECTION, THE INFORMATION PROVIDED TO THE DIRECTOR MAY RESULT IN THE DENIAL, SUSPENSION OR REVOCATION OF THE STATE-CERTIFIED DOULA'S CERTIFICATION. INTERNAL HEARINGS, APPEALS OR PENALTIES RESULTING FROM DISCIPLINARY ACTIONS BY A TRIBAL GOVERNMENT ARE DEEMED TO BE THE FINAL DECISION IN ACCORDANCE WITH THIS SECTION.

36-766.05. Investigations; evidence

THE DIRECTOR MAY INVESTIGATE INFORMATION THAT INDICATES A PERSON MAY HAVE VIOLATED OR MAY BE VIOLATING THIS ARTICLE. IN CONNECTION WITH AN INVESTIGATION, THE DIRECTOR MAY EXAMINE AND COPY DOCUMENTS AND OTHER PHYSICAL EVIDENCE WHEREVER LOCATED THAT RELATE TO THE CONDUCT OR COMPETENCY OF A STATE-CERTIFIED DOULA PURSUANT TO THE REQUIREMENTS OF THIS ARTICLE.

36-766.06. Fees

THE DIRECTOR, BY RULE, SHALL ESTABLISH AND COLLECT NONREFUNDABLE FEES FOR STATE-CERTIFIED DOULA CERTIFICATION THAT ARE CONSISTENT WITH FEES PRESCRIBED PURSUANT TO SECTION 36-1908. THE DEPARTMENT SHALL DEPOSIT THE FEES IN A SEGREGATED ACCOUNT IN THE HEALTH SERVICES LICENSING FUND ESTABLISHED BY SECTION 36-414.

36-766.07. Certification not required

THIS ARTICLE DOES NOT REQUIRE A DOULA TO BE CERTIFIED BY THE DEPARTMENT IN ORDER TO PRACTICE AS A DOULA IN THIS STATE.

36-766.08. Public contracts; preference prohibited

THIS STATE AND ANY POLITICAL SUBDIVISION OF THIS STATE MAY NOT PROVIDE A PREFERENCE IN AWARDING A PUBLIC CONTRACT FOR STATE-CERTIFIED DOULA SERVICES OR AN ENTITY THAT EMPLOYS STATE-CERTIFIED DOULAS.

36-766.09. Doula community advisory committee; members; duties; committee termination

A. THE DOULA COMMUNITY ADVISORY COMMITTEE IS ESTABLISHED CONSISTING OF AT LEAST NINE DOULAS, INCLUDING THOSE WHO REPRESENT DIVERSE AND UNDERREPRESENTED COMMUNITIES, WHO ARE APPOINTED BY THE DIRECTOR. THE TERM FOR AN ADVISORY COMMITTEE MEMBER IS TWO YEARS.

B. THE DIRECTOR SHALL CONSULT WITH THE ADVISORY COMMITTEE REGARDING IMPLEMENTATION OF THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE. THE ADVISORY COMMITTEE SHALL:

1. DEVELOP A LIST OF ACCEPTABLE ORGANIZATIONS THAT PROVIDE CERTIFICATION BASED ON THE MINIMUM QUALIFICATIONS AND CORE COMPETENCIES PRESCRIBED IN THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE.

2. IDENTIFY CLASSES THAT ADDRESS CULTURALLY RELEVANT DOULA PRACTICES.

3. REVIEW RULES AND ADVISE THE DIRECTOR OF ANY NECESSARY UPDATES.

C. THE COMMITTEE ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2029 PURSUANT TO SECTION 41-3103.

Sec. 2. Section 41-619.51, Arizona Revised Statutes, is amended to read:

41-619.51. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of child safety, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, the department of public

safety, the department of transportation, the state real estate department, the department of insurance and financial institutions, the Arizona game and fish department, the Arizona department of agriculture, the board of examiners of nursing care institution administrators and assisted living facility managers, the state board of dental examiners, the Arizona state board of pharmacy, ~~or~~ the board of physical therapy or the state board of technical registration.

2. "Board" means the board of fingerprinting.

3. "Central registry exception" means notification to the department of economic security, the department of child safety or the department of health services, as appropriate, pursuant to section 41-619.57 that the person is not disqualified because of a central registry check conducted pursuant to section 8-804.

4. "Expedited review" means an examination, in accordance with board rule, of the documents an applicant submits by the board or its hearing officer without the applicant being present.

5. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

6. "Person" means a person who is required to be fingerprinted pursuant to this article or who is subject to a central registry check and any of the following:

(a) Section 3-314.
(b) Section 8-105.
(c) Section 8-322.
(d) Section 8-463.
(e) Section 8-509.
(f) Section 8-802.
(g) Section 8-804.
(h) Section 15-183.
(i) Section 15-503.
(j) Section 15-512.
(k) Section 15-534.
(l) Section 15-763.01.
(m) Section 15-782.02.
(n) Section 15-1330.
(o) Section 15-1881.
(p) Section 17-215.
(q) Section 28-3228.
(r) Section 28-3413.
(s) Section 32-122.02.
(t) Section 32-122.05.
(u) Section 32-122.06.
(v) Section 32-1232.
(w) Section 32-1276.01.
(x) Section 32-1284.

(y) Section 32-1297.01.
(z) Section 32-1904.
(aa) Section 32-1941.
(bb) Section 32-2022.
(cc) Section 32-2108.01.
(dd) Section 32-2123.
(ee) Section 32-2371.
(ff) Section 32-3620.
(gg) Section 32-3668.
(hh) Section 32-3669.
(ii) Section 36-113.
(jj) Section 36-207.
(kk) Section 36-411.
(ll) Section 36-425.03.
(mm) Section 36-446.04.
(nn) Section 36-594.01.
(oo) Section 36-594.02.
(pp) SECTION 36-766.01.
~~(pp)~~ (qq) Section 36-882.
~~(qq)~~ (rr) Section 36-883.02.
~~(rr)~~ (ss) Section 36-897.01.
~~(ss)~~ (tt) Section 36-897.03.
~~(tt)~~ (uu) Section 36-3008.
~~(uu)~~ (vv) Section 41-619.53.
~~(vv)~~ (ww) Section 41-1964.
~~(ww)~~ (xx) Section 41-1967.01.
~~(xx)~~ (yy) Section 41-1968.
~~(yy)~~ (zz) Section 41-1969.
~~(zz)~~ (aaa) Section 41-2814.
~~(aaa)~~ (bbb) Section 46-141, subsection A or B.
~~(bbb)~~ (ccc) Section 46-321.

Sec. 3. Section 41-1758, Arizona Revised Statutes, is amended to read:

41-1758. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of child safety, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, the department of public safety, the department of transportation, the state real estate department, the department of insurance and financial institutions, the board of fingerprinting, the Arizona game and fish department, the Arizona department of agriculture, the board of examiners of nursing care institution administrators and assisted living facility managers, the state board of dental examiners, the Arizona state board of pharmacy, ~~or~~

the board of physical therapy or the state board of technical registration.

2. "Division" means the fingerprinting division in the department of public safety.

3. "Electronic or internet-based fingerprinting services" means a secure system for digitizing applicant fingerprints and transmitting the applicant data and fingerprints of a person or entity submitting fingerprints to the department of public safety for any authorized purpose under this title. For the purposes of this paragraph, "secure system" means a system that complies with the information technology security policy approved by the department of public safety.

4. "Good cause exception" means the issuance of a fingerprint clearance card to an applicant pursuant to section 41-619.55.

5. "Person" means a person who is required to be fingerprinted pursuant to any of the following:

(a) Section 3-314.
(b) Section 8-105.
(c) Section 8-322.
(d) Section 8-463.
(e) Section 8-509.
(f) Section 8-802.
(g) Section 15-183.
(h) Section 15-503.
(i) Section 15-512.
(j) Section 15-534.
(k) Section 15-763.01.
(l) Section 15-782.02.
(m) Section 15-1330.
(n) Section 15-1881.
(o) Section 17-215.
(p) Section 28-3228.
(q) Section 28-3413.
(r) Section 32-122.02.
(s) Section 32-122.05.
(t) Section 32-122.06.
(u) Section 32-1232.
(v) Section 32-1276.01.
(w) Section 32-1284.
(x) Section 32-1297.01.
(y) Section 32-1904.
(z) Section 32-1941.
(aa) Section 32-2022.
(bb) Section 32-2108.01.
(cc) Section 32-2123.
(dd) Section 32-2371.

(ee) Section 32-3620.
(ff) Section 32-3668.
(gg) Section 32-3669.
(hh) Section 36-113.
(ii) Section 36-207.
(jj) Section 36-411.
(kk) Section 36-425.03.
(ll) Section 36-446.04.
(mm) Section 36-594.01.
(nn) Section 36-594.02.
(oo) SECTION 36-766.01.
~~(oo)~~ (pp) Section 36-882.
~~(pp)~~ (qq) Section 36-883.02.
~~(qq)~~ (rr) Section 36-897.01.
~~(rr)~~ (ss) Section 36-897.03.
~~(ss)~~ (tt) Section 36-3008.
~~(tt)~~ (uu) Section 41-619.52.
~~(uu)~~ (vv) Section 41-619.53.
~~(vv)~~ (ww) Section 41-1964.
~~(ww)~~ (xx) Section 41-1967.01.
~~(xx)~~ (yy) Section 41-1968.
~~(yy)~~ (zz) Section 41-1969.
~~(zz)~~ (aaa) Section 41-2814.
~~(aaa)~~ (bbb) Section 46-141, subsection A or B.
~~(bbb)~~ (ccc) Section 46-321.

6. "Vulnerable adult" has the same meaning prescribed in section 13-3623.

Sec. 4. Section 41-1758.01, Arizona Revised Statutes, is amended to read:

41-1758.01. Fingerprinting division; powers and duties

A. The fingerprinting division is established in the department of public safety and shall:

1. Conduct fingerprint background checks for persons and applicants who are seeking licenses from state agencies, employment with licensees, contract providers and state agencies or employment or educational opportunities with agencies that require fingerprint background checks pursuant to sections 3-314, 8-105, 8-322, 8-463, 8-509, 8-802, 15-183, 15-503, 15-512, 15-534, 15-763.01, 15-782.02, 15-1330, 15-1881, 17-215, 28-3228, 28-3413, 32-122.02, 32-122.05, 32-122.06, 32-1232, 32-1276.01, 32-1284, 32-1297.01, 32-1904, 32-1941, 32-2022, 32-2108.01, 32-2123, 32-2371, 32-3620, 32-3668, 32-3669, 36-113, 36-207, 36-411, 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-766.01, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-3008, 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814, section 46-141, subsection A or B and section 46-321.

2. Issue fingerprint clearance cards. On issuance, a fingerprint clearance card becomes the personal property of the cardholder and the cardholder shall retain possession of the fingerprint clearance card.

3. On submission of an application for a fingerprint clearance card, collect the fees established by the board of fingerprinting pursuant to section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the monies collected in the board of fingerprinting fund.

4. Inform in writing each person who submits fingerprints for a fingerprint background check of the right to petition the board of fingerprinting for a good cause exception pursuant to section 41-1758.03, 41-1758.04 or 41-1758.07.

5. If after conducting a state and federal criminal history records check the division determines that it is not authorized to issue a fingerprint clearance card to a person, inform the person in writing that the division is not authorized to issue a fingerprint clearance card. The notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

6. Notify the person in writing if the division suspends, revokes or places a driving restriction notation on a fingerprint clearance card pursuant to section 41-1758.04. The notice shall include the criminal history information on which the suspension, revocation or placement of the driving restriction notation was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

7. Administer and enforce this article.

B. The fingerprinting division may contract for electronic or internet-based fingerprinting services through an entity or entities for the acquisition and transmission of applicant fingerprint and data submissions to the department, including identity verified fingerprints pursuant to section 15-106. The entity or entities contracted by the department of public safety may charge the applicant a fee for services provided pursuant to this article. The entity or entities contracted by the department of public safety shall comply with:

1. All information privacy and security measures and submission standards established by the department of public safety.

2. The information technology security policy approved by the department of public safety.

Sec. 5. Rulemaking; department of health services; exemption

For the purposes of this act, the department of health services is exempt from the rulemaking requirements of title 41, chapters 6 and 6.1, Arizona Revised Statutes, for eighteen months after the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 26, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2021.

www.azsos.gov

Arizona Administrative REGISTER

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Administrative Rules Division
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SECRETARY OF STATE
ADRIAN FONTES

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Arizona Administrative Register
Rhonda Paschal

From the Publisher

ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE *REGISTER*?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* Chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this Chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking.very document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

Arizona Administrative REGISTER

March 31, 2023
Volume 29, Issue 13

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SECRETARY OF STATE
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Scott Cancelosi

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Rhonda Paschal

ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
The *Arizona Administrative Code* is available online at www.azsos.gov.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register.* These dates include file submittal dates with a three-week turnaround from filing to published document.

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The Office of the Secretary of State is an equal opportunity employer.

Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register.* Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

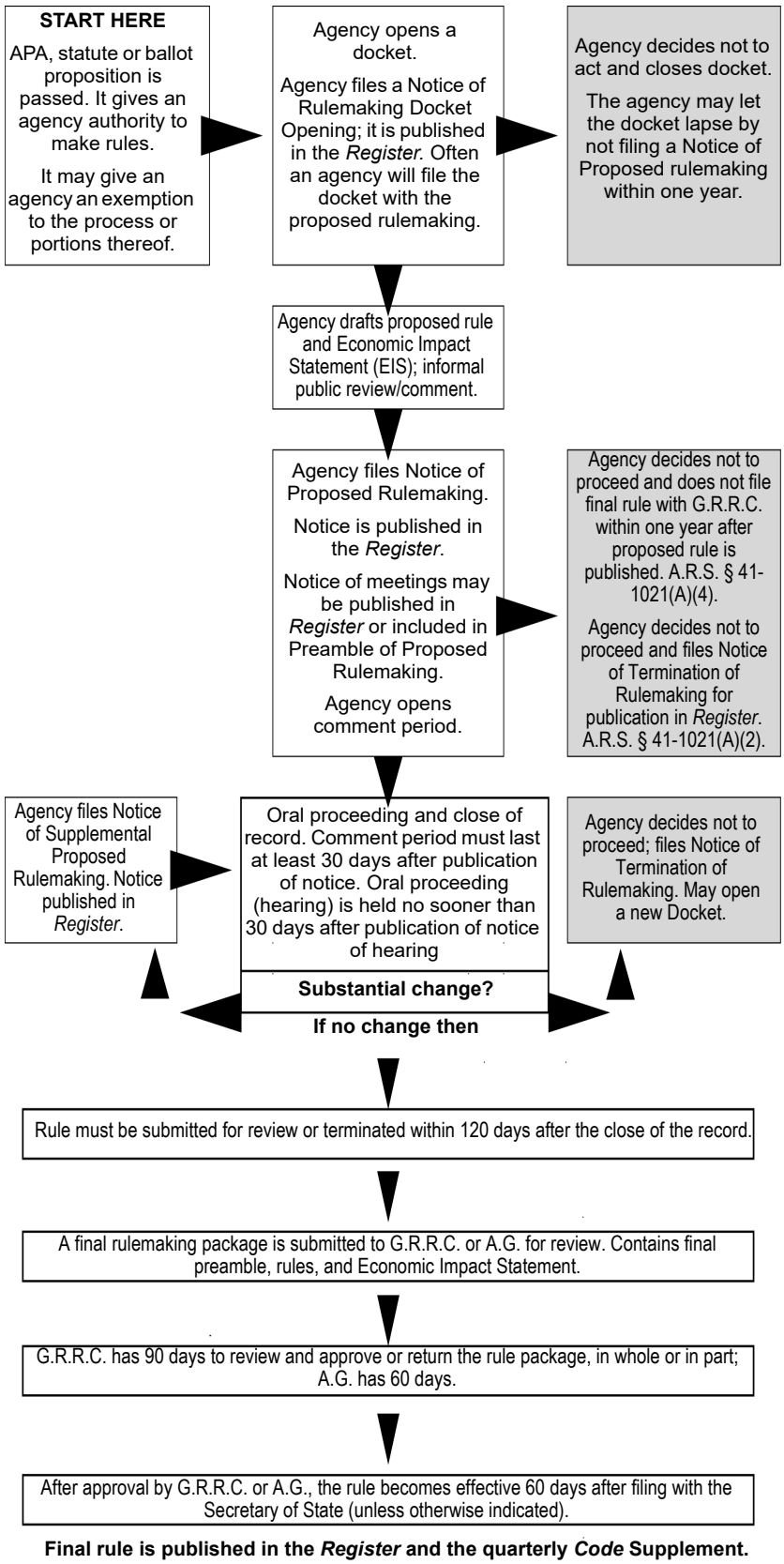
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

***Arizona Administrative Code* (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

***Arizona Administrative Register* (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are complied by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.", and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – Administrative Procedure Act

A.R.S. – Arizona Revised Statutes

CFR – *Code of Federal Regulations*

EIS – Economic, Small Business, and Consumer Impact Statement

FR – *Federal Register*

G.R.R.C. – Governor's Regulatory Review Council

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Exempt Rulemaking.

It is common for an agency to be exempt from all steps outlined in the rulemaking process as specified in Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10, otherwise known as the Arizona Administrative Procedure Act (APA).

An agency's exemption is either written in law - under the APA, or by the Arizona State Legislature in statute, or under a referendum or initiative passed into law by Arizona voters; or a court has determined that an agency, board, or commission is exempt from the rulemaking process.

The Office makes a distinction when publishing certain exempt rulemakings, as provided in these laws, on a case-by-case basis, as determined by an agency's exemption. Other rule exemption types are published elsewhere in the *Register*.

Exempt rulemakings, as published, were promulgated with no special conditions or restrictions; no public input; no public hearing; and no filing of a Proposed Exempt Rulemaking.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING

[R23-30]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

Article 9	New Article
R9-16-901	New Section
R9-16-902	New Section
R9-16-903	New Section
R9-16-904	New Section
R9-16-905	New Section
R9-16-906	New Section
R9-16-907	New Section
Table 9.1	New Table
R9-16-908	New Section
R9-16-909	New Section

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

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

Implementing statutes: A.R.S. §§ 36-766.01, 36-766.02, 36-766.03

Statute or session law authorizing the exemption: Laws 2021, Ch. 282

3. The effective date of the rules:

August 1, 2023

The Arizona Department of Health Services (Department) believes this effective date provides sufficient time for the Department and stakeholders to implement the new rules.

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

Notice of Public Information: 28 A.A.R. 1986, August 5, 2022

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

Name: Megan Whitby, Deputy Assistant Director

Address: Arizona Department of Health Services
Special Licensing
150 N. 18th Ave., Suite 410
Phoenix, AZ 85007

Telephone: (602) 364-3052

Email: megan.whitby@azdhs.gov

Or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200

Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
Email: stacie.gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(18) authorizes the Department to issue or direct the issuance of licenses and permits. Laws 2021, Ch. 282 establishes A.R.S. Title 36, Chapter 6, Article 7.2 and provides authority to the Department to adopt rules to establish standards and requirements for individuals who wish to obtain a state doula certification. After receiving an exception from the rulemaking moratorium in accordance with A.R.S. § 41-1039(A), the Department promulgated new state-certified doula rules in Title 9, Chapter 16, Article 9. In accordance with Laws 2021, Ch. 282, the Department created rules that clarify the scope of practice and core competencies [36-766.02(A)(1)] of state-certified doulas including skills and areas of knowledge that are essential to expanding health and wellness; establishes reasonable and necessary minimum doula qualifications; provides standards and requirements relate to doula education and training programs in the state; identifies continuing education requirements; and to ensure protection of public health and safety, specifies criteria for denying, suspending, and revoking a doula certification. Pursuant to Laws 2021, Ch. 282, the Department is exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 and 6.1, for 18 months after the general effective date of the legislative session.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.

Not applicable

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

Not applicable

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

Not applicable

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

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

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:

According to A.R.S. § 36-766.07, this article does not require a doula to be certified by the Department in order to practice as a doula in Arizona.

The Department believes that under A.R.S. § 41-1037(A)(3), 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 the federal law and if so, citation to the statutory authority to exceed the requirements of the federal law:

Not applicable

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

Not applicable

13. A list of any incorporated by reference material and its location in the rules:

Not applicable

14. Whether this rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

The rule was not previously made, amended, repealed, or renumbered as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING

ARTICLE 9. DOULA CERTIFICATION

Section

ARTICLE 9. DOULA CERTIFICATION

R9-16-901. Definitions

In addition to the definitions in A.R.S. § 36-766, the following definitions apply in this Article unless otherwise specified:

1. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
2. "Applicant" means an individual who submits an application and required documentation for approval to practice as a certified doula.
3. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. "Certification" means an approval granted to individuals who meet the qualifications, including education and training requirements, in this Article for certified doulas.
5. "Certified doula" means the same as "state-certified doula" in A.R.S. § 36-766.
6. "Client" means an individual receiving doula services provided by a certified doula.
7. "Code of ethics agreement" means the document submitted to the Department by an applicant that agrees to the general ethics and compliance of the standards of practice, and doula scope of practice of a certified doula.
8. "Continuing education" means a course that provides training and instruction that is designed to develop or improve a certified doula's professional competence in areas directly related to the practice of a doula.
9. "Core competencies" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
    a. Entrepreneurship,
    b. Standards of practice and ethics,
    c. The childbirth processes,
    d. Parental engagement,
    e. Postpartum care,
    f. Grief,
    g. Trauma-informed care,
    h. Cultural doula practices,
    i. Anatomy and physiology, and
    j. HIPAA.
10. "Course" means a workshop, seminar, lecture, conference, or class.
11. "Department" means the same as in A.R.S. § 36-101.
12. "Doula scope of practice" includes:
    a. Providing care coordination, coaching, and social support;
    b. Providing emotional support of the individuals parenting choices;
    c. Providing encouragement and positive affirmations;
    d. Advocating for parents;
    e. Assessing the needs of the family;
    f. Providing newborn care hands-on education and care including:
        i. Normal newborn behavior,
        ii. Newborn appearance,
        iii. Sleep habits,
        iv. Feeding,
        v. Bathing, and
        vi. Dressing the baby;
    g. Infant feeding support;
    h. Cord and circumcision care;
    i. Establishing a routine;
    j. Organizing the nursery and home; and
    k. Sibling education and transition.
13. "Documentation" means information in written, photographic, electronic or other permanent form.
14. "Evaluation" means the assessment of the client in order to provide doula services.
15. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, according to U.S. Public Law 104-191.

16. "Licensed midwife" has the same meaning as "midwife" in A.R.S. § 36-751 and is licensed by the Department to provide midwifery services.
17. "Medical provider" means an individual licensed in the state of Arizona as a:
    a. "Physician" as defined in A.R.S. §§ 32-1401, 32-1501, or 32-1800;
    b. "Certified nurse midwife" as defined in A.R.S. § 32-1601; or
    c. "Clinical nurse specialist" as defined in A.R.S. § 32-1601.
18. "Observing" means to witness:
    a. The provision of doula services to a client, or
    b. A demonstration of how to provide doula services to a client.
19. "Organization" means a person specified in A.R.S. § 1-215, and includes a tribal government.
20. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
21. "Physical health services" means information and care provided by licensed health professionals consistent with practices specified in A.R.S. § 32-3201.
22. "Postpartum" means the six-week period following delivery of a newborn and placenta.
23. "Training and instruction" means educational activities that develop and improve an individual's professional competence in areas related to the practice as a certified doula specified in A.R.S. § 36-766.03 and specific to the delivery of services identified in the doula scope of practice and core competencies specified in this Article.

R9-16-902. Doula Eligibility and Doula Scope of Practice

A. An individual may provide doula services in Arizona without obtaining certification as a certified doula specified in this Article.

B. An individual is eligible to practice as a certified doula, if the individual:
1. Is 18 years of age or older;
2. Has at least a high school diploma or high school equivalency diploma;
3. Has training or educational documentation for:
    a. Completing at least 30 hours of in-person instruction or a combination of in-person and online in core competency specified in this Article; or
    b. If an individual from a community trained in non-western doula practices, as determined by the Department, documentation confirming that core competencies have been met through culturally specific training or education subject to Department review; or
    c. If an individual provides documentation of other related individualized; or experiential training or education that is subject to review by the Director; or
    d. Proof of current certification from a nationally recognized doula organization;
4. Has written documentation of:
    a. Observing at least one birth after training is completed by the medical provider or licensed midwife who assisted the laboring mother;
    b. Attending a minimum of three births while serving as the primary doula, including evaluations from the laboring mother and from the medical provider or licensed midwife who assisted the laboring mother;
    c. Completing first aid and adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association;
    d. Completing neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
    e. A code of ethics agreement as prescribed by the Department, and
    f. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
5. Meets the requirements of core competencies as specified in R9-16-901(9) and certified doula scope of practice as specified in R9-16-901(12); and
6. Submits an initial doula application in a Department-provided format to the Department.

C. An individual who does not meet the requirements in subsections (B)(3) and (4), but who has been practicing as a doula in this state for at least five years before the effective date of A.R.S. 36-766.03, may be eligible to be a certified doula if the individual submits to the Department the following:
1. Proof of current certification from a nationally recognized doula organization; and
2. Three letters of recommendation from medical providers or licensed midwives who have worked with the applicant within the preceding two years and can attest to the applicant's competency in providing doula services.

D. A certified doula shall not provide physical health services or behavioral health services to a client.

R9-16-903. Certification Initial Application

A. An applicant for a doula certification shall submit to the Department:
1. An application provided in a Department-provided format that contains:
    a. The applicant's name, home address, telephone number, and e-mail address;
    b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    c. Whether the applicant has completed high school or a high school equivalency program;
    d. Whether the applicant is or has been certified as a doula in another state or country;
    e. Whether the applicant has had a certification or license revoked or suspended by any state within the previous two years;
    f. Whether the applicant is currently ineligible for certification or licensure in any state because of a revocation or suspension;
    g. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice as a doula;
    h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under A.R.S. § 41-1075;

i. An attestation that the information submitted is true and accurate; and
j. The applicant's signature and date of signature;
2. If applicable, a list of all states and countries in which the applicant is or has been certified as a doula;
3. If a certificate or license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
a. The date of the revocation or suspension,
b. The state or jurisdiction of the revocation or suspension, and
c. An explanation of the revocation or suspension;
4. If the applicant is currently ineligible for any occupational certificate or license in any state because of a revocation or suspension, documentation that includes:
a. The date of the ineligibility for certification or license,
b. The state or jurisdiction of the ineligibility for certification or license, and
c. An explanation of the ineligibility for certification or license;
5. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's practice as a doula, documentation that includes:
a. The date of the disciplinary action,
b. The state or jurisdiction of the disciplinary action,
c. An explanation of the disciplinary action, and
d. Any other applicable documents, including a legal order or settlement agreement;
6. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080;
7. As applicable, documentation that demonstrates:
a. At least 30 hours of in-person instruction or a combination of in-person and online in core competencies; or
b. Specific cultural training or education received related to community training in non-western doula practices confirming completion of required core competencies; or
c. Individualized or experiential training or education that is consistent with core competencies; or
d. Practicing as a doula in this state for at least five years, before the effective date of A.R.S. § 36-766.03, and includes:
i. Proof of current certification from a nationally recognized doula organization; and
ii. Three letters of recommendation from a medical provider or licensed midwife who has worked with the applicant within the preceding two years and attest to the applicant's competency; and
e. Observing at least one birth after training is completed;
f. Attending at least three births while serving as the primary doula, including evaluations from the laboring mother and medical provider or licensed midwife who assisted the laboring mother;
g. Completion of training in:
i. First aid and cardiopulmonary resuscitation, and
ii. Neonatal resuscitation; and
h. A valid code of ethics agreement; and
i. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1; and
8. A fee specified in R9-16-909.

B. In lieu of the documentation required in subsection (A)(7), an applicant may submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current certification, including:
a. The certification number of each current certification, and
b. The date each current certification was issued;
2. Documentation of the professional certificate or license issued to the applicant by each state in which the applicant holds a professional certificate or license;
3. A statement, signed and dated by the applicant, attesting that the applicant:
a. Has been certified or licensed in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
b. Has met minimum education requirements specified in this Article;
c. Has not voluntarily surrendered a certification or license in any other state or country while under investigation for unprofessional conduct; and
d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.

C. The Department may waive the minimum training and education requirements for doula state-certification in subsections (A)(7) and (B) for applicants who shall provide documentation of current certification with a nationally recognized doula organization.

D. The Department shall review the application and required documentation for certification as a certified doula according to R9-16-907 and Table 9.1.

R9-16-904. Certification Renewal

A. From the date of issuance, a doula certification is valid for three years.

B. At least 30 calendar days and not more than 90 calendar days before the expiration date of a certification, an applicant shall submit to the Department:
1. A renewal application in a Department-provided format that contains:
a. The applicant's name, home address, telephone number, and e-mail address;
b. The applicant's certification number and date of expiration;
c. Whether the applicant has had, within two years before the renewal application date, a certificate suspended or revoked by any state;

d. An attestation that the applicant has completed 15 hours of continuing education required in R9-16-905 and documentation of the completed continuing education is available upon the Department's request;
e. Whether the applicant agrees to allow the Department to submit supplemental request for information under R9-16-907(C);
f. An attestation that the information submitted as part of the renewal application packet is true and accurate; and
g. The applicant's signature and date of signature.

2. A fee specified in R9-16-909.

C. An applicant who does not submit the documentation and the fee in subsection (B) shall apply for a new certificate in R9-16-903.

D. The Department shall review the application and required documentation for renewal certification as a doula according to R9-16-904 and Table 9.1.

R9-16-905. Continuing Education

A. A certified doula shall complete 15 hours of continuing education hours within the three years prior to renewing certification specified in A.R.S. § 36-766.01.

B. Continuing education shall:
1. Directly relate to doula core competencies as specified in R9-16-901(9) including services, skills, and knowledge that:
a. Facilitates access to quality of care delivery and health outcomes for clients receiving services; and
b. Expands health and wellness in diverse communities to reduce health disparities;
2. Have educational objectives that exceed an introductory level of knowledge related to doula core competencies and scope of practices; and
3. Consist of courses related to core competencies, such as:
a. Health and social service systems, including disease prevention to help manage health conditions;
b. Health promotion education;
i. Health literacy and cross-cultural communication;
ii. Referrals and providing follow-up;
iii. Individual support and coaching; and
iv. Outreach methods and strategies;
c. Client and community assessment;
d. Health education for behavior change;
e. Provide direct services;
f. Home visits to provide education, assessment, and social support; and
g. Support, advocacy, and health system navigation for clients.

C. A continuing education course developed, endorsed, or sponsored by the Department according to A.R.S. § 36-766.09(B) is available at www.azdhs.gov.

R9-16-906. Enforcement

A. The Department may deny, suspend, or revoke a certificate holder's certification, permanently or for a fixed period of time specified in A.R.S. § 36-766.04 and this Article.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of clients affected by the violations,
6. The degree of harm to the consumer,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder may appeal an enforcement action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

D. If a certified doula is employed by a tribe and appears to have violated this Article according to A.R.S. § 36-766.04(C), the tribal government having jurisdiction and following tribal ordinances and policies shall:
1. Review and determine whether the certified doula has violated this Article; and
2. Provide the Department with a written determination of whether denied, suspended, or revoked, including specific penalties from disciplinary actions taken by the tribal government.

R9-16-907. Time-frames

A. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the overall time-frame.
1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the administrative completeness review time-frame.
1. The administrative completeness review time-frame begins the date the Department receives an application required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
a. If a certificate application is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the application.
b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.

c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.

3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For a certificate or approval issued by the Department under this Article, Table 8.1 specifies the substantive review time-frame, which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
   a. The Department may make one comprehensive written request for additional information or documentation; and
   b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or approval.

D. An applicant who is denied certification may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 9.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to a Comprehensive Written Request
Initial Application	A.R.S. § 36-766.02	60	30	30	30	30
Certification Renewal	A.R.S. § 36-766.02	60	30	30	30	30

R9-16-908. Changes Affecting a Certificate; Request for a Duplicate Certificate

A. A certified doula shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:

1. The certified doula's home address, telephone number, or e-mail address, including the new home address, telephone number, or e-mail address; and
2. The certified doula's name, including a copy of one of the following with the certified doula's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal documents establishing the certified doula's new name.

B. A certificate holder may obtain a duplicate certificate by submitting to the Department a written request for a duplicate certificate in a Department-provided format that includes:

1. The certified doula's name and address,
2. The certified doula's certification number and expiration date,
3. The certified doula's signature and date of signature, and
4. A duplicate certificate fee specified in R9-16-909.

R9-16-909. Fees

A. An applicant shall submit to the Department for a doula certification, a $100 nonrefundable initial application fee.

B. An applicant shall submit to the Department for a doula certification, a $200 initial certification fee.

C. A certified doula shall submit to the Department for a renewal certification, a $200 nonrefundable renewal fee.

D. The fee for a duplicate certificate is $25.

E. An applicant for initial certification is not required to submit the applicable fee in subsections (A) and (B) if the applicant, as part of the applicable application in R9-16-903, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

F. Subject to the availability of Department funding, an applicant may receive a discounted fee for an initial application, initial certification, or renewal certification.

NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening under A.R.S. § 41-1021.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that an agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires publication of the Notice of Rulemaking Docket Opening in the Register.

Under the APA, effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. An agency may file the Notice of Rulemaking Docket Opening along with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF RULEMAKING DOCKET OPENING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

[R23-31]

1. Title and its heading: 4, Professions and Occupations
Chapter and its heading: 18, Naturopathic Physicians Medical Board
Article and its heading: 6, Naturopathic Medical Assistants
Section numbers: R4-18-601 through R4-18-603

2. The subject matter of the proposed rule:
Medical Assistant Training.

3. A citation to all published notices relating to the proceeding:
None

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Gail Anthony, Executive Director
Address: Naturopathic Physicians Medical Board
1740 W. Adams, Suite 3002
Phoenix, AZ 85007
Telephone: (602) 542-8242
Email: Gail.anthony@nd.az.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:
The Board will continue to accept written comments at the location listed above until the close of record. The Board will schedule oral proceedings within the statutory mandated time-frame, which will be noticed by publication in the Arizona Administrative Register.

6. A timetable for agency decisions or other action on the proceeding, if known:
Not applicable.

NOTICE OF RULEMAKING DOCKET OPENING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

[R23-32]

1. Title and its heading: 4, Professions and Occupations
Chapter and its heading: 18, Naturopathic Physicians Medical Board
Article and its heading: 10, Dispensing of a Natural Substance, Drug or Device
Section numbers: R4-18-1001 through R4-18-1004

2. The subject matter of the proposed rule:
When a certificate to dispense is required; requirements for packaging and inventory of natural substances, drugs or devices dispensed; recordkeeping requirements for natural substances, drugs or devices; and inspections.

3. A citation to all published notices relating to the proceeding:
None

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Gail Anthony, Executive Director

Address: Naturopathic Physicians Medical Board
1740 W. Adams, Suite 3002
Phoenix, AZ 85007

Telephone: (602) 542-8242

Email: Gail.anthony@nd.az.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Board will continue to accept written comments at the location listed above until the close of record. The Board will schedule oral proceedings within the statutory mandated time-frame, which will be noticed by publication in the Arizona Administrative Register.

6. A timetable for agency decisions or other action on the proceeding, if known:

Not applicable.

NOTICES OF SUBSTANTIVE POLICY STATEMENT

SUMMARIES AND LOCATION OF STATEMENTS

Substantive policy statements are written expressions that inform the general public of an agency's current approach to rule or regulation practice as defined under A.R.S. § 41-1001(24).

Agencies are required to prepare a Notice of Substantive Policy Statement and publish the titles of its substantive policy statements, a summary of statements, and its website where full statements can be reviewed under A.R.S. § 41-1013(B)(9). These notices are published in this section of the *Register*.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency's internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

Any person may petition an agency under A.R.S. § 41-1033(A)(2) to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

Contact the agency liaison listed under Item #6.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ)

[M23-14]

1. Title of the substantive policy statement and the number by which the substantive policy statement is referenced:

Title: Donations for the Employee Recognition Program

Policy Number: 0501.2023

2. Date the substantive policy statement was issued and the effective date of the policy statement, if different from the issuance date:

Effective: January 1, 2023

3. Summary of the contents of the substantive policy statement:

The policy establishes the following:

The ADEQ donation portal will only accept monetary donations. The donation portal will ensure that each donation flows through the established operational controls.

All donations will be deposited directly to the Employee Recognition Fund. Donations will not be repurposed or used in any other manner than for the purpose of ADEQ's Employee Recognition Program. Once a donation has been accepted by ADEQ it must and will be treated as public money. The Employee Recognition Fund is not exempt from any internal controls or safeguarding set forth by ADEQ or the State of Arizona concerning public money.

Donations

ADEQ will only accept a donation if doing so is within the powers and duties assigned to ADEQ by Arizona statute. Only donations meant for a valid public purpose consistent with ADEQ's mission and mandates will be accepted. ADEQ will not accept a donation if doing so would violate state or federal law, rule, or policy. ADEQ will only accept a donation if the benefit to the State outweighs the cost of accepting the donation.

To avoid conflicts of interest or appearance of influence, the donor's information will be kept confidential and will not be provided to programmatic staff. This includes all of the information that is required when submitting a donation through the ADEQ donation portal. The visibility of donors will be limited to only those financial staff who must process the transaction and the Chief Financial Officer of ADEQ.

ADEQ will not solicit donations from public entities, private entities, or any person. This includes but is not limited to advertising, campaigning, or propositioning activities. However, if an individual or agency chooses to donate they may do so through the donation portal located on ADEQ's website.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. § 41-709 authorizes state agencies to accept gifts and donations for employee recognition programs.

A.R.S. § 35-149 authorizes state agencies receiving private monies or contributions to manage the funds in accordance with statutory guidelines.

A.R.S. § 35-142 authorizes the state treasury to place and retain monies received for and belonging to the state in separate funds.

A.A.C. R2-5A-501(B)(4) prohibits state agencies from accepting or soliciting directly or indirectly anything of economic value that may appear to, or be designed to, influence an employee's official conduct.

5. A statement as to whether the substantive policy statement is a new statement or a revision:

This substantive policy statement is a revision of the ADEQ Compliance and Enforcement Handbook.

6. The agency contact person who can answer questions about the substantive policy statement:

Name: Edwin Slade, Administrative Counsel

Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2242
Email: slade.edwin@azdeq.gov
Website: www.azdeq.gov

7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

Copies of this document are available at no cost on the Department's website here: https://azdeq.gov/node/1840. Hard copies may be obtained by contacting http://www.azdeq.gov/records-center the ADEQ Records Center, 8:30 AM to 4:30 PM Monday through Friday, 1110 W. Washington St., Phoenix, AZ 85007, (602) 771-4380. Cost is $0.25 per page.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF HEALTH SERVICES

[M23-15]

1. Title of the substantive policy statement and the number by which the substantive policy statement is referenced:

SP-100-PHS-EMS Clarification of Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance Under 9 A.A.C. 25, Article 8.

2. Date the substantive policy statement was issued and the effective date of the policy statement, if different from the issuance date:

March 14, 2023

3. Summary of the contents of the substantive policy statement:

The purpose of this substantive policy statement is to clarify the documentation requirements established under Arizona Administrative Code (A.A.C.) R9-25-801(B) for applicants for an initial or renewal registration for an air ambulance with the Arizona Department of Health Services (Department), including the interpretation of the phrase "legally possess and operate the aircraft" as used in A.A.C. R9-25-801(B)(4).

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

Code of Federal Regulations (C.F.R.) Title 14, Chapter 1, Subchapter G, Part 135; Arizona Revised Statutes (A.R.S.), Title 41, Chapter 6, Article 3; and Arizona Administrative Code (A.A.C.) Title 9, Chapter 25, Articles 7 and 8.

5. A statement as to whether the substantive policy statement is a new statement or a revision:

This is a new substantive policy statement that clarifies the wording of the applicable sections of the Arizona Administrative Code.

6. The agency contact person who can answer questions about the substantive policy statement:

Name: Rachel Zenuk Garcia, Bureau Chief
Address: Arizona Department of Health Services
Bureau of Emergency Medical Services and Trauma System
150 N. 18th Ave., Suite 540
Phoenix, AZ 85007-3248
Telephone: (602) 364-3150
Fax: (602) 364-3568
Email: Rachel.Garcia@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
Email: Stacie.Gravito@azdhs.gov

7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

A copy of the substantive policy statement is available, free of charge, from the Arizona Department of Health Services, Office of Administrative Counsel and Rules at the following web address: http://www.azdhs.gov/ops/oacr/rules/sps/index.php?pg=preparedness. A copy of the substantive policy statement may also be obtained from the Arizona Department of Health Services, Bureau of Emergency Medical Services and Trauma System, 150 N. 18th Avenue, Suite 540, Phoenix, AZ 85007, for 25 cents per page. Payment is accepted in cash or money order made payable to the Arizona Department of Health Services.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

NATUROPATHIC PHYSICIANS MEDICAL BOARD

[M23-16]

1. Title of the substantive policy statement and the number by which the substantive policy statement is referenced:

Substantive Policy Statement #1 Regarding Scope of Practice

2. Date the substantive policy statement was issued and the effective date of the policy statement, if different from the issuance date:

March 9, 2023

3. Summary of the contents of the substantive policy statement:

Scope of practice includes only what is taught in an approved school of naturopathic medicine; in an approved clinical training program; in an approved internship program; in an approved preceptorship program; or in approved postdoctoral training.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. §§ 32-1501(4), 32-1501(5), 32-1501(6), 32-1501(7), 32-1501(8).

5. A statement as to whether the substantive policy statement is a new statement or a revision:

This is a new statement.

6. The agency contact person who can answer questions about the substantive policy statement:

Name: Gail Anthony, Executive Director

Address: Naturopathic Physicians Medical Board
1740 W. Adams, Suite 3002
Phoenix, AZ 85007

Telephone: (602) 542-8242

Email: gail.anthony@nd.az.gov

Website: https://nd.az.gov

7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

A copy of the Substantive Policy Statement may be obtained from the Board's website at no cost.

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See "General Information" in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING
PN = Proposed new Section
PM = Proposed amended Section
PR = Proposed repealed Section
P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING
SPN = Supplemental proposed new Section
SPM = Supplemental proposed amended Section
SPR = Supplemental proposed repealed Section
SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING
FN = Final new Section
FM = Final amended Section
FR = Final repealed Section
F# = Final renumbered Section

SUMMARY RULEMAKING
PROPOSED SUMMARY
PSMN = Proposed Summary new Section
PSMM = Proposed Summary amended Section
PSMR = Proposed Summary repealed Section
PSM# = Proposed Summary renumbered Section
FINAL SUMMARY
FSMN = Final Summary new Section
FSMM = Final Summary amended Section
FSMR = Final Summary repealed Section
FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING
PROPOSED EXPEDITED
PEN = Proposed Expedited new Section
PEM = Proposed Expedited amended Section
PER = Proposed Expedited repealed Section
PE# = Proposed Expedited renumbered Section
SUPPLEMENTAL EXPEDITED
SPEN = Supplemental Proposed Expedited new Section
SPEM = Supplemental Proposed Expedited amended Section
SPER = Supplemental Proposed Expedited repealed Section
SPE# = Supplemental Proposed Expedited renumbered Section
FINAL EXPEDITED
FEN = Final Expedited new Section
FEM = Final Expedited amended Section
FER = Final Expedited repealed Section
FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING
EXEMPT
XN = Exempt new Section
XM = Exempt amended Section
XR = Exempt repealed Section
X# = Exempt renumbered Section
EXEMPT PROPOSED
PXN = Proposed Exempt new Section
PXM = Proposed Exempt amended Section
PXR = Proposed Exempt repealed Section
PX# = Proposed Exempt renumbered Section
EXEMPT SUPPLEMENTAL PROPOSED
SPXN = Supplemental Proposed Exempt new Section
SPXR = Supplemental Proposed Exempt repealed Section
SPXM = Supplemental Proposed Exempt amended Section
SPX# = Supplemental Proposed Exempt renumbered Section
FINAL EXEMPT RULEMAKING
FXN = Final Exempt new Section
FXM = Final Exempt amended Section
FXR = Final Exempt repealed Section
FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING
EN = Emergency new Section
EM = Emergency amended Section
ER = Emergency repealed Section
E# = Emergency renumbered Section
EEXP = Emergency expired

RECODIFICATION OF RULES
RC = Recodified

REJECTION OF RULES
RJ = Rejected by the Attorney General

TERMINATION OF RULES
TN = Terminated proposed new Sections
TM = Terminated proposed amended Section
TR = Terminated proposed repealed Section
T# = Terminated proposed renumbered Section

RULE EXPIRATIONS
EXP = Rules have expired
See also "emergency expired" under emergency rulemaking

CORRECTIONS
C = Corrections to Published Rules

2023 *Arizona Administrative Register*
Volume 29 Page Guide

RULEMAKING ACTIVITY INDEX

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 12 OF VOLUME 29.

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other legal notices required to be published under the Administrative Procedure Act, such as Rulemaking Docket Openings, are included in this Index by volume page number. Notices of Agency Ombudsman, Substantive Policy Statements, Proposed Delegation Agreements, and other applicable public records as required by law are also listed in this Index by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 12 OF VOLUME 29.

RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		**February**		**March**		**April**		**May**		**June**	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
1/1	3/2	2/1	4/2	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/3	2/2	4/3	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/4	2/3	4/4	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/5	2/4	4/5	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/6	2/5	4/6	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/8	2/7	4/8	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/9	2/8	4/9	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/10	2/9	4/10	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/11	2/10	4/11	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/12	2/11	4/12	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/13	2/12	4/13	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/14	2/13	4/14	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/15	2/14	4/15	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/16	2/15	4/16	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/17	2/16	4/17	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/18	2/17	4/18	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/19	2/18	4/19	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/20	2/19	4/20	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/21	2/20	4/21	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/22	2/21	4/22	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/23	2/22	4/23	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/24	2/23	4/24	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/25	2/24	4/25	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/26	2/25	4/26	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/27	2/26	4/27	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/28	2/27	4/28	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/29	2/28	4/29	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/30			3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/31			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	4/1			3/31	5/30			5/31	7/30		

July		August		September		October		November		December	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1

REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

Deadline Date Friday, 5:00 p.m. *(*earlier date due to holiday)*	***Register* Publication Date**	**Oral Proceeding may be scheduled on or after**
January 6, 2023	January 27, 2023	February 27, 2023
January 13, 2023	February 3, 2023	March 6, 2023
January 20, 2023	February 10, 2023	March 13, 2023
January 27, 2023	February 17, 2023	March 20, 2023
February 3, 2023	February 24, 2023	March 27, 2023
February 10, 2023	March 3, 2023	April 3, 2023
February 17, 2023	March 10, 2023	April 10, 2023
February 24, 2023	March 17, 2023	April 17, 2023
March 3, 2023	March 24, 2023	April 24, 2023
March 10, 2023	March 31, 2023	May 1, 2023
March 17, 2023	April 7, 2023	May 8, 2023
March 24, 2023	April 14, 2023	May 15, 2023
March 31, 2023	April 21, 2023	May 22, 2023
April 7, 2023	April 28, 2023	May 30, 2023
April 14, 2023	May 5, 2023	June 5, 2023
April 21, 2023	May 12, 2023	June 12, 2023
April 28, 2023	May 19, 2023	June 19, 2023

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor's Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council's office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit https://grrc.az.gov.

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2023

(MEETING DATES ARE SUBJECT TO CHANGE)

[M21-61/M22-60]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday January 24, 2023	*Tuesday* February 21, 2023	*Tuesday* February 28, 2023	*Tuesday* March 7, 2023
Tuesday February 21, 2023	*Tuesday* March 21, 2023	*Tuesday* March 28, 2023	*Tuesday* April 4, 2023
Tuesday March 21, 2023	*Tuesday* April 18, 2023	*Tuesday* April 25, 2023	*Tuesday* May 2, 2023
Tuesday April 18, 2023	*Tuesday* May 23, 2023	***Wednesday*** May 31, 2023	*Tuesday* June 6, 2023
Tuesday May 23, 2023	*Tuesday* June 20, 2023	*Tuesday* June 27, 2023	***Wednesday*** July 5, 2023
Tuesday June 20, 2023	*Tuesday* July 18, 2023	*Tuesday* July 25, 2023	*Tuesday* August 1, 2023
Tuesday July 18, 2023	*Tuesday* August 22, 2023	*Tuesday* August 29, 2023	***Wednesday*** September 6, 2023
Tuesday August 22, 2023	*Tuesday* September 19, 2023	*Tuesday* September 26, 2023	*Tuesday* October 3, 2023
Tuesday September 19, 2023	*Tuesday* October 24, 2023	*Tuesday* October 31, 2023	*Tuesday* November 7, 2023
Tuesday October 24, 2023	*Tuesday* November 21, 2023	*Tuesday* November 28, 2023	*Tuesday* December 5, 2023
Tuesday November 21, 2023	*Tuesday* December 19, 2023	***Wednesday*** December 27, 2023	*Tuesday* January 2, 2024
Tuesday December 19, 2023	*Tuesday* January 23, 2024	*Tuesday* January 23, 2024	*Tuesday* February 6, 2024

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

9 A.A.C. 16, Article 9 - Response to Council Member Thorwald's question

Angelica Trevino <angelica.trevino@azdhs.gov> Wed, Sep 25, 2024 at 3:52 PM
To: GRRC - ADOA <grrc@azdoa.gov>
Cc: Megan Mcminn <megan.mcminn@azdhs.gov>

Good afternoon,

RE: 9 A.A.C. 16, Article 9 - Response to Council Member Thorwald's question

This email is in response to Council Member Thorwald's question on how does the Arizona doula certification compare to doula certifications in other states.

The Department of Health Services (Department) conducted research in 2022 during the rulemaking process. The research gathered was shared with the Doula Community Advisory Committee (Committee). The Department and the Committee discussed the research gathered and used the findings to aid in developing the rules in this Article, as well to align the rules with A.R.S. § 36-766.03.

A.R.S. § 36-766.03 states the following:

36-766.03. Applicant requirements; education and training; alternate certification

A. An applicant for certification under this article shall do all of the following:

1. Provide one of the following:

(a) Documentation of completing at least thirty hours of in-person instruction or a combination of in-person and online instruction in core competency topics that may include the following:

(i) Entrepreneurship.

(ii) Standards of practice and ethics.

(iii) The childbirth process.

(iv) Parental engagement.

(v) Postpartum care.

(vi) Grief.

(vii) Trauma-informed care.

(viii) Cultural doula practices.

(ix) Anatomy and physiology.

(b) For doulas who are from a community trained in non-western doula practices as determined by the director, documentation confirming that core competencies have been met through culturally specific training or education that is subject to review by the director.

(c) Other related individualized or experiential training or education that is subject to review by the director.

2. Provide department-approved written documentation of both of the following:

(a) Observing at least one birth after training is completed.

(b) Attending at least three births while serving as the primary doula support person and receiving a department-approved and acceptable evaluation from the laboring mother and from the medical provider who assisted the laboring mother.

3. Complete instruction on first aid and cardiopulmonary resuscitation.

4. Submit a code of ethics agreement as prescribed by the director.

B. An individual who does not qualify for state certification under this article but who has been practicing as a doula in this state for at least five years before September 29, 2021 may apply to the department for certification if the individual submits all of the following:

1. Proof of current certification from a nationally recognized doula organization in lieu of proof of the minimum qualifications prescribed in this article and rules adopted pursuant to this article.

2. Three letters of recommendation from health care professionals who have worked with the applicant within the preceding two years and can attest to the applicant's competency in providing doula services.

The rules have been written to align with this statute as well as requirements common for doula certification in other states.

9 A.A.C. 16, Article 9 states the following:

R9-16-902. Doula Eligibility and Doula Scope of Practice

A. An individual may provide doula services in Arizona without obtaining certification as a certified doula specified in this Article.

B. An individual is eligible to apply for certification as a certified doula, if the individual:

1. Is 18 years of age or older;

2. Has at least a high school diploma or high school equivalency diploma;

3. Has training or education covering at least one of the following:

a. Completion of at least 30 hours of in-person instruction or a combination of in-person and online instruction in core competency specified in this Article; or

b. Community training in non-western doula practices, as determined by the Department, documentation confirming that core competencies have been met through culturally specific training or education subject to Department review; or

c. Other related individualized or experiential training or education that is subject to review by the Director;

4. Has written documentation of:

a. Observing at least one birth after completing the training or education specified in subsection (B)(3), signed and dated by the medical provider or licensed midwife who assisted the laboring mother;

b. Attending a minimum of three births while serving as the primary doula, including evaluations from the laboring mother and from the medical provider or licensed midwife who assisted the laboring mother;

c. Completing first aid and adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association;

d. Completing neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;

e. A code of ethics agreement as prescribed by the Department, and

f. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;

5. Meets the requirements of core competencies as specified in R9-16-901(9) and certified doula scope of practice as specified in R9-16-901(12); and

6. Submits an initial doula application in a Department-provided format to the Department.

C. Proof that an individual has current certification from a nationally recognized doula organization may substitute for requirements in sub-sections (B)(3).

D. An individual who does not meet the requirements in subsections (B)(3) and (4)(a) and (b), but who has been practicing as a doula in this state for at least five years before September 29, 2021, may be eligible to be a certified doula if the individual has:

1. Proof of current certification from a nationally recognized doula organization; and

2. Three letters of recommendation from medical providers or licensed midwives who have worked with the individual within the pre-ceding two years and can attest to the individual's competency in providing doula services.

E. A certified doula shall not provide physical health services or behavioral health services, as defined in A.R.S. § 36-401 to a client.

A synopsis of this research of other states is as follows:

- **States with Voluntary Doula Certification:**
  - Massachusetts: Limited information, but certification appears voluntary.
  - Minnesota: Certification is voluntary for three years.
  - Virginia: Certification is voluntary.
- While certification is voluntary in Arizona, applicants must meet the criteria set forth in statute and rule. Key requirements such as training, certification renewal, and application fees are similar to those in other states. Below are some states with certification systems resembling Arizona's.
- **States with some similar Doula Certification Requirements:**
  - Maryland: Does not require licensure, but must register with the state Medicaid for reimbursement.
  - Michigan: A new program requiring certification from a state-approved doula training organization.
  - Minnesota: A doula must apply to register with BirthWorks or Association of Labor Assistants and Childbirth Educators; Childbirth and Postpartum Professional Association; Childbirth International; Commonsense Childbirth, Inc.; DONA International.
  - Nevada: Certification is required, involving training, CPR, recertification, and residency requirements. Certification is valid for two years.
  - New Jersey: No official licensing program, but must be certified through a NJ approved doula training program and must have training (counseling; infant care; labor support; HIPPA; CPR).
  - New York: Pilot program with extensive training requirements. Applicants must also pass an exam.
  - Oregon: Requires training through an approved program; CPR; attend at a minimum of three births and three postpartum visits.
  - Virginia: Various pathways to certification, all requiring training through an approved program.
- **States Without Licensure Programs (as of 2022):**
  - Connecticut
  - Rhode Island
  - Washington

Please let me know if additional information is needed.

Best,
Angie Trevino
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N. 18th Ave, Suite 200
Mobile: 480-589-0298
Phoenix, AZ 85007

F-1.

ARIZONA DEPARTMENT OF REAL ESTATE
Title 4, Chapter 28, Articles 1,3,4,5,7,8,11,12 Parts A and B,13

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 10, 2024

SUBJECT: **ARIZONA DEPARTMENT OF REAL ESTATE**
Title 4, Chapter 28, Articles 1, 3, 4, 5, 7, 8, 11, 12 Parts A and B, 13

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Real Estate (Department) relates to sixty-five (65) rules in Title 4, Chapter 28, Articles 1, 3-5, 7-8, and 11-13. These rules include the following Articles:

- Article 1 - General Provisions
- Article 3 - Licensure
- Article 4 - Education
- Article 5 - Advertising
- Article 7 - Compensation
- Article 8 - Documents
- Article 11 - Professional Conduct
- Article 12 - Developments
- Article 13 - Administrative Procedures

In the prior report for Articles 1, 3, 5, 11, and 13, approved by the Council in May 2019, the Department proposed to amend fifteen (15) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement. The Department proposed to conduct a rulemaking by January 2023 to implement these changes.

In the prior report for Articles 4, 7, 8, and 12, approved by the Council in May 2020, the Department proposed to amend twelve (12) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement. The Department proposed to conduct a rulemaking by January 2021 to implement these changes.

However, the Department indicates it was not able to locate records indicating an exception for the rulemaking moratorium was requested from the Governor's Office nor a package submitted in order to update the Articles outlined above, as directed by the Council. The Department states, aware of the Department's failure to conduct rulemaking for nearly two decades, with no indication of completing the prior 5YRR proposed course of action, and cognizant of the need for the Department and Legislature to update its statutes, the Department requested and received a 120-day extension to submit the current report to allow for legislative session to prove out whether the Department's proposed legislative updates would be passed and signed and in order to complete a comprehensive review of both portions of Title 4, Chapter 28 of the Arizona Administrative Code.

As a result, 2024 Laws, Chapter 52, Fifty-Sixth legislature, Second Regular Session (SB1171) has been included with the review of the Department's rules and the Department completed review of all of Title 4, Chapter 28; not simply the required Articles of 1, 3, 5, 11, and 13. With the completion of the review for this 5YRR to include solicitation of stakeholder feedback, the Department drafted a complete update to Title 4, Chapter 28 and already submitted a request for exemption from the moratorium to pursue expedited rulemaking after acceptance of this 5YRR. The drafted rules submitted to the Governor's Office for rulemaking moratorium exception include amendments to those articles the Department was previously directed to address in its previous 5YRRs outlined above.

Proposed Action

During the Fifty-Sixth Legislature, Second Regular Session, the Department successfully worked with the Governor's Office and Legislature to pass and have signed a comprehensive update to Arizona Revised Statutes, Title 32, Chapter 20.

Cognizant of the proposed legislative changes and in order to comprehensively review all of its Rules; not simply those that were due this year, the Department requested and was granted a 120-extension to complete its 5YRR in February 2024.

In June 2024, the Department completed and submitted its 5YRR of Title 4, Chapter 28 to the Council for consideration and approval. In June 2024, the Department also completed a draft of amendments to its rules satisfying issues identified in the 5YRR. This draft has been submitted to its Policy Advisor in the Governor's Office for exception to the rulemaking moratorium. Once initial approval for the exception is granted, the Department anticipates filing for Notice of Docket Opening and Notice of Proposed Rulemaking within 30-60 days. Simultaneous to the filing of the Notices, the Department will begin to work with stakeholders and the regulated community on the draft to ensure rulemaking will be successful.

Understanding the Department completed a comprehensive review of its rules and the extent of updates and amendments included in the draft, the Department plans for a public comment period of 60-days rather than the minimum 30-days required. At the conclusion of the comment period, the Department will hold an oral proceeding to collect any further commentary and continue to follow the required steps to complete rulemaking.

Additionally, in the current report, the Department indicates it has not reviewed the following rules with the intention that they expire pursuant to A.R.S. § 41-1056(J):

- R4-28-A1221
- R4-28-B1201
- R4-28-B1205

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:

As part of this 5YRR, the Department reviewed the Economic Impact Statements for Articles 1, 3, 4, 5, 7, 8, 11, 12, and 13. The rules in Article 1 generally have minimal economic impact upon the performance of licensed activity by real estate, cemetery, membership campground, and timeshare; the rules are primarily designed to implement statutory mandates. The rules in Articles 1, 3, 4, 5, 7, 8, 11, 12, and 13 also have minimal economic impact on small businesses and consumers: there has been no known adverse economic impact of the rules on the Department, the regulated community, or the public. The Department determined that there have not been significant changes in the economic impact since the most recent 5YRR.

Stakeholders were identified as the Department, real estate brokers, real estate salespersons, cemetery brokers, cemetery salespersons, membership camping brokers, membership camping salespersons, real estate instructors, administrators, and schools, individuals and entities involved in regulated aspects of the real estate industry, and real estate brokers and agents.

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

The Department has determined that the rules in Title 4, Chapter 28 imposes the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, with the exception of the following: R4-28-302 and R4-28-303.

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

The Department indicates it recently worked with stakeholders, drafted a proposal, and worked with the legislature to pass, and for the Governor to sign, a sweeping update to Arizona Revised Statutes Title 32, Chapter 20 during this legislative session, and urged all brokers, schools, and any email contact in the Department's SendGrid account to provide feedback on Arizona Administrative Code, Title 4, Chapter 28.

Specifically, on Nov. 14, 2023, an email soliciting feedback was delivered to 58,283 brokers, schools, and all email contacts held by the Department. The email was opened by 41,384 unique email recipients. The Department received responses from 65 distinct email addresses and through analyzing comments identified 95 separate thoughts and comments, where 21 specific Rules may be understood to have been commented on or where suggestions were made. As part of this report, the Department reviewed each of these comments to consider amendments, repeal, and clarification. Comments are summarized in Section 7 of the Department's report.

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

The Department has identified forty (40) rules and one (1) table that are not clear, concise, and understandable as outlined in more detail in Section 6 of the Department's report.

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

The Department has identified fourteen (14) rules that are not consistent with other rules and statutes as outlined in more detail in Section 4 of the Department's report.

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

The Department has identified seven (7) rules that are not effective in achieving their objectives as outlined in more detail in Section 3 of the Department's report.

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

The Department has identified two (2) rules that are not currently enforced as written as outlined in more detail in Section 5 of the Department's report.

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

The Department indicates federal law does not apply to the subject of these rules.

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

The Department indicates the rules in the Articles subject to this 5YRR were adopted before July 29, 2010 and have not been amended since at least 2006. The Department therefore believes this provision does not apply to the Department's rules.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department of Real Estate (Department) relates to sixty-five (65) rules in Title 4, Chapter 28, Articles 1, 3-5, 7-8, and 11-13. These rules include the following Articles: Article 1 - General Provisions; Article 3 - Licensure; Article 4 - Education; Article 5 - Advertising; Article 7 - Compensation; Article 8 - Documents; Article 11 - Professional Conduct; Article 12 - Developments; Article 13 - Administrative Procedures.

In June 2024, the Department completed and submitted its 5YRR of Title 4, Chapter 28 to the Council for consideration and approval. In June 2024, the Department also completed a draft of amendments to its rules satisfying issues identified in the 5YRR. This draft has been submitted to its Policy Advisor in the Governor's Office for exception to the rulemaking moratorium. Once initial approval for the exception is granted, the Department anticipates filing for Notice of Docket Opening and Notice of Proposed Rulemaking within 30-60 days. Simultaneous to the filing of the Notices, the Department will begin to work with stakeholders and the regulated community on the draft to ensure rulemaking will be successful.

Understanding the Department completed a comprehensive review of its rules and the extent of updates and amendments included in the draft, the Department plans for a public comment period of 60-days rather than the minimum 30-days required. At the conclusion of the comment period, the Department will hold an oral proceeding to collect any further commentary and continue to follow the required steps to complete rulemaking.

Additionally, in the current report, the Department indicates it has not reviewed the following rules with the intention that they expire pursuant to A.R.S. § 41-1056(J): R4-28-A1221; R4-28-B1201; R4-28-B1205.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Susan Nicolson
Commissioner

ARIZONA DEPARTMENT OF REAL ESTATE

100 NORTH 15th AVENUE • SUITE 201
PHOENIX, ARIZONA 85007
(602) 771-7700

June 28, 2024

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

RE: Arizona Department of Real Estate, 4 A.A.C., Ch. 28 State Real Estate Department, Articles: 1 - General Provisions, 3 - Licensure, 4 - Education, 5 - Advertising, 7 - Compensation, 8 - Documents, 11 - Professional Conduct, 12 - Developments - Parts A and B, and 13 - Administrative Procedures

Dear Chair Klein:

Please find enclosed the Five Year Review Report of the Arizona Department of Real Estate (Department) for 4 A.A.C., Ch. 28 State Real Estate Department, Articles: 1, 3, 4, 5, 7, 8, 11, 12 - Parts A and B, and 13; of which Articles 1, 3, 5, 11, and 13 are due on June 28, 2024.

The Department did not review the following rules with the intention that those rules expire under A.R.S. 41-1056(J):

- R4-28-A1221 - Cemetery Developments.
- R4-28-B1201 - Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands.
- R4-28-B1205 - Contiguous Parcels.

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

For questions about this report, please contact Jim Knupp, Deputy Commissioner, at 602.771.7769 or jknupp@azre.gov.

Sincerely,

Susan Nicolson
Commissioner

Arizona Department of Real Estate

5 YEAR REVIEW REPORT

Title 4. Professions and Occupations

Chapter 28. State Real Estate Department

June 28, 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-2107(F)

Specific Statutory Authority:

ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions:
A.R.S. §§ 32-2102, 32-2107, 32-2108

R4-28-102. Document Filing; Computation of Time:
A.R.S. §§ 32-2102, 32-2107, 32-2108, 32-2124, 32-2153, 32-2175, 32-2181, and 32-2197.13

R4-28-103. Licensing Time-frames:
A.R.S. §§ 32-2102, 32-2107, 32-2123, 32-2124, 32-2125, 32-2130, 32-2131, 32-2134, 32-2134.01, 32-2135, 32-2181, 32-2183.01

R4-28-104. Development Inspection Fee:
A.R.S. §§ 32-2132, 32-2182, 32-2194.02, 32-2195.02, 32-2197.07, 32-2198.04, 32-2182

Table 1. Time-frames (Calendar Days):
A.R.S. § 41-1073

ARTICLE 3. LICENSURE

R4-28-301. General License Requirements; Non-resident License:
A.R.S. §§ 32-2123, 32-2124, 32-2125, 32-2125.02

R4-28-302. Employing Broker's License; Non-resident Broker:
A.R.S. §§ 32-2101, 32-2121, 32-2122, 32-2125, 32-2125.01, 32-2125.02, 32-2126, 32-2127, 32-2128, 32-2130, 32-2131, 32-2133, 32-2134, 32-2151, 32-2153, 32-2154, 32-2155, 32-2163, 32-2174, 32-2175

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance:
A.R.S. §§ 32-2126, 32-2128, 32-2130, 32-2131, 32-2132(A)(10), 32-2136

R4-28-304. Branch Office; Branch Office Manager:
A.R.S. §§ 32-2123, 32-2127

R4-28-305. Temporary License, Certificate of Convenience:
A.R.S. §§ 32-2133, 32-2134, 32-2134.01

R4-28-306. Unlawful License Activity:
A.R.S. §§ 32-2163, 32-2164, 32-2166

ARTICLE 4. EDUCATION

R4-28-401. Prelicensure Education Requirements; Waiver:
A.R.S. §§ 32-2124, 32-2135

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning:

A.R.S. §§ 32-2130, 32-2135
R4-28-403. License Examinations:
A.R.S. § 32-2130
R4-28-404. Real Estate School Requirements, Course and Instructor Approval:
A.R.S. § 32-2135

ARTICLE 5. ADVERTISING
R4-28-502. Advertising by a Licensee:
A.R.S. §§ 32-2135, 32-2153, 32-2161, 32-2183.01
R4-28-503. Promotional Activities:
A.R.S. § 32-2183.01
R4-28-504. Development Advertising:
A.R.S. § 32-2183.01

ARTICLE 7. COMPENSATION
R4-28-701. Compensation Sharing Disclosure:
A.R.S. § 32-2151

ARTICLE 8. DOCUMENTS
R4 28 802. Conveyance Documents:
A.R.S. § 32-2151
R4 28 803. Contract Disclosures:
A.R.S. §§ 32-2107, 32-2183, 32-2197.02, 32-2197.05, 32-2197.08
R4 28 804. Rescission of Contract:
A.R.S. § 32-2197.03
R4-28-805. Public Report Receipt:
A.R.S. §§ 32-2183, 32-2195.03, 32-2197.08

ARTICLE 11. PROFESSIONAL CONDUCT
R4 28 1101. Duties to Client:
A.R.S. § 32-2101(12), (13), (36), (39), (48), (50)
R4 28 1102. Property Negotiations:
A.R.S. §§ 32-2151.02, 32-2153, 32-2155
R4-28-1103. Broker Supervision and Control:
A.R.S. §§ 32-2151, 32-2151.01, 32-2153 (A)(21), 32-2155, 32-2171, 32-2172, 32-2173, 32-2174, 32-2175

ARTICLE 12. DEVELOPMENTS
PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION
R4-28-A1201. Development Name; Lot Sales; Applicant:
A.R.S. §§ 32-2181, 32-2181.01, 32-2181.02, 32-2183, 32-2194.01, 32-2194.03, 32-2195, 32-2195.01, 32-2197.02, 32-2197.08, 32-2198.01
R4-28-A1202. Development Map; Location; Land Characteristics:
A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195.03, 32-2197.02
R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions:
A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195
R4-28-A1204. Utilities:
A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195
R4-28-A1205. Water Supply:
A.R.S. §§ 32-2181, 32-2183, 32-2183.01, 32-2194.01, 32-2195, 32-2197.02, 32-2197.08
R4-28-A1206. Sewage Disposal:

A.R.S. §§ 32-2181, 32-2183.01, 32-2195, 32-2197.02

R4-28-A1207. Streets and Access:
A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2185.01, 32-2195, 32-2197.02, 32-2198.01

R4-28-A1208. Flood Protection and Drainage Improvements:
A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195

R4-28-A1209. Common, Community, or Recreational Improvements:
A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2197.02, 32-2197.08, 32-2198.01

R4-28-A1210. Master Planned Community:
A.R.S. §§ 32-2181, 32-2183, 32-2194.03

R4-28-A1211. Assurances for Completion and Maintenance of Improvements:
A.R.S. §§ 32-2183.04, 32-2193.02, 32-3294.01, 32-2194.03, 32-2195.03, 32-2197.02, 32-2197.05, 32-2198.08

R4-28-A1212. Schools and Services:
A.R.S. § 32-2181

R4-28-A1213. Property Owners' Association:
A.R.S. §§ 32-2181, 32-2181.02, 32-2198.14

R4-28-A1214. Development Use:
A.R.S. §§ 32-2181, 32-2181.02, 32-2195, 32-2197.08

R4-28-A1215. Development Sales:
A.R.S. §§ 32-2181, 32-2181.02, 32-2181.03, 32-2185, 32-2195, 32-2195.03, 32-2197.08

R4-28-A1216. Title Reports and Encumbrances:
A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2185, 32-2185.01, 32-2194.01, 32-2195, 32-2195.03, 32-2197.08, 32-2197.12, 32-2198.01

R4-28-A1217. ADEQ Approval:
A.R.S. § 32-2181

R4-28-A1218. Property Registrations in Other Jurisdictions:
A.R.S. § 32-2197.02

R4-28-A1219. Condominium Developments:
A.R.S. §§ 32-2181, 32-2183, 33-1215, 33-1219

R4-28-A1220. Foreign Developments:
A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2183.01, 32-2183.04, 32-2185.01, 32-2185.06, 32-2194.15, 32-2195, 32-2195.05, 32-2197.02, 32-2197.07, 32-2197.08, 32-2197.17, 32-2198.14

R4-28-A1221. Cemetery Developments:
A.R.S. §§ 32-2194.01, 32-2194.03, 32-2194.24, 32-2194.25, 32-2194.26, 32-2194.27, 32-2194.28, 32-2194.29, 32-2194.30

R4-28-A1222. Membership Camping Developments:
A.R.S. §§ 32-2198.01, 32-2198.03, 32-2198.08, 32-2198.14

R4-28-A1223. Affidavit:
A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195, 32-2197.02, 32-2198.01

PART B. GENERAL INFORMATION

R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands:
A.R.S. §§ 32-2181, 32-2181.02, 32-2182, 32-2183, 32-2183.04, 32-2184, 32-2185.01, 32-2195.01, 32-2195.03, 32-2195.04, 32-2195.10

R4-28-B1202. Conditional Sales Exemption:
A.R.S. §§ 32-2181, 32-2181.01, 32-2181.02, 32-2181.03, 32-2182,

32-2183, 32-2183.01, 32-2183.04, 32-2184, 32-2185.01, 32-2185.02, 32-2185.06, 32-2195, 32-2195.01, 32-2195.03, 32-2195.04, 32-2195.05, 32-2195.10

R4-28-B1203. Material Change; Public Report Amendments:
A.R.S. §§ 32-2182, 32-2183.04, 32-2184, 32-2194.10, 32-2195.01, 32-2195.03, 32-2195.10, 32-2197.04

R4-28-B1204. Cemetery Notice; Amendments:
A.R.S. §§ 32-2194.01, 32-2194.10

R4-28-B1205. Contiguous Parcels:
A.R.S. §§ 32-2181, 32-2181.02

R4-28-B1206. Filing with HUD:
A.R.S. §§ 32-2181, 32-2181.02

R4-28-B1207. Subsequent Owner:
A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197.09

R4-28-B1208. Public Report Correction:
A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197.09

R4-28-B1209. Options; Blanket Encumbrances; Releases:
A.R.S. §§ 32-2181, 32-2181,02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197.09

R4-28-B1210. Earnest Money:
A.R.S. §§ 32-2181, 32-2181.03, 32-2183, 32-2185, 32-2185.01, 32-2185.06, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197.09, 32-2197.10

R4-28-B1211. Recordkeeping:
A.R.S. §§ 32-2151.01, 32-2181, 32-2181.03, 32-2183, 32-2185, 32-2185.01, 32-2185.06, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197-09, 32-2197.10

ARTICLE 13. ADMINISTRATIVE PROCEDURES

R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice:
A.R.S. §§ 32-2154, 32-2157, 32-2158, 32-2159

R4-28-1303. Information Obtained in an Investigation:
A.R.S. § 32-2125.03

R4-28-1304. Response; Default:
A.R.S. § 32-2199.01

R4-28-1305. Notice of Appearance of Counsel:
A.R.S. §§ 32-2108, 32-2153, 32-2154, 32-2157, 32-2158, 32-2159, 32-2160, 32-2160.01, 32-2183.01, 32-2191, 32-2195.12, 32-2197.08

R4-28-1310. Rehearing or Review of Decision; Response; Decision:
A.R.S. §§ 32-2102, 32-2154, 32-2157, 32-2158, 32-2159, 32-2160, 32-2195.07, 32-2195.11, 32-2197.14

R4-28-1313. Correction of Clerical Mistakes:
A.R.S. §§ 32-2102, 32-2197.14

2. The objective of each rule:

Rule	Objective
R4-28-101. Definitions	The objective of the rule is to explicitly clarify the scope of Title 4, Chapter 28, Article 1 of the Arizona Administrative Code (hereinafter, the "Code"). The rule clarifies terms used in the industry by giving definitions and meaning to those terms generally used but not otherwise defined under A.R.S. § 32-2101.
R4-28-102. Document Filing; Computation of Time	The rule is beneficial to the industry and the public because it establishes guidelines for determining timeliness after filing an original or renewal application for review, and should describe whether business or calendar days are to be used in computing periods of time.
R4-28-103. Licensing Time-frames	This rule establishes license application review and approval time frames for both the Department and the applicant. Defines "completeness" of application. and establishes process for license renewal applications. Directs renewal applicants to R4-28-301(A) for renewal qualifications. Table 1 provides a timeline chart.
R4-28-104. Development Inspection Fee	This rule confirms development site inspection fees can be charged by the Department and that multiple fees and inspections may occur. Inspections and fees are established by A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04 before and after issuance of the public report. Table 1 provides a timeline chart.
R4-28-301. General License Requirements; Non-resident license	The rule provides specific requirements of application for broker or salesperson real estate license for individuals and entities. Establishes time frames for licensees, school owners, administrators, and instructors to update the Department of changed information. (Ex: change of business or resident address, convictions, etc.). Establishes 14 calendar day response period (or later as determined by Department) to respond to Department request for documents or information as part of an investigation.
R4-28-302. Employing Broker's License; Non-resident Broker	Provides required information to apply for an Employing Broker license for entities and individuals. Establishes requirements for Foreign Entities and Non-resident employing brokers licensing, location and availability of records, and changes to information update to Department timelines.
R4-28-303. License Renewal; Reinstatement; Changes to Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance	Defines forms and information required to renew a salesperson, broker, or Designated Broker license including late renewal and reinstatement of license. Defines responsibility of Designated Broker to inform the Department of certain changes to Employing Broker including bankruptcy, opening or closing of branch office, change of Designated Broker, and opening or closing of trust accounts. Describes information required to be licensed as a Professional Corporation, Professional Limited Liability Company or to return the license to an individual status. Provides the process for a licensee to request the Department to inactivate a salesperson or broker's license.
R4-28-304. Branch Office; Branch Office Manager	Provides the requirements for a Designated Broker to obtain a branch office license. Establishes Designated Broker requirements when a broker authorizes a branch manager and outlines permissible duties of an Associate Broker or Salesperson branch manager. Provides that a temporary office license is not required for office at a subdivision.
R4-28-305. Temporary License, Certificate of Convenience	Describes information required for an individual to provide the Department when applying for a temporary cemetery salesperson license, a temporary broker's license, or a membership camping salesperson certificate of convenience. Provides clarification to A.R.S. §§ 32-2134, 32-2134.01, 32-2133, and 32-2125 (C).

R4-28-306. Unlawful License Activity	Defines unlawful license activity. Provides specific information to be submitted to the Department by the licensee who conducted unlawful license activity and provides for disciplinary actions by the Commissioner. Clarifies A.R.S. §§ 32-2122 and 32-2153.
R4-28-401. Prelicensure Education Requirements; Waiver	Describes education requirements prior to applying for a license, the education waiver requirement, and the education/experience waiver requirement. Clarifies A.R.S. 32-2124.
R4-28-402. Continuing Education Requirements; Waiver; Distance Learning	Articulates the continuing education requirement for Designated Brokers, Managing Brokers and Salesperson licensees. Describes the mandatory categories of continuing education and credit hours required in each category. Describes the continuing education waiver process and "good cause" criteria. Provides distance learning continuing education approval requirements for approved real estate schools and instructors.Clarifies R4-28-404, A.R.S. 32-2136, and A.R.S.32-2130.
R4-28-403. License Examinations	Describes how frequently the Department shall hold licensing exams. Establishes exam notification requirements to applicants.
R4-28-404. Real Estate School Requirements, Course and Instructor Approval	Establishes requirements for a real estate school to receive a Certificate of School Approval, a Certificate of Course Approval or an instructor to obtain Instructor Approval. Provides school requirements for student records and retention. Addresses school complaint process and requirement to notify Department of changes to school entity, course content, or instructor.
R4-28-502. Advertising by a Licensee	The objective of the rule is to establish guidelines for advertising of real estate and approved courses by various types of licensees. The rule prohibits false, incomplete, and misleading advertising by license holders regulated by the Department [as defined in A.R.S. § 41-1001(2)].
R4-28-503. Promotional Activities	The rule achieves its objective by establishing that a premium offered at no cost or reduced cost shall not be described as a prize or award. The rule also outlines that the terms and details of a premium must be described before a person participates in the promotional activity. R4-28-503(D) states that only developers may conduct a lottery, contest, or game of chance when offering to sell or lease an interest in a development and the guidelines for doing so. As defined in § 32-2101(22) and (23), 'developers' and 'developments' encompass the various types of land developments regulated by the Department.
R4-28-504. Development Advertising	This objective of the rule is to establish guidelines for developers pursuant to § 32-2101(22) and (23) of the various types of developments regulated by the Department with respect to advertising, and prohibit false and misleading advertisements.
R4-28-701. Compensation Sharing Disclosure	The objective of this rule is to ensure all parties in a transaction know who is receiving compensation from a licensee.
R4-28-802. Conveyance Documents	The objective of the rule is to implement procedures to confirm the statutory requirements that all parties have copies of transaction documents, require that all offers must be presented in accordance with a contract, and identify documents that must be maintained in transaction files pursuant to statute.
R4-28-803. Contract Disclosure	The objective of the rule is to establish procedures for transferring interests in land under development.

R4-28-804. Rescission of Contract	The objective of this rule is to ensure that purchasers of real estate interests in unimproved land, land under development, or timeshares are aware that they have a statutory right to rescind the contract under certain conditions.
R4-28-805. Public Report Receipt	The objective of this rule is to specify the language developers will use in the public report receipt that prospective purchasers signs before executing a binding contract to purchase or lease an interest in the development.
R4-28-1101. Duties to Client	The objective of the rule is to describe the manner in which salespersons and brokers are to conduct themselves in their dealings with parties to transactions. It describes when and how they must make certain types of disclosures; prohibits licensees from causing avoidable delays and from allowing controversies with other licensees to affect transactions. The intent of the rule is to provide guidance to licensees about their duties to clients.
R4-28-1102. Property Negotiations	The objective of the rule is to prohibit salespersons and brokers from contacting another's principal directly except under certain identified circumstances. This promotes communications concerning a property to be channeled through the principal's broker or broker's representative and reduces the likelihood of a salesperson or broker interfering in a transaction. The rule provides guidance to ensure all offers are presented timely.
R4-28-1103. Broker Supervision and Control	The objectives of the rule are to prescribe how a broker exercises reasonable supervision of licensed and unlicensed persons in the broker's employ, including the establishment and enforcement of the broker's policies and procedures, and a system to monitor compliance with those policies and procedures. The rule provides guidance to brokers on electronic records storage and document retention.
R4-28-A1201. Development Name; Lot Sales; Applicant	The objective of the rule is to provide procedures for filing applications for a public report, certificate of authority, or special order of exemption.
R4-28-A1202. Development Map: Location; Land Characteristics	The objective of this rule is to provide procedures for filing a development map.
R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions	The objective of the rule is to provide procedures for disclosing flood areas and other adverse conditions concerning property.
R4-28-A1204. Utilities	The objective of the rule is to provide procedures for disclosing information concerning utility services.
R4-28-A1205. Water Supply	The objective of the rule is to provide procedures for disclosing water resources.
R4-28-A1206. Sewage Disposal	The objective of the rule is to provide procedures for disclosing sewage disposal.
R4-28-A1207. Streets and Access	The objective of the rule is to provide procedures for disclosing access to property.
R4-28-A1208. Flood Protection and Drainage	The objective of the rule is to provide procedures for disclosing flood protection and drainage improvements.

Improvements	
R4-28-A1209. Common, Community, or Recreational Improvements	The objective of the rule is to provide procedures for disclosing common, community, and recreational facilities.
R4-28-A1210. Master Planned Community	The objective of the rule is to provide procedures for disclosing offsite improvements in master planned communities.
R4-28-A1211. Assurances for Completion and Maintenance of Improvements	The rule provides procedures for providing assurance of completion and maintenance of common areas thereafter.
R4-28-A1212. Schools and Services	The objective of the rule is to provide procedures for disclosing locations of schools and information about public and emergency services.
R4-28-A1213. Property Owners' Association	The objective of the rule is to provide procedures for disclosing information about property owner associations.
R4-28-A1214. Development Use	The objective of the rule is to provide procedures for disclosing whether lots will be sold or leased, their proposed use, whether they are in an open range area, and whether mineral rights and other material issues exist.
R4-28-A1215. Development Sales	The objective of the rule is to provide procedures for the required information about the manner in which the sale or lease of lots within the development will be conducted, including the following: how title will be conveyed; whether cash sales are permitted and, if so, when buyer takes title, where deposits and earnest monies will be held; whether the developer has access to earnest money and deposits; under what conditions the funds are released; when the purchaser will be permitted to use and occupy the lot; an explanation if title will not be conveyed free and clear of all liens; the estimated average sales price; where transaction records will be stored; and details about the lease if the property is to be leased.
R4-28-A1216. Title Reports and Encumbrances	The objective of the rule is to identify required information about the developer's title to the property, including; a current title report; copies of all liens and encumbrances; and recorded and unrecorded documents reflected in the title report or known to applicant, such as, restrictions, trust agreements, options, and maps pertaining to the development.
R4-28-A1217. ADEQ Approval	The objective of the rule is to inform developers that approval of their subdivision or timeshare project by the Arizona Department of Environmental Quality is required.
R4-28-A1218. Property Registrations in Other Jurisdictions	The objective of the rule is to inform the Department of other jurisdictions where the subject development is registered for approval to sell.
R4-28-A1219. Condominium Developments	The objective of the rule is to require proof that the development of a condominium may legally commence.

R4-28-A1220. Foreign Developments	The objective of the rule is to inform developers of information that will be required to seek approval to advertise, promote, or sell interests in a development located outside Arizona to residents of this State.
R4-28-A1221. Cemetery Developments	The objective of the rule is to require financial information concerning management and funding of a cemetery development and its maintenance.
R4-28-A1222. Membership Camping Developments	The objective of the rule is to identify information and documentation that is required from a person (including an entity) that wishes to develop a regulated membership campground.
R4-28-A1223. Affidavit	The objective of the rule is to inform developers that they are required to execute an affidavit attesting to the truth of the information they have provided in their application for a public report or certificate of authority.
R4-28-B1201. Expedited Registration for Improved Subdivision Lots and Unsubdivided Lands	The objective of the rule is to provide procedures to expedite an application for a public report.
R4-28-B1202. Conditional Sales Exemption	The objective of the rule is to provide procedures to allow sale of lots before a public report is issued.
R4-28-B1203. Material Change; Public Report Amendments	The objective of the rule is to inform developers of the requirements for providing notice of changes and amending the public report. The rule clearly identifies the required information to notify the Department of the change, and to amend the development's public report when required.
R4-28-B1204. Cemetery Notice; Amendments	The objective of the rule is to inform cemetery owners and operators of their obligation under the statute to notify the Department of changes to the cemetery, its owners, or operator, by amending the information previously submitted to the Department.
R4-28-B1205. Contiguous Parcels	The objective of the rule is to clarify that the Department will count all purchases of contiguous lots in a subdivision by the same buyer as a single lot.
R4-28-B1206. Filing with HUD	The objective of the rule is to clarify that developers must comply with United States Housing and Urban Development Department (HUD) mandates if the development is to be certified by HUD.
R4-28-B1207. Subsequent Owner	The objective of the rule is to require a developer who acquires 6 or more lots in a subdivision/unsubdivided land, or 12 or more shares in a time-share development, to obtain a new public report before reselling the lots or shares.
R4-28-B1208. Public Report Correction	The objective of the rule is to provide for correction of errors in the public report filed with the Department.
R4-28-B1209. Options; Blanket Encumbrances; Releases	The objective of the rule is to establish the Department’s position on developments where all or some lots are held under option, are subject to blanket encumbrance, or if conditions are imposed on the release of such encumbrances.

R4-28-B1210. Earnest Money	The objective of the rule is to set out conditions requiring a developer to deposit earnest money and down payments into a neutral depository.
R4-28-B1211. Recordkeeping	The objective of the rule is to provide for recordkeeping in the event of sale or lease of property by a developer without a listing broker.
R4-28-1302 Service of Pleadings Subsequent to Complaint and Notice	The objective of this rule is to inform the public of the noticing process by the Department and inform a person filing a brief or pleading to also send a copy to the Attorney General.
R4-28-1303 Information Obtained in an Investigation	This rule informs the public the Department must ensure the confidentiality of information and documents subject to audit or investigation. Notifies the public that redacted audit and investigative files will be available for review upon request and subject to the Department's retention schedule.
R4-28-1304 Response; Default	Informs the public the circumstance for an individual to admit, deny, or state there is insufficient information to admit or deny the allegation. Clarifies the process of response and default. Clarifies non response as violation of A.R.S. 32-2153(B)(10).
R4-28-1305 Notice of Representation; Notice of Appearance	Describes the process for a party to represent themself, appoint another person to represent them at hearing or be represented by an attorney at hearing. Informs that the Notice of Representation must contain specific information and be filed at the Office of Administrative Hearings.
R4-28-1310 Rehearing or Review of Decision; Response; Decision	This rule provides the timeframe and requirements for an aggrieved party to request a rehearing or review of a hearing decision. Provides specific timelines and criteria. Clarifies A.R.S. §41-1092.09
R4-28-1313 Correction of Clerical Mistakes	Provides for clerical mistakes to be corrected by the Administrative Law Judge, the Department Commissioner or upon motion of any party.

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

R4-28-404. Real Estate School Requirements, Course and Instructor Approval.

At Subsection (D), rule explains the requirements of a roster of student attendance. Rule has been amended to include specific requirements of online courses, for verifying individual student attendance, and for maintaining a log or record of login and log out attempts by students.

R4-28-502. Advertising by a Licensee.

The Department believes the rule may be made more effective by amending (D) to specify a school must include the name, phone, and email address of the school's administrator on all advertising of Department-approved courses. Currently, a school must supervise all advertising and ensure the advertising is accurate, but no information is required to be provided for the public to contact the school with questions or concerns.

The Department believes the rule may be made more effective by amending (E) to specify use of a name that is not licensed or registered with the Department must be of a smaller font size and proportionally smaller as to what or who is licensed and inclusion of a name that is not licensed may not cause confusion to the public as to who or what is licensed.

The Department believes the rule may be made more effective by amending (G) to specify a designated broker shall be responsible for advertising if not in compliance with statute and rule as opposed to stating they must "supervise

all advertising," which does not clarify to what standard a broker shall hold the advertising under its brokerage. The Department believes that amending to eliminate (J) also improves the effectiveness of the rule as inclusion of the broker's legal name or DBA and requiring broker approval of advertising works toward compliance with statute and rule related to all aspects of advertising requirements.

The Department believes the rule may be made more effective by amending (I) to specify the requirement to obtain written consent from a property owner is required prior to placing a sign or publishing a listing to an electronic media; whereas now the rule only relates to placement of a physical sign on the property.

R4-28-805. Public Report Receipt.
The Department believes the rule may be made more effective by amending this Section to remove a prescribed form set by rule and move to using the form as provided with the approved public report. The Department further believes the intent of the state in providing a public report to a potential purchaser is to provide the customer with time to review the public report and looks to amend to include this language with the rule.

R4-28-1101. Duties to Client.
The Department believes the rule may be made more effective by amending "salesperson or broker" to simply "licensee" to remove confusion - in the industry and enforcement - as to whether the rule applies when a licensee is acting as a principal in a transaction. Additional amendments are included to better clarify the rule to more effectively meet the objective.

R4-28-A1221. Cemetery Developments.
The Department believes the rule adds no substance beyond statute at A.R.S. § 32-2194.01 and is not necessary to retain. The Department moves to expire this rule.

R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands.
The Department believes the rule became unnecessary when non-expedited processes were updated to reflect that of expedited. As noted below in the EIS for this section, the Development Services Division completes or issues all public report approvals, lot reservations exemptions, conditional sales exemptions and any amendments to public reports on average in less than four days. The rule is no longer necessary and the Department moves to expire the rule.

R4-28-B1205. Contiguous Parcels.
The Department believes the rule is ineffective as it is not clear nor does it add to the definition of "contiguous" found in A.R.S. § 32-2101. Further the Department does not classify parcels as subdividing and classifying of land is an authority provided to counties in Arizona. The Department moves to expire this rule.

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

R4-28-101. Definitions.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 12, amending Section 32-2130, the Department moves to create a definition for "current license," "eligible license," and "inactive license" and further moves to create R4-28-307 to implement "inactive license" as a new license status.

To align with legislative changes made in Chapter 298, Fifty-Fifth Legislature, Second Regular Session, at Sections 1 and 2, and Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101, the Department moves to consolidate "online course" into "distance learning course."

To align with legislative changes made in Chapter 55, Fifty-Fourth Legislature, First Regular Session, at Section 1, amending Section 32-4302, the Department moves to define "residency" and suggests language generally aligned with Department of Revenues definition of 'residency' as found in A.R.S 43-104 and the Board of Pharmacy as defined in R4-23-110.

R4-28-301. General License Requirements; Non-resident License.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 6,

amending Section 32-2123, the Department moves to amend and eliminate (A)(2)(c) and (d) relating to a requirement for license applicants to submit written references and a 10-year work history.

To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 4, amending Section 32-2108.01, the Department moves to amend (A)(3) relating to fingerprint cards and fingerprint clearance cards.

To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10 amending Section 32-2126, the Department moves to amend (E) relating to providing an address for a statutory agent in lieu of a "place of business."

R4 28 302. Employing Broker's License; Non-resident Broker.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 9, amending Section 32-2125.02, the Department moves to amend (L) relating to availability of transactional records and the requirement for non-resident brokers to provide the name and contact information for an individual who has possession of or access to such records. To further align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10, amending Section 32-2126, the Department moves to additionally amend (L) relating to providing for a statutory agent in lieu of establishing a definite place of business.

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10 amending Section 32-2126, the Department moves to amend (D) and (E) relating to providing an address of record in lieu of a place of business.

R4-28-304. Branch Office; Branch Office Manager.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10 amending Section 32-2126, the Department moves to amend (A) relating to providing an address of record in lieu of a place of business.

R4-28-305. Temporary License, Certificate of Convenience.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10 amending Section 32-2126, the Department moves to amend (A) relating to providing an address of record in lieu of a place of business.

To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 8, amending Section 32-2125, the Department moves to amend (C) relating to, after the current designated broker passes away, either issuing a temporary broker's license with intended closure of a brokerage or as the law will permit for an authorized party to install a new designated broker.

R4-28-307. Inactive License
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 12, amending Section 32-2130, the Department moves to add a new rule to allow for implementation of the new license status of "inactive." Following passage of the bill, the Department met with the Senate President to provide him a copy of a draft of the new rule as he was sponsor of the legislative language and to ensure the rule meets his expectations for implementation. Within this review, the Department will be recommending the expiration of three rules to meet the requirements set forth within A.R.S. § 41-1039(C). Those rules are R4-28-A1221, R4-28-B1201, and R4-28-B1205.

R4-28-401. Prelicensure Education Requirements; Waiver.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10 amending Section 32-2126, the Department moves to amend (A) relating to providing an address of record in lieu of a place of business.

To align with legislative changes made in Chapter 55, Fifty-Fourth Legislature, First Regular Session, at Section 1, amending Section 32-4302, the Department moves to amend (C) to clarify waivers may be based on out-of-state license recognition in addition to existing waivers available within Title 32, Chapter 20.

At Subsection (E), rule establishes restrictions on licensees for how many Continuing Education credits they may complete and receive in one day. No authority appears to exist in statute to create such a requirement and the Department moves to eliminate this subsection.

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning.
At Subsection (C), and similar to R4-28-401(E), the rule establishes restrictions on licensees for how many Continuing Education Credit hours they can earn per day. No authority appears to exist in statute to create such a requirement and the Department moves to eliminate this subsection.

R4-28-404. Real Estate School Requirements, Course and Instructor Approval.
To align with legislative changes made in Chapter 193, Fifty-Third Legislature, Second Regular Session, at Section 2, adding Section 41-1093.04, the Department moves to amend (E) to require real estate schools include a notice related to a person ability to petition an agency to make a determination whether their criminal record may preclude them from obtaining licensure before obtaining required education or experience.

R4-28-804. Rescission of Contract.
To align with legislative changes made in Chapter 245, Fifth-Fourth Legislature, First Regular Session, at Section 1, amending Section 32-2197.03, the Department moves to amend (B) to change the days permitted to cancel a purchase contract from seven to ten.

R4-28-B1206. Filing with HUD.
To align with federal legislative changes, the rule should be updated to reflect the filing of subdivision public reports moved from the United States Department of Housing and Urban Development to the Consumer Financial Protection Bureau, see 12 CFR Part 1010 (Regulation J).

R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice.
To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 and at Section 10 amending Section 32-2126, the Department moves to amend (A) relating to requiring notice of hearing and adding service of a party's statutory agent, as applicable.

R4-28-1303. Information Obtained in an Investigation.
To align with the Department's records retention schedule as approved by the Arizona State Library, Archives, and Public Records Division of the Secretary of State and Arizona Revised Statute Title 39 and as applicable specific statutes prohibiting release of personal identifying information, the Department moves to amend (B) and remove what protected information is duplicative to already being protected information which may fall out of date with current statute.

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

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance.
At Subsection (A)(2)(c), rule requires an application for renewal filed in paper format to include the date and signature of the designated broker. For over a decade (FY2014-2023), renewal applications have been submitted online at a rate of over 98 percent with the last seven years being over 99 percent. This specific paragraph of rule provided designated brokers or otherwise a statutorily authorized individual to effectively sever (terminate) the licensee from being licensed by the brokerage at the time of renewal. This may now be accomplished through the Department's online portal, without filing any paperwork, and the Department now also provides an optional notice to all employing brokers of successful renewals of licensees attached to the brokerage. The Department moves to remove this requirement as it believes this should not be a hindrance to completing the renewal application.

At Subsection F, rule requires a licensee to provide various copies of records related to formation and structure of Professional Corporations or Professional Limited Liability Companies and also places time restrictions on the age

of the copy. The records needed are typically readily available on the Arizona Corporation Commission's website and are verified to be active and current by Department staff. The Department believes the requirement for providing this specific information with a specific timeframe is unnecessary and moves to remove this requirement.

R4-28-402. Continuing Education Requirements ; Waiver; Distance Learning.
At Subsection (A)(5)(g), the rule requires a licensee to obtain Continued Education credit hours in the category of Business Brokering. This rule is not enforced and has been amended to remove the requirement. A licensee may obtain Continued Education credit hours for a Business Brokering course under the category of "General Real Estate".

At Subsection (A)(5)(h), the rule describes the course categories in which a licensee can receive credit hours under "General Real Estate." An amendment has been added to include the subcategory of Business Broker and Content that serves to protect the public in real estate transactions. Through this amendment, the Department exercises expanded ability to ensure recency or currentness of courses taught and permits a wider variety of course approvals, so long as they serve to protect the public.

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

R4-28-102. Document Filing; Computation of Time.
The Department believes the rule may be made more clear by amending the language in (A) to remove original applications as the date received for an original application is the date it is filed and in (B) to remove ambiguous language related to timeframes with the period of time being less than 11 days.

R4-28-103. Licensing Time-frames.
The Department believes the rule may be made more clear by amending (B) to identify language explicit in A.R.S. 41-1074 related to issuing one notice including a comprehensive list of specific deficiencies for an application that is not administratively complete and by amending (B) and (C) removing discretion on the approval of a 30-day extension following a request to provide additional information if made by the applicant in writing and within the Deficiency Time frame or Additional Information time frame.

Table 1. Time-frames (Calendar Days)
As stated in R4-28-103, the Department believes the rule may be made more clear by using language made explicit in A.R.S. 41-1074 related to issuing a notice of deficiencies for an application that is not administratively complete.

R4 28 301. General License Requirements; Non-resident License.
The Department believes the rule may be made more clear by specifying electronic copies of certified records are acceptable and to specify certain requirements for licensure are derived from Section 41-1080. As such, the Department believes amending (A)(2) and (5) is necessary. Additional clarifications throughout the rule are suggested to improve understandability.

R4 28 302. Employing Broker's License; Non-resident Broker.
The Department believes the rule may be made more clear by amending (J) to simplify the language and (K) to reflect current practice that a physical license is no longer issued and therefore no longer required to be returned if resigning.

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance.
The Department believes the rule may be made more clear by amending (A)(2)(e) to reflect language used on Department forms related to disciplinary action disclosure.

R4-28-304. Branch Office; Branch Office Manager.
The Department believes the rule may be made more clear by amending (A) to specify it also requires email with the application for creation of a Branch Office and no longer requires inclusion of the license expiration date of an employing broker, as the Department possesses this information and as such should not be an additional requirement for the completion of the application.

The Department believes the rule may be made more clear by amending (B) to specify the location and length of time a designated broker is required to maintain the letter of authority required under R4-28-303(E)(7), specifying which duties a branch manager is permitted to perform.

R4-28-306. Unlawful License Activity.
The Department believes the rule may be made more clear by making minor technical changes and amending (A) and (B) to simplify the language used.

R4-28-401. Prelicensure Education Requirements; Waiver.
The Department believes the rule may be made more clear by making minor updates to required contact information to include

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning.
The Department believes the rule may be made more clear by amending (A) to be more specific and properly explain the time frames in which a licensee may apply their Continued Education Credit Hours towards their license renewal.

The Department believes the rule may be made more clear by amending Subsection (A)(3) to encompass Delegated Associate Brokers as the requirements are identical to a Designated Broker.

The Department believes the rule may be made more clear by amending Subsection (A)(5)(c) as the rule does not accurately represent the correct and accurate concept of 'Arizona Administrative Code.' Currently the rule requires a licensee to take a required number of Continued Education hours in the area of "Commissioners Rules." The Rules that the Arizona Department of Real Estate enforces are outlined in the Arizona Administrative Code and should not be confused to suggest one person has written or has the sole authority to establish Rule. To be clear and concise, the rule has been amended to label the course category as Arizona Statute and Rule Requirements. By amending this subsection, a licensee may receive continuing education credit for education located within the Arizona Revised Statutes and Arizona Administrative Code as it directly relates to real estate.

The Department believes the rule may be made more clear by amending Subsection (D) to describe the requirements that each course must have in relation to material, assessments, interactivities, and modules. The Department moves to amend the rule to elaborate on the Department's requirements and add extra precautionary measures with student verification. As part of the application for course approval, a school administrator must express a plan or a solution in the event of a hardware or software failure.

R4-28-502. Advertising by a Licensee.
The Department believes the rule may be made more clear by amending (A), (B), (C), and (E) to replace "salesperson or broker" with "licensee" to match that of (F) and (H). Through amendment, the Department believes the rule becomes more clear as it removes ambiguity whether the requirement exists only if a licensee is representing another as a salesperson or broker or whether the requirement exists generally for any advertising for which a license is required, where the latter would for enforceability be the intent.

The Department believes the rule may be made more clear by further amending (B) to specify the requirement requiring the words "owner/agent," as applicable, exists only if advertising in Arizona; and not a requirement by this Department for property outside of the state.

The Department believes the rule may be made more clear by amending (F) to specify the requirement exists to disclose the name of listing broker in a clear and prominent manner whether the listing is currently on the market or already sold as the result of another listing broker's agreement.

The Department believes the rule may be made more clear by amending the Section to add a Subsection to specify the use of an electronic medium, such as the Internet, Artificial Intelligence, or other website technology, targeting residents of the State with the offering of a property interest or real estate brokerage services meets the definition of advertising as defined in A.R.S. § 32-2101(2).

R4-28-504. Development Advertising.
The Department believes the rule may be made more clear by amending (E) to improve readability by separating out the two plausible options of requiring a developer provide either an estimated date of completion with evidence of the completion being possible or disclosing there is no improvement guaranteed in their entirety under two separate paragraphs.

The Department believes the rule may be made more clear by amending (G) to specify where prominent disclosure of the nature of pictorial depictions or illustrative depictions, if other than unmodified photographs, is required to include if they are architectural designs, Artificially Intelligent created designs, engineer renderings, 3-d modeling, other type of rendering.

The Department believes the rule may be made more clear by amending (H) to specify the requirement for inclusion of a legend and disclosure of actual road miles if providing a pictorial representation in advertising of where the development exists with respect to distance from the pictorial representation.

The Department believes the rule may be made more clear by amending (L) to specify that if any body of water is described as a feature in advertising of a development that the developer must include the average surface area of the body of water.

R4-28-701. Compensation Sharing Disclosure.
The Department believes the rule may be made more clear by matching the rule to current practice where disclosure is required three days before closing and consistent with 12 CFR § 1026.19(f).

R4-28-802. Conveyance Documents.
The Department believes the rule may be made more clear by amending (A) to specify delivery of copies of signed documents and final agreements should be accomplished as a priority, or "expeditiously," as opposed to "as soon as practical."

The Department believes the rule may be made more clear by amending (C) to specify transaction documents signed by parties to the transaction and any disclosures made as part of the transaction are required to be retained with the transaction statements.

R4-28-1102. Property Negotiations.
The Department believes the rule may be made more clear by separating out the expectations for responsibility of negotiations based on whether it is the listing side of a transaction versus the buyer side.

R4-28-1103. Broker Supervision and Control.
As stated in previous Five Year Rule Reviews and as reconfirmed in this review, the Department believes the rule may be made more effective by making it more clear as to what is necessary to ensure broker supervision is met as a regulatory requirement. The Department therefore provides clarifying amendments throughout the Section.

R4-28-A1201. Development Name; Lot Sales; Applicant.
The Department believes the rule may be made more clear by bringing current the language in (B) and (D) to match current practice related to documentation necessary from the Arizona Corporation Commission. In this case, a developer needs only submit ACC documentation that is current rather than having been obtained within one year of application as the documents are readily available to match against on ACC's website. (A), (C), (D), (E) and (F) are also updated to request email contact information.

R4-28-A1202. Development Map; Location; Land Characteristics.
The Department believes the rule may be made more clear by removing limiting language potentially used as guidance but nonetheless, overall serving to limit physical characteristics of land disclosures which may need to be made.

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions.

The Department believes the rule may be made more clear by removing limiting language potentially used as guidance but nonetheless, overall serving to limit physical characteristics of flood and drainage disclosures which may need to be made.

R4-28-A1204. Utilities.
The Department believes the rule may be made more clear by removing limiting language potentially used as guidance but nonetheless, overall serving to limit types of utilities which may be available to a specific development. Amendments are made to reflect this clarification and also include addition of electronic contact information and the need to provide an estimated completion date if the developer is offering completion of a utility to the purchaser's lot line.

R4-28-A1205. Water Supply.
The Department believes the rule may be made more clear by delineating out expectations of a developer who offers completion of water supply to lot lines versus properties where this is not being offered. For properties existing outside of an Active Management Area and where no current water source exists, the Department also wishes to provide clarity to potential purchasers by providing an addendum on various potential sources of information to investigate potential water availability. Finally, the Department believes the rule may be made more clear by expanding the potential water sources available to property owners by updating to more modern offerings and then also spells out Arizona Department of Water Resources rather than simply using the acronym.

R4-28-A1206. Sewage Disposal.
The Department believes the rule may be made more clear by delineating out expectations of a developer who offers completion of sewage disposal to lot lines versus properties where this is not being offered. Additionally, the Department believes the rule may be made more clear by requiring disclosure of when estimated costs to complete installation were obtained and then also spells out Arizona Department of Environmental Quality rather than simply using the acronym.

R4-28-A1207. Streets and Access.
The Department believes the rule may be made more clear by reorganizing the rule in a logical manner; first requiring disclosure of exterior street access and then in B requiring disclosure of interior streets. The Department also believes the rule may be made more clear and effective by requiring disclosure of any participation in and cost of special taxing districts and community facility districts used for street maintenance.

R4-28-A1208. Flood Protection and Drainage Improvements.
Here and similar to several other provisions relating to subdivision public reports, the Department believes the rule may be made more clear by delineating out expectations of a developer who offers completion of an improvement versus those not offering completion. The Department also believes disclosure of participation in and cost of special taxing districts and community facility districts used for this purpose would aid in clarity and effectiveness of the rule.

R4-28-A1209. Common, Community, or Recreational Improvements.
The Department believes the rule may be made more clear by requiring disclosure of participation in and cost of special taxing districts and community facility districts.

R4-28-A1210. Master Planned Community.
The Department believes the rule may be made more clear by requiring disclosure of participation in and cost of special taxing districts and community facility districts used for this purpose.

R4-28-A1211. Assurances for Completion and Maintenance of Improvements.
The Department believes the rule may be made more clear by making technical corrections to more clearly state expiration dates of a public report.

R4-28-A1212. Schools and Services.
The Department believes the rule may be made more clear by adding relevant services and schools related to a development including public charter schools and by specifying whether emergency services are private, municipal,

volunteer or another type of service. The Department also believes the rule may aid in clarity and effectiveness by requiring disclosure of the nearest physical location of a facility operating as a primary office for the United States Postal Service.

R4-28-A1213. Property Owners' Association.
The Department believes the rule may be made more clear and effective by specifying the need to breakdown and estimate the total amount of association assessments as well as requiring the provision of a URL to the Covenants, Conditions and Restrictions and Bylaws of the Association, as available.

R4-28-A1214. Development Use.
The Department believes the rule may be more clear by removing the requirement of disclosure of whether the development is an adult occupancy or age restricted community in favor of disclosure of any restrictions.

R4-28-A1215. Development Sales.
The Department believes the rule may be made more clear by removing unnecessary and potentially confusing requirements of disclosure such as the estimated average price of lots. Far too many variables exist in developments for this sort of information to be helpful information to a potential purchaser. The Department also wishes to provide additional clarity in disclosures by requiring the sales documents include all contract disclosures required by statute.

R4-28-A1216. Title Reports and Encumbrances.
The Department believes the rule may be made more clear and effective by including with the title report the name of the preparer, their employing entity, and a description of any restrictions or conditions which must be met to secure title.

R4-28-A1217. ADEQ Approval.
The Department believes the rule may be made more clear by specifying the type of approval from the Arizona Department of Environmental Quality, and spelling out the name of the department rather than use its acronym.

R4-28-A1222. Membership Camping Developments.
The Department believes the rule may be made more clear by removing redundancy found in statute and only clarifying what must be included in a description of the camping development if advertising the existence of lakes, streams, or other natural features.

R4-28-B1202. Conditional Sales Exemption.
The Department believes the rule may be made more clear by removing acronyms for the Arizona Department of Water Resources and by simply making technical changes to (A)(9).

R4-28-B1203. Material Change; Public Report Amendments.
The Department believes the rule may be made more clear by specifying amendment to the public report is required if a material change adversely impacts a potential purchaser or lessee and suggests one additional technical change specifying "municipality" rather than "city."

R4-28-B1207. Subsequent Owner.
The Department believes the rule may be made more clear by specifying and adding language in (E) to clarify when the Commissioner may approve applications for a subsequent ownership exemption related to subdivision public report requirements.

R4-28-B1209. Options; Blanket Encumbrances; Releases.
The Department believes the rule may be made more clear by updating (A) to specify when the Department would not issue or amend a public report for certain lots.

R4-28-B1210. Earnest Money.
The Department believes the rule may be made more clear by specifying when the Department may require use of a neutral depository for earnest money or down payments and otherwise specifying conditions of when a developer is required to use a neutral depository.

R4-28-1304. Response; Default.
The Department believes the rule may be made more clear by specifying (A) indicates the timing of the response to be part of the investigative stage and not the hearing stage of the process.

R4-28-1305. Notice of Appearance of Counsel.
The Department believes the rule may be made more clear by delineating and specifying the Department's need for a Notice of Representation to work with an authorized representative during the investigative and audit process but also that a Notice of Appearance is required if the case were to proceed to the Office of Administrative Hearings.

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

The Department is cognizant it has not successfully completed rulemaking in nearly two decades. Additionally, its statutes have failed to remain relevant with changing market and business models. Taking into account the need to update both its statutes and rules, the Department:

- Worked with stakeholders, drafted a proposal, and worked with the legislature to pass, and for the Governor to sign, a sweeping update to Title 32, Chapter 20 during this legislative session, and;
- Urged all brokers, schools, and any email contact in the Department's SendGrid account to provide feedback on Arizona Administrative Code, Title 4, Chapter 28.

Specifically, on Nov. 14, 2023, an email soliciting feedback was delivered to 58,283 brokers, schools, and all email contacts held by the Department. The email was opened by 41,384 unique email recipients.

The content of the email is as follows:

> ADRE's Statutes are found in Arizona Revised Statutes, Title 32, Chapter 20. These are often requirements and authorities that are passed by Arizona's legislators and signed by the Governor.
>
> ADRE's Rules are found in Arizona Administrative Code, Title 4, Chapter 28. These are often requirements and authorities that are written by the Department in collaboration with stakeholders and subject to approval by the Governor's Regulatory Review Council.
>
> Every five years and pursuant to criteria provided in A.R.S. § 41-1056(A) and A.A.C. R1-6-301, each Department and Agency in the State of Arizona is required to review and make recommended changes to its Administrative Rules.
>
> The Arizona Department of Real Estate is no different and half of the Department's Rules are subject to a Five Year Rule Review in 2024 and another half in 2025.
>
> The Department anticipates undergoing a review of all of its Rules this year and would like your feedback.
>
> Specifically and as we review, we want to know what you as a licensee view as overly burdensome, confusing, incompatible with today's business models, or ineffective in protecting the public.
>
> Please submit your written comments and feedback regarding A.A.C. Title 4, Chapter 28 to jknupp@azre.gov, no later than Friday, December 8, 2023.

The Department received responses from 65 distinct email addresses and through analyzing comments identified 95 separate thoughts and comments, where 21 specific Rules may be understood to have been commented on or where suggestions were made.

As part of this Five-Year Rule Review, the Department reviewed each of these 21 comments to consider amendments, repeal, and clarification.

A summary of the comments, identified Rule and Action are as follows:

Public Comment	Rule Identified	Dept Analysis	Action?
R4-28-B1207 Subsequent Owner Clarification is needed for the term “developer who is a successor in interest within a subdivision”. In the past DRE has interpreted this to include investors who purchase existing homes in long ago completed subdivisions. As a result, the term “developer” has taken on a vague meaning within the market place. Investors who purchase 6 or more finished homes in a subdivision, particularly during times of distressed real estate, do not meet the commonly understood meaning of “developer”. In the past DRE has required investors who purchase several houses within an existing subdivision to update the public report. In several instances the subdivision was more than a decade old. At the same time, the department exempted property owners who had acquired several properties through foreclosure of the same duty (Fannie Mae, VA, FHA, large banks, etc.). An investor of distressed properties within a well established subdivision should not be categorized as a developer since the development has been completed and should not be required to provide an updated public report. In the case of infill residential lots within an established subdivision, then clearly defining “developer” as a person or entity who is building on vacant, never before built on lots would be helpful. Those new build developers should be required to provide an updated public report as currently outlined.	R4-28-B1207	Department was working with legislature on HB2101 providing additional clarity around subsequent ownership and the requirements for obtaining a public report. HB2101 amended on to HB2201 may progress to passage. Though preferably done in statute, the Department believes it may be able to accomplish similar by rule due to authorities generally provided in 32-2181(E)(6), as the rule would be simply describing instances where the exemptions apply.	May amend, based on legislative action related to same topic.
R4-28-B1205. Contiguous Parcels Except for lots in a platted subdivision, if two or more contiguous parcels of land are acquired by a single owner, the Department shall classify the lots as a single parcel for purposes of subdivision laws A little confusing So this would only apply if the owner wanted to subdivide the property.	R4-28-B1205	Comment identifies rules as not being clear, "a little confusing." After discussion and through review, the Department agrees and moves to Repeal this rule due to lack of clarity.	Repeal

Clarify or add that Broker Name is required in social media postings such as FB. The biggest error I see on FB is “come to my open house . . .” a specific property but no mention of the broker name. Or they put in the MLS listing, but not mentioning broker name. There are no exceptions to broker name being clear & prominent in social media. See A.R.S. 32-2101(2); A.A.C. R4-28-502A); SPS 2007.18	R4-28-502(L):	Discussed and offering amendment to R4-28-502.	Amend; R4-28-502
Update what can be taught as general category, many topics have been recommended for consideration over the last two years.	R4-28-502(D): as discussed in the TH on 12/18/23	Dept is considering changes to the education categories. The changes are being considered with and beyond the 5YRR due to the extreme size of the effort to update categories and curriculum.	Updates have been drafted. Further consideration necessary.
Under current electronic media rules, the brokerage must show on the 1st page from the link when advertising a brokerage isn't possible due to the electronic platform. WIth the advent of Linktr.ee and other tree'd sites, I'd like this to extend to business communications that point to a tree, or clarification that it already applies. Since I consider myself first and foremost an entrepreneur, I'd like to hand out a business card that identifies me not as an agent, but an entrepreneur / consultant. The QR on the card would go to my linktr.ee and that tree would feature not only my real estate business but all of my businesses. The first landing page from the real estate link would of course feature the brokerage. Again, I think the current rule may cover this, but advances in technology sometimes deserve a clarification.	R4-28-502	Department will consider this comment as it reviews R4-28-502(E) related to "clear and prominent." Current Department publications related to this topic, suggest: Follow These “Clear and Prominent” Employing Broker Guidelines: Although “clear and prominent” is a somewhat subjective term, it means “readily noticeable,” which may relate to font size or position in relation to the size or placement of the other text in the ad, TV commercial, social media post, email, website, etc. Social Media: When advertising real property on social media, such as Facebook, Instagram, LinkedIn, and YouTube, the name of the employing broker must be	Amend; R4-28-502

		stated. When advertising real property in “thumbnails”, text messages, “tweets”, etc., where stating the name of the employing broker firm is not practical, the advertising information being linked to must include the name of the employing broker. Websites: The employing broker’s name must be visible on the front page of the website and each subsequent page of the website, without the necessity of scrolling down, regardless of the screen size of the computer.	
Advertising R4-28-502 SOCIAL MEDIA and LOCAL MARKET Boards There is a need for clarity with regard to Social Media Marketing. Properties are being advertised for sale or rent on local market boards (such as Marketplace, or hyper-local online garage sale type boards) The advertisement appears as the individual's listing, which upon lots of searching, shows the property to be listed by a broker, other than the person sharing the listing. Some, not all will have a note at the end of the search that says, "listing courtesy of (brokerage). There are too many to forward, and they are more than "one click" from the identifying brokerage, many not even identifying the lister as an agent until scrolling through the listing and looking at the individual's personal information. I recommend language to update the existing Advertising rules to include all social media marketing, with details on brokerage and agent identification prominence. Clarify the agent's requirement to obtain permission from the listing agent prior to sharing the listing, and how to note on the listing. (as in, Listing courtesy of xyz brokerage,	R4-28-502	Department will consider this comment as it reviews R4-28-502(E) related to "clear and prominent." Current Department publications related to this topic, suggest: Follow These “Clear and Prominent” Employing Broker Guidelines: Although “clear and prominent” is a somewhat subjective term, it means “readily noticeable,” which may relate to font size or position in relation to the size or placement of the other text in the ad, TV commercial, social media post, email, website, etc. Social Media: When advertising real property on social media, such as	Amend; R4-28-502

listing broker license and contact)		Facebook, Instagram, LinkedIn, and YouTube, the name of the employing broker must be stated. When advertising real property in "thumbnails", text messages, "tweets", etc., where stating the name of the employing broker firm is not practical, the advertising information being linked to must include the name of the employing broker. Websites: The employing broker's name must be visible on the front page of the website and each subsequent page of the website, without the necessity of scrolling down, regardless of the screen size of the computer.	
Update what can be taught as general category, many topics have been recommended for consideration over the last two years.	R4-28-402(A)(5)(h):	Dept is considering changes to the education categories. The changes are being considered with and beyond the 5YRR due to the extreme size of the effort to update categories and curriculum.	Updates have been drafted. Further consideration necessary.
Business Brokerage is no longer a category – eliminate paragraph "g"	R4-28-402(A)(5)(g): .	Repealed.	Repeal
Desire for explicit exemption from Fair Housing if exclusively Commercial sales	R4-28-402		No commercial-only license exists
The renewal classes are more frequntly tailored to the NAR group of Realtors, often irrelevant to the rest of the other brokers. Many of the classes and test questions are about the specifics of the Realtor code of ethics, history of NAR & laws and NAR contract forms. Perhaps a separate category for renewal	R4-28-402	Dept is considering changes to the education categories. The changes are being considered with and beyond the 5YRR due to the extreme size of the	Further consideration necessary

requirements for commercial vs residential. It would be nice to have some innovation in the classes provided instead of the old retreaded classes. It would be nice to learn something.		effort to update categories and curriculum.	
change it to meet the new 2024 pre-licensing course hours or take out the reference to 27 hours & just say state portion.	R4-28-401(A):		Statutory requirement; stated in rule but required by statute.
Sync it to A.R.S. 32-2133 clarifying that the sole purpose of the temporary broker license is to “wind up” meaning close the business. Not everyone checks both statute & rule – so both should be in sync to avoid the common mistake of taking on new clients.	R4-28-305(C)(2):		Statutory changes provide an additional option but clarity is aided by providing the two options in the rule.
Regarding the provisions on records & office. Many Independent Brokers: Do not have a need for an office space. Have a need for privacy and do not wish to have their home address public. Records are no longer physical (they are cloud based) Therefore There should be allowance for a virtual office or box option for their safety and privacy.	R4-28-304	NA - No longer necessary due to changes made through passage and signing of SB1171 enabling election of a statutory agent in lieu of address. Department will review rule to determine if it needs updated due to impending statutory change.	Not necessary due to statutory change.
ARS 32-2126: Place of business required Update to reflect increasing number of virtual real estate brokerages and agents. Business contact information (phone & email) should be adequate for the public, while the department has on file the licensee’s home address, private phone number and email.	R4-28-304	NA - No longer necessary due to changes made through passage and signing of SB1171 enabling election of a statutory agent in lieu of address. Department will review rule to determine if it needs updated due to impending statutory change.	Not necessary due to statutory change.
Article 13: Administrative Procedures Alongside Article 11, I do believe that Article 13 needs to be re-addressed, a lot for the same reasoning. These two Sections go hand-in-hand and it should be	R4-28-1302 through R4-28-1313	Five Year Rule Review will focus on and, as applicable, consider making relevant and	Article 11 was reviewed and 13 is largely statute iterated

made more clear repercussions for wrongdoings by licensees/brokers, etc.		possible changes.	in rule, pulling from Title 32, Chapter 20, Article 11.
R4-28-1102. Property Negotiations Except for owner listed properties, negotiations shall be conducted exclusively through the principal's broker or the broker's representative unless: 1. The principal waives this requirement in writing, and 2. No licensed representative of the broker is available for 24 hours A little confusing So If no licensed representative of the broker is available for 24 hrs who is authorized to perform property negotiations? It seems the principle would have to do property negotiations.	R4-28-1102	Comment identifies rules as not being clear, "a little confusing." This will be discussed during the 5YRR.	Ameded as part of the review to improve clarity.
add geographic area specifically as a working out of area of expertise. A common disagreement in broker licensing & CE classes is that "MY" license allows me to work anywhere in AZ. However, only if you have expertise in that area. There are many opportunities to harm clients where the agent is working out of geographic area of expertise (this could also violate A.A.C. R4-28-1101(A) for not putting the client first).	R4-28-1101(H)		Considered and inappropriate to limit based on geographic area.
Operating outside the area of competency. Even though real estate agents are licensed to practice within the state as are appraisers, I am encountering numerous agents and some appraisers who are operating outside their area of competency. These individuals do not know rural properties, manufactured homes. Recently I read an appraisal for a custom built home where the appraiser who was not the appraiser of record included a mfg home in his appraisal inspection report. These individuals continue to contribute to the negative feelings the consumer has about real estate agents. As a real estate agent whose area of competency is residential rural land and homes on rural land or in the city, I do not work on commercial listings. I don't even work in Lake Havasu which is an hour to the southwest of Kingman and Golden Valley. I refer any inquiries to agents in that area.	R4-28-1101(H)	Rule addresses this concern. The rule will be reviewed for effectiveness and enforceability but when a complaint is recieved, it will be investigated and a licensee found in violation of the prohibition will be held accountable as appropriate.	Considered and inappropriate to limit.

Military Airport territory map: Add some language that clearly informs the public the noise contours directly relate to the accident potential zones and may limit the ability of the property owner to build, develop or use the land.	R4-28-1101(B)		Recommendation well-taken but Title 28 (DOT) would need amended or 32-2113(A) to include may lead to a potential of reduced land use.
Article 11: Professional Conduct I believe this entire Section should be heavily looked at and should be restored to a better, more modern and applicable way. In Arizona, is it far too easy to get a license and when there are life-changing, monetary-altering mistakes, and unprofessional conduct, too often do these go overlooked, ignored, and unaddressed. Consequences for violations within this industry should be heavily enforced and there should be stricter consequences for those that do not do well.	R4-28-1101 through R4-28-1103	Five Year Rule Review will focus on and, as applicable, consider making relevant and possible changes.	R4-28-1101 through 1103 was significantly reviewed and amendments proposed.
The “use and enjoyment of the property by the purchaser” concerns me a bit as I have seen especially with Toll Brothers in the past that it leaves a huge window open for very “picky” purchasers and it make it hard for me to advise them if they should amend or not. Is there a possibility of adding maybe something along the lines of “within reasonable expectation” or something of that nature where I wouldn’t have to assess if a small dog grooming facility across the street from a Subdivision in Scottsdale requires an amendment because someone might get upset at the potential smell of dogs ?	R4-28-101	Department understands the inclusion of "use and enjoyment" in the Definition of "Material Change" may lack clarity.	Amended in R4-28-A1203 to remove unreasonable expectation of disclosure. Feedback from industry on how to improve clarity has been requested.

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

Article 1. General Provisions

The rules generally have minimal economic impact upon the performance of licensed activity by real estate, cemetery, membership campground, and timeshare. The rules are primarily designed to implement statutory mandates. No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since the rule was last amended or newly made. Because of the need to promote understanding of the regulations designed to protect individuals and entities involved in regulated aspects of the real estate industry, the Department contends that small business and consumers will benefit from the addition of terms and definitions in R4-28-101.

The previous report contemplated reduction of timeframes to promote the faster licensure of applicants.

Within the Licensing Division, as of the time of this report and from the beginning of the current Fiscal Year, the Department completes or issues the following tasks on average in less than one day:

- Name Reservations
- Salesperson Applications
- Professional Corporation/Professional Limited Liability Company Applications
- Cemetery Applications
- Broker Applications
- Entity Applications
- Applications for Legal Name Change

Within the Education Division, as of the time of this report and since the beginning of the Current Fiscal Year, the Department completes or issues the following authorizations/licenses on average in less than one day:

- School Approvals
- Course Approvals
- Instructor Approvals
- Distance Learning Courses (1.64 days)

Within the Development Services Division, representing the Department's most complex applications and from the beginning of the current Fiscal Year, the Department completes or issues the following reports/exemptions on average in less than three days:

- Unimproved Subdivision Public Reports
- Unsubdivided Land Public Reports
- Special Order of Exemption from the Public Report Requirements
- Conditional Sales Exemptions
- Lot Reservations Exemptions
- Timeshare Public Report (3.67 days)
- Amendments to any of the above

All licensing, education or development services licenses, reports and authorities are listed above; meaning no timeframe extends beyond those disclosed.

Article 3. Licensure

The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. It should be noted that there has been no known adverse economic impact of the rules on the Department, the regulated community, or the public.

The duties, permissions, and requirements for licensure of real estate brokers, real estate salespersons, cemetery broker, cemetery salesperson, membership camping broker, and membership camping salesperson are set in the Constitution of the State of Arizona, Article 26 § 1 and A.R.S. § 32-2122. The Department does not expand on or create additional licenses in Arizona Administrative Code.

Additionally, the Department of Real Estate is unlike the majority of Arizona's other regulatory boards, commissions, and Departments as fees associated with licensure are set administratively to project revenue to between at least 95 percent of the Department's legislative appropriation and not more than 110 percent. This budget modeling is required annually pursuant to A.R.S. § 32-2103. Notwithstanding the 95/110 budget projections, the Department is limited to not exceed the upper bounds for any fee pursuant to A.R.S. § 32-2132.

At the time of the last Five-Year Rule Review, the Department budget appropriation permitted 37 FTEs with a General Fund appropriation of approximately $3 Million. These same appropriations hold true today and as a result of the interplay between the number of licensees (increasing) and the 95/110 budget model provided for in A.R.S. § 32-2103, fees have continued to decrease over the last five years and the Department's licensing fees remain among

the lowest in the Western United States.

The rules generally have minimal economic impact on small businesses and consumers.

The "Licensed Individuals and Entities" count completed for January 2019 stated as follows: total active individuals 58,937; total inactive individuals 14,570; total individuals in grace period 5,051; total individual licensees 78,558. The report also includes information for entities: total active entities 7,437; total inactive entities 454; total entities in grace period 672; total entity licensees 8,568. Currently, there are 84,358 individual licensees and 8,077 total entities, representing a 7.3% increase in total individual licenses and a 5.7% decrease in number of entity licensees.

Demand inelasticity, interest rates, housing prices, lending leniency, and other endogenous factors impacting the housing market correlate with licensing trends. As the housing market slows, the Department may anticipate reductions in new applications and renewals.

Article 4. Education
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. It should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community, or the public. The Administrative Rules in Article 4, governing Education, inform real estate instructors, administrators, and schools of the specific rules to comply with the statutory laws in A.R.S. Title 32, Chapter 20.

The rules generally have minimal economic impact on small businesses and consumers.

The scope of this article applies to 228 real estate schools (a decrease of 19% since the last five year rule review), 220 schools offering continuing education courses (a decrease of 23% since the last five year rule review), 2,353 real estate courses (decrease of 20% since the last five year rule review), and 686 real estate school instructors (a decrease of 26% since the last five year rule review).

From July 1, 2023 to June 19, 2024, the Department received the following number of applications for each approval type: 859 course approval applications, 70 distance learning approval applications, 52 school approval applications, and 286 instructor approval applications.

Article 5. Advertising
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. The rules generally have a minimal economic impact. The rules are primarily designed to address statutorily mandated areas where the Commissioner must provide guidance.

No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since the rule was last amended or newly made. The rules are primarily designed to promote understanding of the regulations designed to protect individuals and entities involved in regulated aspects of the real estate industry. There has been no known adverse economic impact of these Rules on the Department, the regulated community or the public.

Proposed amendments stated in this report would further the mission of protecting the public in the evolving area of marketing, both online and in the field, without causing unnecessary regulatory burden. Advertising methods are evolving and continue to be an ongoing discussion with industry professionals and public stakeholders. There were several comments received from brokers related to increasing or clarifying the requirements for advertising after the Department's outreach related to this Five-Year Rule Review. This cost-benefit analysis of suggested changes was not conducted for this Five Year Rule Review but will be included with Proposed Rulemaking.

Article 7. Compensation
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. It should be noted that there has been no known adverse economic impact of the rules on the Department, the regulated

community, or the public.

The Administrative Rule in Article 7 governing Compensation provides clarity to the public, licensees, and clients by stipulating disclosure of who receives compensation from a transaction.

The scope of this article applies to approximately 13,306 real estate brokers as of June 6, 2024.

Article 8. Documents
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. It should be noted that there has been no known adverse economic impact of the rules on the Department, the regulated community, or the public.

The prior EIS claimed a positive economic impact from these rules due to permitting electronic and web-based records resulting in an economic savings to all parties. The current review finds the same and draft language derived from this review introduces additional methods for the industry to use technology to meet statutory requirements.

The scope of this article applies to approximately 13,306 brokers and 71,053 salespersons.

Article 11. Professional Conduct
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. There has been no known adverse economic impact of these Rules on the Department, the regulated community or the public.

The rules impact the regulated industry and public by stipulating the responsibilities of the broker and agent.

The rules are necessary for the Department to ensure protection of the public through real estate transactions. Proposed amendments stated in this report further this mission without causing unnecessary regulatory burden.

Article 12. Developments
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review and determined that there have not been significant changes. There has been no adverse economic impact of these Rules on the Department, the regulated community or the public.

In FY 2019 the Development Services Division issued 741 Public Report Disclosures (20% increase from FY 2018), received 813 subdivision applications (24% increase from FY 2018), and issued 227 exemption requests (31% increase from FY 2018). In FY23, the Division issued 830 Public Report Disclosures (12% increase from FY 2019), received 466 subdivision applications (43% decrease from FY 2019), and issued 81 exemption requests (64.32% decrease from FY 2019).

Similar to licensure, the duties, permissions, and requirements for developers and subdividers are set by statute, namely Title 32, Chapter 20, Articles 4, 7, and 9. The Department does not expand on or create additional regulated populations in Arizona Administrative Code.

With further similarity to licensure, the Department includes fees associated with developments in its 95/110 budget modeling and projections and again, the Department is limited to not exceed the upper bounds for any fee pursuant to A.R.S. § 32-2132.

Article 13. Administrative Procedures
The Department reviewed the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review. It should be noted that there has been no known adverse economic impact of the rules on the Department, the regulated community, or the public.

In FY23, after concluding investigation or audit, the Department issued 187 orders. Of this, the Department requested 31 hearings at the Office of Administrative Hearings and completed 25.

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

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

Records indicate, the Department received direction from the Governor's Regulatory Review Council (GRRC) in May 2020 after submitting a Five-Year Rule Review to update Administrative Rules specific to that report which included, A.A.C. Title 4, Chapter 28, Articles 4, 8, and 12.

According to records found in the Department, it submitted a plan to GRRC that stated a rulemaking package would be submitted to the Council by January 2021, if an exemption from the rulemaking moratorium was granted.

The Department is not able to locate records indicating an exemption for the rulemaking moratorium was requested from the Governor's Office nor a package submitted in order to update Articles 4, 8, and 12, as directed by the Council.

Aware of the Department's failure to rulemake for nearly two decades, with no indication of completing the prior Five-Year Rule Review, and cognizant of the need for the Department and Legislature to update its statutes, the Department requested and received a 120-day extension to allow for legislative session to prove out whether the Department's proposed legislative updates would be passed and signed and in order to complete a comprehensive review of both portions of Arizona Administrative Code Title 4, Chapter 28.

As a result of permitting the extension, 2024 Laws, Chapter 52, Fifty-Sixth legislature, Second Regular Session (SB1171) has been included with the review of the Department's rules and the Department completed review of all of Arizona Administrative Code, Title 4, Chapter 28; not simply the required Articles of 1, 3, 5, 11, and 13.

With the completion of the review for this Five-Year Rule Review to include solicitation of stakeholder feedback, the Department drafted a complete update to Title 4, Chapter 28 and already submitted a request for exemption from the moratorium to pursue expedited rulemaking after acceptance of this Five-Year Rule Review.

The drafted rules submitted to the Governor's Office for rulemaking moratorium exemption include amendments to Articles 4, 8, and 12; those articles the Department was previously directed to address in the most recent Five-Year Rule Review.

In addition to those three Articles however, the Department analyzed the last two Five-Year Rule Reviews (2019, 2020) to ensure it addressed outstanding issues discussed previously. The following represents a summary of that analysis:

- R4-28-101 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested the addition of 27 new definitions. Unsurprisingly, the Department was unable to obtain consensus on these terms, their qualifications, and scope and decided against moving forward. This Five-Year Rule Review assessed this section and failed to determine a need for such definitions outside of those required due to recent statutory changes and these amendments are accounted for in the draft.
- R4-28-102 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested adding "business days" to 'clarify' computation of time related to document filing. Business days may simplify the language but generally, the Department found no issue with effectiveness related to this rule during this Five-Year Rule Review.
- R4-28-103 to improve effectiveness and consistency:
    - To improve effectiveness, the Department previously suggested reducing timeframes to be more realistic about the days needed to process applications - as is, the Department far exceeds statutory and regulatory timeframes with all licensing and education applications being completed in one day

or less and subdivision public report filings being completed within less than five days. The timeframes remain effective. To improve consistency, the Department suggested specifying days for an online course to be reviewed and completed. This became irrelevant with Chapter 298, Fifty-fifth Legislature, Second Regular Session, at Sections 1 and 2, and Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101, combining online course and distance learning course, where distance learning is already accounted for in timeframes.

- R4-28-104 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested clarifying the range of fees permitted to be charged developers and subdividers for government services performed pursuant to A.R.S. § 32-2182. The Department experiences no issues related to subdivision public report fees.
- R4-28-301 to improve effectiveness and clarity:
    - To improve both effectiveness and clarity, the Department previously suggested amendment of the rule to become compliant with A.R.S. §§ 32-2123(D)(2) and 41-1758.03. To align with legislative changes made in Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 4, amending Section 32-2108.01, the Department includes amendment language to bring consistent (A)(3) relating to fingerprint cards and fingerprint clearance cards.
- R4-28-302 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested amendment of the rule related to required documentation for entity licenses. The Department concurs in this review and included language removing unnecessary or overly burdensome requirements and also brings consistent requirements related to use of statutory agents in lieu of places of business.
- R4-28-303 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested amending rule related to inactive and active licensure and to codify its treatment of fingerprint clearance card suspensions. The Department concurs with the issues identified but instead successfully achieved these amendments in Chapter 52, Fifty-Sixth Legislature, Second Regular Session.
- R4-28-304 to improve clarity:
    - To improve clarity, the Department previously, generally suggested adding clarity around A.R.S. § 32-2127 relating to branch offices. The Department concurs with this suggestion and the draft submitted with this review includes such amendments and incorporates changes related to place of business versus allowing for a statutory agent as made possible by Chapter 52, Fifty-Sixth Legislature, Second Regular Session.
- R4-28-305 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested reducing burden by changing shall to may. For as much as the Department is able to determine, this may have most likely related to Agency practice with Subsection C where requirements are detailed for what is required to be submitted in the instance of a death of a designated broker. The Department does exercise discretion of what is required here, to include may, but lessening the requirement for certain instances, would not be appropriate and therefore the Department believes retaining “shall” is prudent. The Department however is submitting amending language arising from passage of Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 8, enabling the installation of a new designated broker when an entity’s current designated broker passes away.
- R4-28-306 to improve effectiveness and enforcement:
    - To improve effectiveness and enforcement, the Department previously suggested inclusion of additional statutes describing unlicensed activity and amendment of statute. The Department has not included the additional provisions as the effectiveness of a statute is not dependent on a rule iterating its existence.
- R4-28-401 to improve effectiveness, consistency with statute and clarity:
    - To improve effectiveness and consistency, suggested edits are included with this draft to bring waivers into compliance with legislative changes made in Chapter 55, Fifty-Fourth Legislature, First Regular Session, at Section 1, amending Section 32-4302 and address both the consistency and effectiveness matters raised.
    - To improve clarity, the Department’s previously suggested edits became irrelevant through legislative changes made in Chapter 298, Fifty-fifth Legislature, Second Regular Session, at Sections 1 and 2, and Chapter 52, Fifty-Sixth Legislature, Second Regular Session, at Section 1, amending Section 32-2101 combining online course and distance learning course and additional

edits are included with this draft to clarify guidelines.

- R4-28-402 to improve effectiveness and enforcement:
    - To improve effectiveness, the Department previously suggested changes to address issues related to "poor quality distance learning courses." Much may be accomplished by altering forms and the Department addressed issues raised. Additionally, the Department easily reviews courses being approved after working with the Arizona Auditor General and implementing its Recommendations made during the Department's Sunset Review. Through altering internal approval processes and procedures to meet the Recommendations, the Department now ensures distance learning courses are reviewed and relevant.
    - To improve enforcement, edits are included with this draft to allow course approvals under a "General Category" if the course serves to protect the public.
- R4-28-404 to improve enforcement and clarity:
    - To improve enforcement, the Department previously suggested creating qualifications for school operators and school administrators. The authority to limit the qualifying individuals for this role may be more appropriate for statutory changes if desired as a policy of the state. Similarly, the previous suggestion for clarity related to requirements set forth for schools. Statute is largely silent in this area but again and regardless this may be more appropriate for policymakers in the state to provide these guidelines.
- R4-28-502 to improve effectiveness, enforcement and clarity:
    - To improve effectiveness, the Department previously suggested the ability to determine licensing credentials of a party advertising. The draft prepared for this review includes language addressing this matter; requiring names not licensed with the Department to be smaller font size, smaller proportionally, and may not confuse the public as to who or what is licensed. To improve enforcement and clarity, the Department previously suggested inclusion of a requirement to display the broker's name on advertising. The draft prepared for this review includes language addressing this matter.
- R4-28-504 to improve clarity:
    - To improve clarity, the Department previously suggested the rule should require the broker's name be identified on all advertising. The draft contained within this review does not include that amendment but does clarify language surrounding the advertising of developments.
- R4-28-802
    - The Department previously suggested codifying Commissioner Advisories and Substantive Policy Statements to expand the objective of the rule. This was not accomplished and is not within the draft submitted with this review.
- R4-28-803 to improve effectiveness:
    - To improve effectiveness, the Department previously suggested amendment to the rule to require disclosure of the Public Report Approval Number. The developer however is required to provide the prospective purchaser with a copy of the Public Report and the Report itself possesses the Approval Number.
- R4-28-804 to improve consistency:
    - To improve consistency, the Department previously suggested amending the rescission period language to state that the time a person has the ability to cancel certain agreements was extended from 7 days up to 10 days in 2019. The draft includes this amendment.
- R4-28-1101 to improve enforcement and clarity:
    - To improve enforcement, the Department previously suggested edits to the rule to make clear that a Designated Broker remains responsible for actions of branch offices, associate brokers, and unlicensed individuals. To improve clarity, the Department suggested further disclosure of "all income" derived from a transaction when a licensee acts as a principal in a transaction. The draft included works to improve clarity related to the application of the rule to all licensees and does not attempt to restate a broker's need to supervise.
- R4-28-1102 to improve clarity:
    - To improve clarity, the Department previously suggested specifying the necessary documents required in statute. In the included draft, the Department provides additional clarity around how property negotiations must be conducted.

- R4-28-1103 to improve enforcement:
    - The Department previously expressed issues with enforcing the rule when brokers attempt to distance themselves from their supervisory responsibilities through branch offices and associate brokers. The Department continues to observe this behavior but experiences no issues with holding the designated broker accountable. This behavior is also observed within "teams" as it relates to current industry practices. Among other amendments within this section, the Department is suggesting language attempting to clarify and an additional requirement for broker's to better supervise licensees under their brokerage.
- R4-28-A1201 to improve effectiveness:
    - The Department previously suggested adding email addresses to requirements for the Public Report. This review also found inclusion of the additional contact information to be beneficial and included the requirement in the draft.
- R4-28-A1203 to improve clarity:
    - The Department previously suggested further disclosure requirements related to fissures and pipelines. The draft included with this review expands this suggestion to require disclosure of any known material facts.
- R4-28-A1204 to improve effectiveness:
    - The Department previously suggested adding language clarifying whether utilities are available to a property. The draft included with this review works to clarify whether utilities are being offered to be included to the purchaser's lot line and should address the concern raised previously.
- R4-28-A1211
    - The Department previously sought amendment to this rule and similar suggested language is included with this draft.
- R4-28-B1202 to improve clarity:
    - The Department previously suggested it would be advantageous to spell out that this rule could apply to more than just conditional sales exemptions. Lot reservations are completely detailed in A.R.S. § 32-2181.03 however and the review found this suggestion unnecessary.
- R4-28-B1206 to improve consistency:
    - The Department previously recommended catching this section up with federal regulatory changes moving the requirements from Housing and Urban Development to the Consumer Financial Protection Bureau. This review includes this change in the draft.
- R4-28-B1207 to improve consistency:
    - The Department previously suggested amendments to this section to include a legislative change that places a year limit on how long the Department is able to look back when assessing whether a subdivision is required. The review found this was not necessary as it is explicit in statute. The Department does include clarity around when the Department may grant subsequent ownership exemptions.

11. <u>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:</u>

The Department has determined that the rules Title 4, Chapter 28 imposes the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, with the exception of the following:

R4 28 302. Employing Broker's License; Non-resident Broker.
The Department believes (K) must be amended to reflect current practice that a physical license is no longer issued and therefore no longer required to be returned if resigning.

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance.
At Subsection (A)(2)(c), rule requires an application for renewal filed in paper format to include the date and

signature of the designated broker. For over a decade (FY2014-2023), renewal applications have been submitted online at a rate of over 98 percent with the last seven years being over 99 percent. This specific paragraph of rule provided designated brokers or otherwise a statutorily authorized individual to effectively sever (terminate) the licensee from being licensed by the brokerage at the time of renewal. This may now be accomplished through the Department's online portal, without filing any paperwork, and the Department now also provides an optional notice to all employing brokers of successful renewals of licensees attached to the brokerage. The Department moves to remove this requirement as it believes this should not be a hindrance to completing the application.

At Subsection F, rule requires a licensee to provide various copies of records related to formation and structure of Professional Corporations or Professional Limited Liability Companies and also places time restrictions on the age of the copy. The records needed are now typically readily available on the Arizona Corporation Commission's website and are verified to be active and current by Department staff. The Department believes the requirement for providing this specific information with a specific timeframe is unnecessary and moves to remove this requirement.

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

Federal law does not apply to the subject of this rulemaking.

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

The Rules in the Articles subject to and in addition to this Five-Year Rule Review were adopted before July 29, 2010 and have not been amended since at least 2006.

Further, the Department does not issue general permits by rule, but rather issues licenses and approvals as required by Arizona Revised Statute Title 32, Chapter 20 to qualifying applicants. No license issued by the Department is created through rule. The Department therefore believes this provision does not apply to the Department's rules and A.R.S. § 41-1037 does not apply.

14. Proposed course of action

During the Fifty-Sixth Legislature, Second Regular Session, the Department successfully worked with the Governor's Office and Legislature to pass and have signed a comprehensive update to Arizona Revised Statutes, Title 32, Chapter 20.

Cognizant of the proposed legislative changes and in order to comprehensively review all of its Rules; not simply those that were due this year, the Department requested and was granted a 120-extension to complete its Five Year Rule Review in February 2024.

In June 2024, the Department completed and will have submitted its Five Year Rule Review of Arizona Administrative Code, Title 4, Chapter 28 - State Real Estate Department to the Governor's Regulatory Review Council for consideration and approval.

In June 2024, the Department also completed a draft of amendments to its rules satisfying issues identified in the Five Year Rule Review. This draft has been submitted to its Policy Advisor in the Governor's Office for approval to be exempt from the Rulemaking Moratorium.

Once initial approval for exemption is granted, the Department anticipates filing for Notice of Docket Opening and Notice of Proposed Rulemaking within 30-60 days. Simultaneous to the filing of the Notices, the Department will begin to work with stakeholders and the regulated community on the draft to ensure rulemaking will be successful.

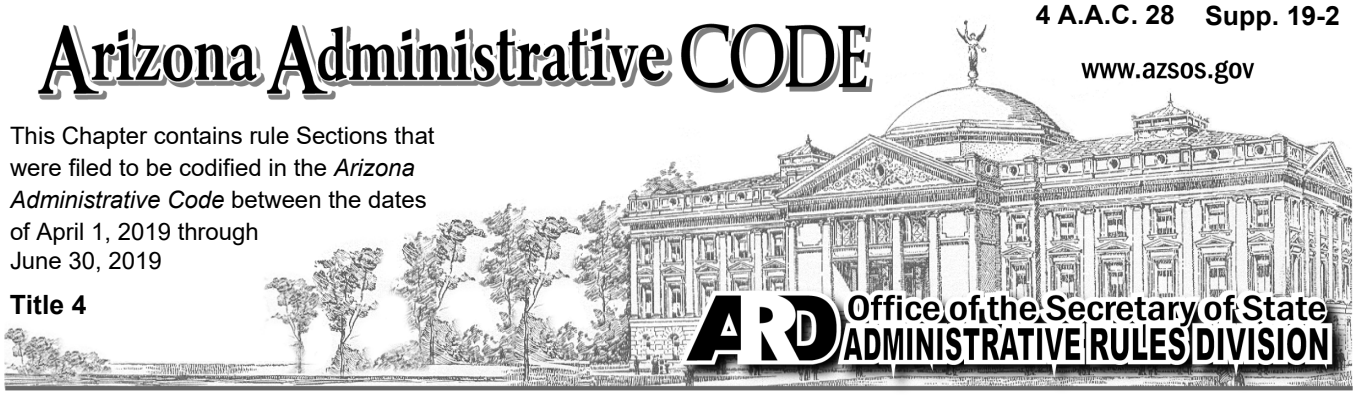
Understanding the Department completed a comprehensive review of its rules and the extent of updates and amendments included in the draft, the Department plans for a public comment period of 60-days rather than the minimum 30-days required. At the conclusion of the comment period, the Department will hold an oral proceeding to collect any further commentary and continue to follow the required steps to complete rulemaking.

Arizona Administrative CODE

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2019 through June 30, 2019

Title 4



TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Questions about these rules? Contact:

Department	Arizona Department of Real Estate
Address:	100 North 15th Avenue, Suite 201 Phoenix, AZ 85007
Website:	www.azre.gov

The release of this Chapter in Supp. 19-2 replaces Supp. 15-2, 1-32 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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

Authority: A.R.S. § 32-2107

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. REPEALED

ARTICLE 3. LICENSURE

ARTICLE 4. EDUCATION

ARTICLE 5. ADVERTISING

ARTICLE 6. REPEALED

Article 6, consisting of Section R4-28-601, repealed effective February 28, 1995 (Supp. 95-1).

ARTICLE 7. COMPENSATION

ARTICLE 8. DOCUMENTS

Editor's Note: A correction was made to the table of contents to reflect the correct Section heading for R4-28-805 (Supp. 04-4).

ARTICLE 9. REPEALED

Article 9, consisting of Sections R4-28-901 and R4-28-902, repealed effective February 28, 1995 (Supp. 95-1).

ARTICLE 10. REPEALED

Article 10, consisting of Section R4-28-1001, repealed by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp.05-1).

ARTICLE 11. PROFESSIONAL CONDUCT

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

PART B. GENERAL INFORMATION

ARTICLE 13. ADMINISTRATIVE PROCEDURES

ARTICLE 14. REPEALED

Former Article 14, consisting of Section R4-28-1401, repealed effective November 27, 1987.

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

"Active license" or "active status license" means a current license issued by the Department to a broker or salesperson that states the name of the broker that employs the broker or salesperson and the location at which the salesperson or broker is employed. If referring to an employing broker, it means a currently licensed employing broker with a currently licensed designated broker of record.

"ADEQ" means the Arizona Department of Environmental Quality.

"ADWR" means the Arizona Department of Water Resources.

"Closing" means the final step of a real estate transaction, such as when the consideration is paid, all documents relating to the transaction are executed and recorded, or the deed is delivered or placed in escrow.

"Credit hour" means 50 minutes of instruction.

"Course" means a class, seminar, or presentation.

"D.b.a." means 'doing business as' and is a name, other than a person's legal name, authorized by the Department for a licensee's use in conducting business.

"Distance learning course" means a course of instruction outside a traditional classroom situation consisting of computer-based interactive instructional material, requiring completion in the credit hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

"Immediate family" means persons related to an individual by blood, marriage, or adoption, including spouse, siblings, parents, grandparents, children, and grandchildren.

"Individual" means a natural person.

"Material change" means any significant change in the size or character of the development, development plan, or interest being offered, or a change that has a significant effect on the rights, duties, or obligations of the developer or purchaser, or use and enjoyment of the property by the purchaser.

"Non-resident license" means a license authorized under the provisions of 32-2122(A) issued to a person who has been domiciled in this state for less than one year and who does not meet any of the following:

Has an Arizona driver's license;

Has an Arizona motor vehicle registration;

Has been employed in Arizona;

Has an Arizona voter registration;

Has transferred banking services to Arizona;

Has changed permanent address on all pertinent records;

Is a domestic corporation or limited liability company;

Has filed an Arizona income tax return with the Department of Revenue during the previous or current tax year; or

Has received benefits from any Arizona public service department or agency, such as welfare, food stamps, unemployment benefits, or worker's compensation.

"Property interest" means a person's ownership or control of a lot, parcel, unit, share, use in a development, including any right in a subdivided or unsubdivided land, a cemetery plot, a condominium, a time-share interval, a membership camping contract, or a stock cooperative.

Historical Note

Former Section R4-28-01 repealed, new Section R4-28-01 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-01 renumbered without change as Section R4-28-101 (Supp. 87-1). Former Section R4-28-101 renumbered to R4-28-102, new Section R4-28-101 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-102. Document Filing; Computation of Time

A. All documents shall be considered filed on the date received by the Department. An original or renewal application postmarked on or before the end of the application or renewal deadline shall be considered timely.

B. In computing any period of time allowed by these rules or by an order of the Commissioner, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Unless the time period is specified as calendar days, when the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

Historical Note

Former Section R4-28-02 repealed, new Section R4-28-02 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-02 renumbered without change as Section R4-28-102 (Supp. 87-1). Former Section R4-28-102 repealed, new Section R4-28-102 renumbered from R4-28-101 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-103. 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 a complete application. The overall time-frame is the total of the number of days provided for in the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The applicable 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 is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered 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 expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension in writing from the Department before expiration of the Response to Completion Request period in Table 1. The Department shall grant the applicant one extension for the number of days identified as the Response to Completion Request period for the type of license. 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 begins after the application is administratively complete.

1. The Department may schedule an inspection.
2. 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 the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn unless the applicant requests in writing an extension from the Department before expiration of the Response to Additional Information period in Table 1. The Department shall grant the applicant one extension for the number of days identified in the Response to Additional Information period for the type of license.
3. 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 for appealing the denial.

D. Renewals. If an applicant for renewal of a salesperson's or broker's license submits a complete renewal application:

1. Before the expiration date and there are no changes in the applicant's license or qualifications pursuant to R4-28-301(A), the Department shall send the applicant notice that the license is renewed;
2. After the expiration date, or if a substantive review is required because the applicant wishes to make changes to or has answered in the affirmative any question on the license questionnaire, the Department shall process the application as a modified or amended application.

Historical Note

Amended as an emergency effective June 20, 1975 (Supp. 75-1). Former Section R4-28-03 repealed, new Section R4-28-03 adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-03 renumbered without change as Section R4-28-103 (Supp. 87-1). Former Section R4-28-103 repealed, new Section R4-28-103 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-104. Development Inspection Fee

A fee shall be charged for a development site inspection pursuant to A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04, before or after issuance of a public report. Multiple inspections and fees may be required based on development circumstances.

Historical Note

New Section R4-28-104 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 4917, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-105. Expired

Historical Note

New Section R4-28-105 made by exempt rulemaking at 19 A.A.R. 201, effective January 16, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 971, effective March 1, 2019 (Supp. 19-2).

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-frame
Broker or Salesperson (Individual)	A.R.S. § 32-2122 A.A.C. R4-28-301	30	30	30	30	60
Individual Renewal	A.A.C. R4-28-303	30	30	30	30	60
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	30	30	30	30	60
Individual Reinstatement	A.A.C. R4-28-303	30	30	30	30	60
Corp/LLC/Partnership/ PC/PLC/Desig. Broker Status	A.R.S. § 32-2125 A.A.C. R4-28-302	60	30	60	60	120
Branch Office	A.R.S. § 32-2127	60	30	60	60	120
Entity/DB status Renewal	A.A.C. R4-28-303	60	30	60	60	120
Modified/Amended (Change of Name, Address, or License Status)	A.A.C. R4-28-303	60	30	60	60	120
Entity Reinstatement	A.A.C. R4-28-303	60	30	60	60	120
Temporary Broker	A.R.S. § 32-2133	60	30	60	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	60	30	60	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01 A.A.C. R4-28-305	60	30	60	60	120
School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval:	A.R.S. § 32-2135					
New (Live Instruction)	A.A.C. R4-28-404	10	15	20	15	30
New (Distance Learning)	A.A.C. R4-28-402, R4-28-404	30	30	90	30	120
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30
ADVERTISING						
Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D)	15	5	0	0	15
Subdivision (only for drawing or contest)	A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (only for drawing or contest)	A.A.C. R4-28-503(D) A.R.S. § 32-2197.17(I)	15	5	0	0	15
Time-Share (the offer of a premium)	A.A.C. R4-28-503(D) A.R.S. § 32-2197.17(K) A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203	40	40	60	40	100
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	30	30	30	30	60
Certificate of Authority	A.R.S. § 32-2194.03(A)	40	40	60	40	100
Amended Certificate	A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	30	30	30	30	60

WAIVERS						
Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12
EXEMPTIONS						
Subdivision	A.R.S. § 2181.01 A.A.C. R4-28-B1202	40	40	40	40	80
Unsubdivided Land	A.R.S. § 32-2195.01 A.A.C. R4-28-B1202	40	40	40	40	80
Time-Share	A.R.S. § 32-2197.13	40	40	40	40	80
Membership Camping	A.R.S. § 32-3198.03	40	40	40	40	80

Historical Note

New Table 1 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 2. REPEALED

R4-28-201. Repealed

Historical Note

Former Section R4-28-04 repealed, new Section R4-28-04 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-04 renumbered and amended as R4-28-201 effective February 28, 1987 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-201 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 3. LICENSURE

R4-28-301. General License Requirements; Non-resident License

A. An applicant for any Department-issued license or license renewal including, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the entity, shall submit the following information to the Department:

1. A signed original licensure or renewal questionnaire, as applicable, disclosing any:
   a. Conviction for a misdemeanor or felony, or deferral of a judgment or sentencing for a misdemeanor or felony;
   b. Order, judgment, or adverse decision entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts, or campgrounds;
   c. Restriction, suspension, or revocation of a professional or occupational license, or registration currently or previously held by the applicant in any state, district, or possession of the United States or under authority of any federal or state agency; any civil penalty imposed under the license, or any denial of a license; or
   d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or violation of the racketeering laws by the applicant, or payment from a recovery fund or fund of last resort due to the applicant's action or inaction.
2. If the applicant discloses information under subsection (A)(1), the applicant shall provide all of the following written documentation:
   a. A signed written statement describing in detail the circumstances surrounding the matter disclosed;
   b. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant shall provide written documentation from the court or agency having jurisdiction, stating the reason the records are unavailable.
   c. Three written and dated references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least one year before the date of the Department's receipt of the application. Each reference shall be dated no more than one year from the date the application is submitted to the Department and include the writer's name, address, and telephone number;
   d. A 10-year work history, stating each employer's name and address, supervisor's name and telephone number, position held, and dates of employment, specifying any periods of unemployment;
   e. A certified copy of all documents pertaining to every reprimand, censure or sanction, order assessing a civil penalty, or denying, suspending, restricting, or revoking any professional or occupational license currently held or held by the applicant within the last 10 years;
   f. A certified copy of any civil judgment awarded by a court of competent jurisdiction against the applicant that included findings of fraud or dishonest dealings by the applicant;
   g. A certified copy of any document evidencing a payment of a judgment on behalf of the applicant by any recovery fund administered by any state or professional or occupational licensing board, or repayment by the applicant as a judgment debtor to any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.

h. A certified copy of any temporary or permanent order of injunction entered against the applicant;
i. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.

3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01;
4. The appropriate license application and fee; and
5. Social security number, if the applicant is an individual.

B. In addition to the information required in subsection (A), an applicant for a salesperson's or broker's license shall provide information showing the person meet the qualifications listed in A.R.S. § 32-2124, A.A.C. R4-28-401, and R4-28-403. If disclosing censure, sanction, disciplinary action, or other order against any professional or occupational license currently or previously held by the applicant, the applicant shall submit a certified license history from each state in which the applicant holds, or has held, a professional or occupational license within the five years before the application.

C. The Department shall not issue a broker's license to any person who holds an active salesperson's license in this state. An active-status salesperson applying for broker's license may simultaneously submit a severance signed by the designated broker on behalf of the salesperson's employing broker under R4-28-303(E)(10) or may request to be administratively severed under R4-28-303(G).

D. The Department shall issue to a qualified person a license bearing the legal name of the licensee and any additional nickname, corporate, or dba name that the Commissioner finds is not detrimental to the public interest. A professional corporation or professional limited liability company licensed under A.R.S. § 32-2125(B) shall not adopt a dba name.

E. Every salesperson and broker holding a current license shall file with the Commissioner both the address of the salesperson's or broker's principal place of business, if any, and a current residence address.

F. Each salesperson, broker, school owner, director, administrator, and instructor shall, within 10 days of each occurrence, notify the Commissioner in writing of any change in information provided under subsection (A)(1)(a) through (d) and provide documentation listed in subsection (A)(2).

G. A licensee shall, within 14 calendar days or a later date determined by the Department, respond to a request from the Commissioner or the Commissioner's representative for any documents, electronic files, written statements, or other information required as a part of a complaint investigation, regardless of whether the licensee is named in the complaint.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-05 renumbered without change as Section R4-28-301 (Supp. 87-1). Amended subsection (C) effective May 3, 1988 (Supp. 88-2). Amended subsection (J) effective February 28, 1989 (Supp. 89-1). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-302. Employing Broker's License; Non-resident Broker

A. A person applying for an employing broker's license shall provide the following information:

1. The name, business address, telephone number, fax number and e-mail address, if any, and designated broker's name, license number and expiration date, and the signature of the designated broker;
2. Whether the broker is an individual, a sole proprietorship, corporation, partnership, limited liability company, professional corporation or professional limited liability company;
3. The mailing address, if different than the business address;
4. The d.b.a. name, if applicable;
5. The bank name and location of each of the broker's trust accounts, if any; and
6. The name and number of the trust account.

B. Partnership.

1. When the applicant is a partnership, the applicant shall name a broker to serve as designated broker:
   a. The designated broker shall be a partner of the general partner if the general partner is a partnership.
   b. The designated broker shall be a corporate officer of the corporate partner if the general partner is a corporation.
   c. The designated broker shall be a member of the member-managed limited liability company or manager of the manager-managed limited liability company if the general partner is a limited liability company.
   d. A limited partner of a partnership shall not be designated broker for the partnership.
2. In addition to the information provided in subsection (A), an applicant for an employing broker's license as a partnership shall, if applicable, provide:
   a. The name and address of each partner, and the name of any other person with a beneficial or membership interest in the partnership;
   b. An agreement signed by all partners, stating the name of the partner appointed to act as the designated broker for the partnership;
   c. A written statement signed by the designated broker stating that:
      i. The partnership has applied for a broker's license in Arizona;
      ii. Each partner has read the complete application on the named partnership as submitted to the Department;
      iii. All the information contained in the application is true;
      iv. Each general partner is qualified to do business in Arizona; and
      v. The name of the partnership complies with A.R.S. § 29-245 and subsections (H) and (I), and is not likely to be misleading or confusing;
   d. A copy of the partnership agreement and any amendments;
   e. A copy of the application for partnership registration stamped "Received and Filed" by the Arizona Secretary of State; and
   f. Any other information required by the Department to verify the applicant's qualifications.

C. Corporation. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a corporation shall provide:

1. The name and address of each officer and director, and the name and address of each shareholder controlling or holding more than 10% of the issued and outstanding

common shares, or 10% of any other proprietary, beneficial, or membership interest in the corporation;

2. A copy of the Articles of Incorporation and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the corporate license, a Certificate of Good Standing from the Arizona Corporation Commission is required;
3. A corporate resolution stating that the designated broker was elected or appointed as a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation;
4. A written statement signed by the designated broker stating that:
   a. The corporation has applied for a broker's license in Arizona;
   b. Each officer and director has read the complete application on the named corporation as submitted to the Department;
   c. All the information contained in the application is true;
   d. The name of the corporation complies with A.R.S. § 10-401 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and
   e. Each corporation is qualified to do business in Arizona; and
5. Any other information required by the Department to verify the applicant's qualifications.

D. Limited liability company. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a limited liability company shall provide:

1. The name and address of each member and manager, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
2. A copy of the Articles of Organization and any amendments stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the date the Articles were stamped "Filed" by the Arizona Corporation Commission and the application for the limited liability company license, a Certificate of Good Standing from the Arizona Corporation Commission is required;
3. A company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act as the designated broker;
4. A written statement signed by the designated broker stating that:
   a. The limited liability company has applied for a broker's license in Arizona;
   b. Each member and manager has read the complete application on the limited liability company as submitted to the Department;
   c. All of the information contained in the application is true;
   d. The name of the limited liability company complies with A.R.S. § 29-602 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and
   e. The limited liability company is qualified to do business in Arizona.
5. A copy of the operating agreement and any amendments; and
6. Any other information required by the Department to verify the applicant's qualifications.

E. Foreign entity. In addition to the requirements in this Section, the Department may require any of the following information from an entity applying for a broker's license if a partner, member, officer, or director of the entity is domiciled in another state:

1. The agreement and plan of merger;
2. The Certificate of Good Standing;
3. The Certificate of Merger on file in the state in which the applicant is domiciled;
4. The Certificate of Merger on file with the Arizona Corporation Commission;
5. A filed and stamped Articles of Merger;
6. A filed and stamped application for registration of the foreign limited liability company, foreign corporation, or partnership;
7. Any other information required by the Department to verify the applicant's qualifications.

F. Self-employed broker. In addition to the information provided in subsection (A), any person applying as a self-employed broker shall provide a sworn statement attesting that the applicant is the sole proprietor of the business.

G. If any information prescribed in subsections (A) through (F) changes, the designated broker shall, within 10 days after the change, file a supplemental statement in writing with the Department listing the change and include the appropriate fee, if any.

H. The Department shall not license an employing broker or authorize an employing broker to do business under a dba name similar to that of any employing broker already licensed if the name would cause uncertainty or confusion to the public. If there is a conflict of names between two employing brokers, the Commissioner shall require the employing broker seeking licensure to supplement or otherwise modify the broker's name.

I. The Department shall not license an employing broker under more than one dba name and a person shall not conduct or promote real estate business under any name other than the name under which the person is licensed.

J. A broker shall not employ a salesperson or associate broker and allow the salesperson or associate broker to establish and carry on a brokerage business if the broker's only interest is the receipt of a fee for the use of the license and the broker does not exercise supervision over the salesperson or associate broker.

K. Change of designated broker.

1. To resign as an employing broker's designated broker a broker shall submit to the Department a copy of the broker's letter of resignation and shall return the licenses issued to the designated broker and the employing broker to the Department.
2. A licensed entity may remove its designated broker by submitting to the Department a copy of the partnership agreement, corporate or company resolution removing the broker and returning to the Department the licenses issued to the employing broker and designated broker.
3. The employing broker whose designated broker has resigned or been removed shall cease conducting business until the employing broker has complied with subsection (K)(4).
4. An employing broker whose designated broker has resigned or been removed may continue business without interruption if the incoming designated broker on the same day as, or the next business day following, the departure or removal of the outgoing designated broker:

a. Completes, signs, and submits the Change Form as prescribed in R4-28-303; and
b. If the entity is a corporation or limited liability company, submits a resolution appointing the new broker to act on its behalf; or
c. If the entity is a partnership, submits an amendment to the partnership agreement naming the new broker to act on its behalf.

L. Non-resident employing broker.
1. An employing broker that holds a non-resident license and maintains a principal office outside this state shall:
   a. Maintain a trust account or licensed escrow account situated in Arizona for monies received from Arizona transactions;
   b. Maintain, in Arizona, copies of all documents pertaining to any Arizona transactions handled by the broker;
   c. Provide a written statement to the Department identifying the name, address, and telephone number of the person residing in Arizona, such as a statutory agent or attorney, who has possession of the records; and
   d. Identify the physical location of the records.
2. An employing broker that holds a non-resident license and employs a licensed salesperson or broker within the state shall:
   a. Establish an office in Arizona and appoint a branch manager; and
   b. Provide a statement describing how the licensed employee shall be supervised.
3. An employing broker who holds a non-resident license shall notify the Department within 10 days of any change to any information required under this Section.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Correction, Supp. 80-3 should read Adopted effective May 1, 1980 (Supp. 83-3). Amended subsection (B) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-06 renumbered without change as Section R4-28-302 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-302 repealed, new Section R4-28-302 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-303. License Renewal; Reinstatement; Changes of Personal Information, License, or License Status; Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance

A. Renewal.
1. If a salesperson or broker makes a timely and sufficient application for license renewal or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the Commissioner's order or a later date fixed by order of the reviewing court.
2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:
   a. Any change or correction to the applicant's licensing information;
   b. Whether the renewal application is late;
   c. If the renewal is for an active license and is filed in paper format, the Department shall require the application to include the date and signature of the designated broker, authorized branch office manager, or authorized designee under A.R.S. § 32-2127(D). If signed by a branch manager or designee, the branch manager or designee shall attach a copy of the authorization or designation;
   d. The signature of the applicant, attesting to the truthfulness of the application information;
   e. A completed certification questionnaire, providing details and supporting documents for any affirmative response not previously disclosed in writing to the Department concerning judgments, orders, professional licenses, or convictions, as required under R4-28-301(A).
   f. To renew as designated broker for an employing broker, the designated broker shall complete and submit a signed Broker Supervision & Control Audit Declaration for the sole proprietorship or entity on whose behalf the broker acts as designated broker. The completed declaration shall:
      i. Be dated and filed before or with the broker's renewal application, and submitted to the Department no earlier than 90 days before the broker's license expiration date;
      ii. Be in the form prescribed by the Department;
      iii. State the broker's compliance or non-compliance with, or the non-applicability of, specified statutes and rules; and
      iv. Identify all of the broker's property management and trust accounts.

B. Late renewal. In addition to the information required in subsection (A), any person applying for renewal after the date of license expiration shall specify whether the person conducted unlawful license activities as described in R4-28-306.

C. Reinstatement.
1. Any salesperson or broker applying for license reinstatement under A.R.S. § 32-2131 shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application For Reinstatement form:
   a. The type of license and status requested;
   b. The applicant's legal name, business address, and telephone number;
   c. Whether the license was suspended, canceled, terminated, or revoked, and the date of and reason for the action;
   d. The license number of the applicant;
   e. The mailing address, if different than the business address;
   f. The name, address, and telephone number of the employing broker, if applicable;
   g. The employer's trade or d.b.a. name, if any;
   h. The date of the application; and
   i. The signature of the applicant attesting to the above information and that the applicant is aware of the provisions in A.R.S. §§ 32-2131, 32-2153, and 32-2160.01.
2. If the license was active at the time of suspension, cancellation, revocation, or termination, the applicant shall provide the information required under R4-28-306.

D. A salesperson or broker shall notify the Department in writing within 10 days of any change in the individual's personal information or qualifications. The salesperson or broker shall

include in the notice the individual's name, signature, license number, and:

1. If disclosing information required under R4-28-301, such as a criminal conviction, adverse judgment, denial or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's behalf, a written statement providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);
2. If requesting a change of personal name, written notice stating the prior name and new name, supporting documentation for the change, and applicable fee;
3. If changing residence address or residential mailing address, written notice stating the prior address, new address and the date of the change;
4. If changing residence telephone number or providing an additional telephone number or e-mail address, written notice of the prior and current number or e-mail address; or
5. If becoming licensed as a professional corporation or professional limited liability company, or changing licensure as a professional corporation or professional limited liability company, the information required under subsection (F).

E. A designated broker shall notify the Department in writing within 10 days of any change in the employing broker's qualifications under R4-28-301, and shall provide notice of any proposed change in the employing broker's business information under this Section. An employing broker shall not conduct business under information described in subsections (E)(2), (3), (7), (9), (12), or (13) until the change is approved by the Department. The designated broker shall include in the notice the designated broker's name and signature, the employing broker's legal name, and:

1. If disclosing information required under R4-28-301 such as an adverse judgment, denial, or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's own behalf or on behalf of any officer, director, member, manager, partner, owner, trust beneficiary holding 10 percent or more beneficial interest, stockholder owning 10 percent or more stock, or other person exercising control of the employing broker, file with the Department a written statement within 10 days of the occurrence, providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);
2. If changing the employing broker's legal name, written notice stating the current name and proposed name, supporting documentation, and applicable fee;
3. If changing the employing broker's dba name, written notice stating the current dba name, if any, the proposed dba name, and applicable fee;
4. If changing the employing broker's physical address, changing or adding a business mailing address, or changing the address of any branch office, written notice within 10 days of the change stating the prior address and new address, return all current licenses issued to the former address, and pay the applicable fee;
5. If changing business telephone number, written notice within 10 days of the change, providing the prior and current number. The broker may provide additional telephone numbers or e-mail addresses;
6. If changing the structure or membership of the employing broker as provided in A.R.S. § 32-2125 (G), written notice within 10 days of the change including supporting documentation identified in R4-28-302;
7. If changing branch office managers at an established branch office of the employing broker, or changing the authority delegated to the branch office manager, the application form, applicable fee, and letter of authority that identifies the person appointed and specifies the duties delegated as provided by R4-28-304;
8. If closing a branch office, a written statement informing the Department within 10 days of the closure, accompanied by the branch office license and Department form severing the employment of or transferring to another branch office each employee at the branch;
9. If hiring a salesperson or broker, or transferring a salesperson or broker employed by the employing broker to another office of the employing broker, a change form that includes the name, license number, signature of the employee, and the branch office address where the employee will work, and applicable fee;
10. If severing a licensee employed by the employing broker, written notice and return of the employee's license within 10 days of the severance;
11. If opening or closing a broker's trust account, written notice within 10 days of the opening or closing that provides the name of the account, the account number, and the name and address of the bank where the account is located. If relocating or changing the name of a trust account, the designated broker shall include the information for the previous and new accounts;
12. If appointing a temporary broker, submit the information specified in R4-28-305 and in accordance with provisions of A.R.S. §§ 32-2127 or 32-2133, as applicable; or
13. If an employing broker is changing designated brokers, the information and documentation provided in R4-28-302(K).

F. In addition to the applicant's name, signature, license number, the name and address of the employing broker's office where the employee will work, and the change fee, a salesperson or broker shall submit the following information to be licensed as a professional corporation or professional limited liability company, to add or remove members of a licensed professional corporation or professional limited liability company, or to change the name of a licensed professional corporation or professional limited liability company:

1. Professional corporation.
   a. The name of the professional corporation that includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation;
   b. The name and business address of each officer, director, and shareholder in the corporation and a written statement that each holds a current and active real estate license;
   c. A copy of the Articles of Incorporation, as amended, stamped "Received and Filed" by the Arizona Corporation Commission;
      i. The Articles of Incorporation shall state that the corporation's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.
      ii. If more than one year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional corporation, the Department

shall require the salesperson or associate broker to submit a Certificate of Good Standing from the Arizona Corporation Commission; and

d. Evidence that membership in the professional corporation is limited to the designated broker and does not include any other person if the applicant for licensure as a professional corporation is licensed as a designated broker;

2. Professional limited liability company.
   a. The name of the professional limited liability company which includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization;
   b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate license;
   c. A copy of the Articles of Organization, as amended, stamped "Received and Filed" by the Arizona Corporation Commission:
      i. The Articles of Organization shall state that the limited liability company's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.
      ii. If more than one year has elapsed between the date the Articles of Organization were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional limited liability company, the Department shall require the salesperson or associate broker to submit a certificate of Good Standing from the Arizona Corporation Commission.
   d. A copy of the operating agreement, as amended; and
   e. Evidence that membership in the professional limited liability company is limited to the designated broker and does not include any other person if the applicant for licensure as a professional limited liability company is licensed as a designated broker.

3. To return a license from professional corporation or professional limited liability company status to individual status:
   a. The name, license number, and dated signature of the salesperson or broker;
   b. A written statement that the salesperson or broker no longer wishes to be licensed as a professional corporation or professional limited liability company; and
   c. The change fee.

G. Administrative severance.

1. A salesperson or broker may request that the Department sever the salesperson's or broker's license from the employing broker. The salesperson or broker shall provide the following information on a form or in the manner prescribed by the Department:
   a. The name, license number, and dated signature of the salesperson or broker seeking the severance; and
   b. The name of the employing broker from whom the license is being severed.
2. Upon receipt of the written request for severance as provided in subsection (G)(1)(a), the Department shall administratively sever the license and provide written notice to the employing broker, who shall return the severed person's license to the Department under subsection (E)(10).

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-07 renumbered without change as Section R4-28-303 (Supp. 87-1). Amended by adding a new subsection (K) effective May 3, 1988 (Supp. 88-2). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-303 repealed, new Section R4-28-303 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Subsection (F) amended to correct a manifest clerical error, filed in the Office of the Secretary of State March 29, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-304. Branch Office; Branch Office Manager

A. To obtain a branch office license, the designated broker shall submit to the Department before operating the branch office the following information for each branch office of the employing broker on the Application for Branch Office form:

1. The name, date, and signature of the designated broker;
2. The license number and license expiration date of the employing broker;
3. The name, address, telephone, and license number of the main office;
4. The type of employing broker's license;
5. The employing broker's dba name, if applicable;
6. The address, telephone number, and fax number, if any, of the branch office; and
7. The name and license status of the salesperson or broker who is the branch office manager and the authority granted to the branch office manager, including any designation of authority under subsection (B).

B. Branch office manager. A designated broker may authorize in writing an associate broker or salesperson to act as a branch office manager to perform any of the following duties of the designated broker at the branch office. This designation does not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for five years.

1. If the branch manager is an associate broker, the associate broker may, when dealing with branch office transactions:
   a. Review and initial contracts,
   b. Supervise the activity of salespersons and associate brokers,
   c. Hire or sever a salesperson or associate broker,
   d. Sign compensation checks,
   e. Be a signer on the branch office trust account and property management trust account,
   f. Write checks from the broker's trust accounts, and
   g. Be responsible for the handling of all trust account funds administered by the branch manager.
2. If the branch manager is a salesperson, the salesperson may, when dealing with branch office transactions:
   a. Perform office management tasks that are not statutory duties of the employing broker, and
   b. Be a signer on the broker's trust account and property management trust account.

C. Temporary office. An additional license is not required for a temporary office established for the original on-site sale of properties within the immediate area of a subdivision or unsubdivided land.

1. The broker named in the application for public report shall supervise operation of the temporary office to sell or lease the subdivided or unsubdivided land.
2. The broker shall display the subdivision or unsubdivided land name and the licensed name of the employing broker marketing the development in a prominent manner at the entrance to the temporary office.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (A) effective June 23, 1983 (Supp. 83-3). Amended subsection (A)(4) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-08 renumbered and amended as Section R4-28-304 effective February 28, 1987 (Supp. 87-1). Former Section R4-28-304 repealed, new Section R4-28-304 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-305. Temporary License, Certificate of Convenience

A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and applicable fee to the Department:
1. The type of license requested;
2. The name, address, telephone number, and date of birth of the applicant;
3. The mailing address if different from the address in subsection (A)(2);
4. The name, business address, telephone number, fax number, if any, and license number of the employing broker; and
5. The branch office number, address, telephone number, and fax number, if any, where employed, if different than the employing broker in subsection (A)(4).

B. The designated broker shall submit an affidavit under A.R.S. § 32-2134 or 32-2134.01 for:
1. An applicant for temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or
2. An applicant for a membership camping certificate of convenience stating that the applicant will be trained in membership camping and contract laws.

C. In addition to the information required in subsection (A), an applicant for a temporary broker's license pursuant to A.R.S. § 32-2133 shall submit the following information to the Department:
1. A copy of the death certificate or notice, if applicable, or a letter advising the Department of the broker's illness or disability; and
2. A letter from the surviving spouse, an attorney representing the broker or the broker's family, personal representative, or other responsible party, appointing an individual to serve as a temporary broker for 90 days.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (A) effective June 23, 1983 (Supp. 83-3). Amended subsection (A)(4) and (5) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-09 renumbered without change as Section R4-28-305 (Supp. 87-1). Former Section R4-28-305 repealed, new Section R4-28-305 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-306. Unlawful License Activity

A. Unlawful license activity is:
1. The performance of acts requiring a license under A.R.S. § 32-2122 by a person who does not hold a current and active license;
2. The performance of acts requiring a license by a person on behalf of a broker other than the person's employing broker; or
3. A broker's employment of a person as a salesperson or broker if the person does not hold a current and active license issued to the person under that employing broker.

B. A person who conducts unlawful license activity shall submit to the Department, as soon as the person becomes aware that the activity has occurred, the following:
1. A written explanation of why the unlawful license activity occurred;
2. A signed statement from the person that the person will not conduct activities requiring licensure under A.R.S. § 32-2122 unless the person holds a current and active license to perform those acts;
3. A signed statement from the employing broker's designated broker, identifying all unlawful activity by the person on behalf of the employing broker;
4. Upon request by the Department:
   a. A copy of all listing and employment agreements, offers or contract to buy, sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts prepared, negotiated or executed by the person while the person was not properly licensed under the employing broker;
   b. Documentation listing all compensation received or to be received by the person based on transactions that occurred while the person was not properly licensed;
   c. Documentation listing all compensation received or to be received by the person's employing broker and designated broker, if any, resulting from transactions that occurred while the person was not properly licensed if not provided in response to subsection (B)(4)(b); and
   d. A signed statement from the person stating that the information provided under subsection (B)(4) is true and complete and that the copies provided are true copies of all contracts, agreements, statements, and leases and no relevant documents are omitted.

C. A person who has no prior history of engaging in unlawful license activity under this Section, who conducted unlawful license activity for not more than 30 days and against whom there are no pending complaints may apply to renew the person's license or for license change to active status. The Department shall not delay processing the application based on the unlawful licensed activity. The Department shall issue an Advisory Letter of Concern to the person.

D. The Commissioner may take disciplinary action under A.R.S. § 32-2153 against a person who engages in unlawful license activity under this Section for longer than 30 days, has previously conducted unlawful license activity, or is the subject of a pending complaint.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 4. EDUCATION

R4-28-401. Prelicensure Education Requirements; Waiver

A. Any individual applying for a real estate license shall either:

1. Complete the required 90-hour prelicensure education as prescribed in A.R.S. § 32-2124; or
2. Except for the 27-hour Arizona-specific course, apply for and be granted a waiver of the prelicensure courses.

B. If the waiver request is based on prior education, the applicant shall submit a letter to the Commissioner that includes or demonstrates:
1. The name, mailing, and business address, daytime telephone number, and signature of the applicant;
2. The type of license sought;
3. The name and address of the school;
4. The course description or curriculum, including credit hours; and
5. Completion of one or more real estate courses. Acceptable evidence includes;
   a. A signed letter from a school representative or official transcript from a college or university, which indicates:
      i. The starting and ending dates of the course;
      ii. The number of semesters, quarters, and credit hours awarded per course; and
      iii. Whether the course examination was passed.
   b. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

C. If the waiver request is based on experience, or education and experience, the applicant shall submit a letter to the Commissioner that includes:
1. A detailed resume covering the previous 10 years, indicating duties performed and the name and telephone number for each employer; and
2. An original certified license history, including disciplinary action if any, from the real estate regulatory agency in each state in which the applicant is currently licensed and from any other state in which the applicant was licensed during the preceding 10 years; and
3. One or more of the following:
   a. Completion of one or more real estate courses. Acceptable evidence includes a signed letter from a school representative, or official transcript from a college or university, which identifies:
      i. The starting and ending dates of the course;
      ii. The number of semesters, or quarters, and credit hours awarded per course;
      iii. Whether the course examination was satisfactorily passed.
   b. Evidence of more than five years' experience in a real estate related field; or
   c. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

D. The Department shall provide a copy of the prelicensure course content to any person requesting it.

E. A person shall not receive credit for more than 10 hours of prelicensure education classes per day.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsections (F) and (G) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-10 renumbered without change as Section R4-28-401 (Supp. 87-1). Amended by adding a new subsection (E) and renumbering accordingly effective March 7, 1988 (Supp. 88-1). Amended subsection (G) effective June 6, 1989 (Supp. 89-2). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-401 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

A. Continuing education requirements.
1. To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.
2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124(L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.
5. The categories for real estate continuing education courses are:
   a. Agency law. The majority of class material concerns agency relationships and disclosure.
   b. Contract law. The majority of class material concerns the contract formation and implementation, or the results of contract use, including:
      i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
      ii. Contract writing;
      iii. Required disclosures, problem-solving, and law and rule requirements;
      iv. Recent court decisions and case law studies;
      v. Breach of contract issues;
      vi. Legal, ethical and agency considerations, procedures, and disclosures;
      vii. Accommodating current financing procedures, requirements, and options.
   c. Commissioner's standards. The majority of class material relates to license laws, including:
      i. Article 26 of the Arizona Constitution;

ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land, membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.
iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.

d. Real estate legal issues. The majority of class material concerns existing real estate law, including:
i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;
ii. Land and its elements (air, mineral rights, real and personal property);
iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;
iv. Easements, fixtures, land descriptions, ownership, deeds, and building restrictions;
v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;
vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;
vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;
viii. Commission issues and forms of business ownership;
ix. Homeowners Association regulations;
x. Real Estate Settlement Procedures Act (RESPA); and
xi. Environmental issues.

e. Fair housing. The majority of class material concerns equal opportunities in housing, including:
i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;
ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;
iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;
iv. Commercial and residential concerns; and
v. Administrative procedures and business practices.

f. Disclosure. The majority of class material concerns the following:
i. Licensee's disclosure obligations to client and others;
ii. Seller's and buyer's disclosure obligations to each other;
iii. Common material facts warranting disclosure, and liability for failure to disclose;
iv. Avoiding inadvertent non-disclosures;
v. Transaction documents that should be reviewed;
vi. Common "red flags" in a real estate transaction;
vii. Homeowner associations and buyers' obligations to homeowner associations; and
viii. Advising buyers and sellers of common "red flags."

g. Business brokerage. The majority of class material concerns business brokerage including:
i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;
ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;
iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;
iv. Accounting for business brokers;
v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and
vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."

h. General real estate. The majority of class material concerns real estate, but does not fall within any of the categories listed in subsections (A)(5)(a) through (A)(5)(g), including:
i. Appraisal methodology;
ii. General finance, use of financial calculators, mathematics, and managing cash flow;
iii. History of development in metropolitan areas; and
iv. Introduction to property management.

6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.
7. The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.
8. An applicant may substitute subject matter hours within a 90-hour broker's prelicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, for the continuing education credit required in subsection (A)(2) or (3).
9. If any change in the continuing education course requirements occurs during a renewal applicant's license period and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.

B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or bro-

ker submits a written request to the Commissioner and shows good cause for the waiver or additional time.

1. Good cause may include:
   a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;
   b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;
   c. The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice;
   d. An approved real estate instructor requests a waiver for a course the instructor has taught;
   e. The salesperson or broker demonstrates other extraordinary circumstances.
2. A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours by the deadline or be subject to disciplinary action.

C. The Department shall not grant a person credit for more than nine hours of continuing education per day.

D. Distance learning.

1. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.
2. The Department shall not approve a distance learning course unless it contains:
   a. Individual modules of instruction for delivery on a computer or other interactive program;
   b. At least one learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;
   c. A structured learning method to enable the student to attain each learning objective;
   d. A diagnostic assessment of the student's performance during each module of instruction;
      i. The assessment shall measure what the student learned throughout the module of instruction, and
      ii. Assess the comprehension of each concept covered in the module;
   e. Remediation.
      i. Repetition of a module if a student is deficient in a diagnostic assessment; and
      ii. Continuous repetition of the module until the student understands the content material.
3. An approved instructor shall teach and an approved instructor or the school director shall grade distance learning courses. The instructor or school director shall:
   a. Provide the student with assistance, if required;
   b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and
   c. Certify the student as completing a distance learning course only if the student:
      i. Completes all required instructional modules,
      ii. Attends any required hours of live instruction or testing, or both, for a given course; and
      iii. Passes a final examination.
4. As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how the school will deal with hardware and software failure.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (F) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-11 renumbered without change as Section R4-28-402 (Supp. 87-1). Amended by deleting subsections (C) and (E) and renumbering accordingly effective March 7, 1988 (Supp. 88-1). Former Section R4-28-402 renumbered to Section R4-28-403, new Section R4-28-402 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-403. License Examinations

A. The Department shall hold, or contract for, at least one state licensing examination each week.

B. A state license examination shall not be returned to the applicant. The applicant shall be notified in person of the results of the examination by the words "passed" or "did not pass." The results notification for an applicant who did not pass the examination shall also show the score for the examination and the relative score for each content area.

C. Qualifying to take or passing a license examination does not constitute a waiver of the Commissioner's right to deny issuance of a license if grounds exist pursuant to A.R.S. § 32-2153 or any other applicable statute.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-12 repealed, new Section R4-28-12 adopted effective August 28, 1986 (Supp. 86-4). Former Section R4-28-12 renumbered without change as Section R4-28-403 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-403 renumbered to R4-28-404, new Section R4-28-403 renumbered from R4-28-402 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-404. Real Estate School Requirements, Course and Instructor Approval

A. Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of School Approval from the Department. The school's authorized representative shall provide the following information on or with the Certificate of School Approval form:

1. The name, address, telephone number, and fax number, if any, of the school;
2. The name of the owner and d.b.a. name, if any;
3. Whether the owner is a sole proprietorship, partnership, trust, limited liability company, or corporation;
4. The name, address, telephone number, and percentage ownership of each person, entity, or beneficiary holding or controlling 10% or more financial interest in the school;
5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates or prelicensure verifications, or both;

6. The name, business address, and telephone number of all current and prospective administrators, directors, and instructors;
7. In addition to the information required in R4-28-301(A), each school owner, administrator, director, and instructor shall provide a statement of the individual's:
   a. Education,
   b. Teaching experience, and
   c. Employment history.
8. If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf;
9. If the owner is a corporation or limited liability company, a copy of:
   a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;
   b. A current Certificate of Good Standing from the Arizona Corporation Commission;
   c. The latest annual report on file with the Arizona Corporation Commission;
   d. The Articles of Incorporation or Organization, as amended.
10. The location of school registration and licensing certification records.

B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:
1. The school name, address, telephone number, and fax number, if any;
2. The authorized representative's name, title, and signature;
3. The title of the course;
4. A detailed outline of course material content that clearly lists the subject matter to be covered;
5. The date, time, and location of the anticipated presentation, if known;
6. The number of credit hours requested. The time allocated by a school for examination shall not be included in calculating credit hours if the examination is used for overall evaluation.
7. The category of approval requested;
8. A definition of segments if the course is to be offered in part and in its entirety;
9. If video or audio tapes will be used as instructional aids, the percentage of the class they will comprise;
10. The name of every instructor who will teach the course; and
11. The date of the application.

C. Instructor approval. Any person wishing to teach an approved real estate course shall apply for an instructors approval, and shall have at least one of the following in the proposed subject area:
1. A bachelor's or master's degree in an area traditionally associated with real estate, such as business, law, economics, marketing, and finance;
2. An award of a generally-recognized professional real estate designation, such as Certified Commercial Investment Member, Graduate Realtor Institute, Certified Residential Specialist, Independent Fee Appraiser, or Member of the Appraisal Institute, and two years of postsecondary education from an accredited institution;
3. Experience in real estate, and a bachelor's degree in education with a valid certificate issued within 15 years of the date of application for instructor approval;
4. A real estate salesperson's or broker's license, and is an employee or former employee of a regulatory agency;
5. A Distinguished Real Estate Instructor designation, with credentials in the specific subject;
6. At least three years real estate or specific subject experience; or
7. Other education or experience determined by the Commissioner to qualify the applicant as an instructor.

D. The school shall maintain a record for five years of each student attending the school. The record shall include:
1. The name of each student;
2. The dates of attendance;
3. The title of each course taken;
4. The course number, category, and credit hours awarded;
5. The final grade or score in each prelicensure course; and
6. The original signature roster for each course or course segment taught.

E. The prospective student shall sign an agreement or application to enroll, presented to the student by the school representative, that includes the following, in bold type and capital letters:
1. The course or course segment title within a curriculum,
2. The total credit hours applicable for licensure or renewal,
3. The cost of each course,
4. A statement of the refund policy, and
5. A statement of any job placement service.

F. The Department does not consider lists of employers given to graduates to be a placement service. The school may advertise job placement services only if:
1. Student referrals result from direct contact between the school placement service and prospective employers,
2. Documented evidence of student referrals is maintained and includes:
   a. The number of referrals to prospective employers per student,
   b. Results of referrals,
   c. Final placement or other disposition.

G. Complaints. The Commissioner may, and upon a verified complaint in writing shall, investigate and observe the classes of any school, owner, administrator, director, or instructor acting on behalf of the school and may examine the books and records of the school in connection with the offering of approved courses.

H. Change in school, course, or instructor. Each school owner, operator, director, and instructor shall:
1. Provide a written notice and supporting documentation within 10 days of any:
   a. Change of personal name or address,
   b. Change of business address,
   c. Change of business mailing address,
   d. School closing, or
   e. Disclosure of certification information pursuant to R4-28-301(A),
2. Provide a written notice and supporting documentation within 30 days after any change in structure of a licensed entity, including any change of a:
   a. Director, officer, or person holding or controlling 10% or more of the shares, if a corporation;
   b. Partner, if a partnership;
   c. Member or manager, if a limited liability company.
3. Obtain approval from the Commissioner before conducting business when:
   a. Changing a business name,
   b. Establishing a school location,

c. Changing the course content,
d. Changing the course length, or
e. Offering a new course.

4. Provide written notice as soon as practical of a last minute change of instructor due to illness or emergency.

Historical Note
Section R4-28-404 renumbered from R4-28-403 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-405. Expired

Historical Note
New Section made by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective February 28, 2015 (Supp. 15-2).

ARTICLE 5. ADVERTISING

R4-28-501. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-13 renumbered without change as Section R-28-501 (Supp. 87-1). Former Section R4-28-501 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-502. Advertising by a Licensee

A. A salesperson or broker acting as an agent shall not advertise property in a manner that implies that no salesperson or broker is taking part in the offer for sale, lease, or exchange.

B. Any salesperson or broker advertising the salesperson's or broker's own property for sale, lease, or exchange shall disclose the salesperson's or broker's status as a salesperson or broker, and as the property owner by placing the words "owner/agent" in the advertisement.

C. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.

D. A school shall include its name, address and telephone number in all advertising of Department-approved courses. The school owner, director, or administrator shall supervise all advertising. The school owner shall ensure that the school's advertising is accurate.

E. A salesperson or broker shall ensure that all advertising identifies in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate.

F. A licensee who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.

G. The designated broker shall supervise all advertising, for real estate, cemetery, or membership camping brokerage services.

H. A licensee shall not use the term "acre," either alone or modified, unless referring to an area of land representing 43,560 square feet.

I. Before placing or erecting a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a salesperson or broker shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.

J. The provisions of subsections (E) and (G) do not apply to advertising that does not refer to specific property.

K. Trade Names.

1. Any broker using a trade name owned by another person on signs displayed at the place of business shall place the broker's name, as licensed by the Department on the signs;
2. The broker shall include the following legend, "Each (TRADE NAME or FRANCHISE) office is independently owned and operated," or a similar legend approved by the Commissioner, in a manner to attract the attention of the public.

L. The use of an electronic medium, such as the Internet or web site technology, that targets residents of this state with the offering of a property interest or real estate brokerage services pertaining to property located in this state constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

Historical Note
Former Section R4-28-14 repealed, new Section R4-28-14 adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (D) effective August 1, 1986 (Supp. 86-4). Former Section R4-28-14 renumbered without change as Section R4-28-502 (Supp. 87-1). Section R4-28-502 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-503. Promotional Activities

A. A licensee shall not describe a premium offered at no cost or reduced cost to promote sales or leasing as an "award," or "prize," or use a similar term.

B. A licensee shall clearly disclose to a person in writing the terms, costs, conditions, restrictions, and expiration date of an offer of a premium before the person participates in the offer.

C. Unless otherwise provided by law, a person shall not solicit, sell, or offer to sell an interest in a development by conducting a lottery contest, drawing, or game of chance.

D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance, or award a premium under A.R.S. § 32-2197.17(J), by submitting to the Department the information under A.R.S. §§ 32-2183.01(I), 32-2197.17(J) or 32-2198.10(D), the applicable fee, if any, and:

1. The name, address, telephone number, and fax number, if any, of the subdivider, time-share developer, or operator;
2. The legal name of the broker;
3. The public report number;
4. The time and location for collecting entries for the lottery, contest, or drawing;
5. The date, time, and site for selection of a winner; and
6. The conditions and restrictions to enter, if any.

Historical Note
Former Section R4-28-15 repealed, new Section R4-28-15 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-15 renumbered without change as Section R4-28-503 (Supp. 87-1). Section R4-28-503 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-504. Development Advertising

A. If a developer obtains a conditional sales exemption, under R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations under A.R.S. § 32-2181.03, the developer shall disclose on all advertising that only reservations or conditional sales contracts will be taken until the public report has been issued.

B. Only a developer or the developer's authorized representative shall file advertising for a development under A.R.S. §§ 32-2183.01(A), 32-2194.05(A), 32-2195.05(A), 32-2197.17(A) or 32-2198.01(A)(6) with the Department.

C. A developer shall ensure that advertisement of property in a development includes the name of the development as registered with the Department. The Commissioner may waive application of this subsection if the Commissioner determines that the public interest is not affected.

D. A developer shall not advertise a monthly payment, total price, or interest rate that is not available to all prospective purchasers or is restricted, unless the lack of availability or the restriction is conspicuously disclosed to all prospective purchasers within the advertisement.

E. A developer shall not advertise proposed or incomplete improvements unless the following requirements are met:

1. The estimated date of completion is specified or, if there is no estimated date of completion, the developer includes a prominent disclosure in the advertisement that the improvement is proposed only and no warranty is given or implied that the improvement will be completed; and
2. If a completion date is specified, the developer has submitted to the Department evidence to satisfactorily demonstrate to the Department that the completion and operation of the facilities are assured and that completion will be within the time represented in the advertisement or promotional material.

F. The developer shall not reference a proposed public facility or project that purports to effect the value or utility of an interest in a development without disclosing in writing the existing status of the proposed facility. The developer shall base the disclosure upon information supplied or verified by the authority responsible for the public facility or project and shall forward the information to the Department.

G. Pictorial or illustrative depictions, other than unmodified photographs of the property being offered, shall bear a prominent disclosure identifying the nature of the depiction, such as an artist's conception, and shall identify those improvements that are proposed and not in existence.

H. When a pictorial representation is used in an advertisement for a specific development and is not an actual or accurate representation of the property, a statement within the advertisement shall prominently disclose the distance of the pictorial representation from the advertised property.

I. If a map or diagram is used to show the location of the development in relation to other facilities, actual road miles from each facility to the development shall be shown on the map or diagram.

J. A developer shall not expressly state or imply that a facility is available for the exclusive use of purchasers of lots or interests if a public right of access or public use of the facility exists.

K. A developer shall not refer to availability for use of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of an interest in the development unless a disclosure is made in the advertisement. The disclosure shall affirmatively state the existence of the facilities and that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.

L. When a standing body of water is described as a feature of a development, all advertising shall indicate the average surface area of the body of water. If a standing body of water or a flowing waterway described as a feature of a development is not permanent, or fluctuates substantially in size or volume, the developer shall disclose this fact in all advertisements describing the feature.

M. At the time an incentive is offered to visit any place where a sales presentation for a development is to be made and before the recipient of the incentive makes the trip, the developer shall disclose in writing all conditions, limitations, or recipient qualifications that will be applied.

N. A developer shall not include in advertising testimonials or endorsements that contain statements that a salesperson or broker would be precluded by law from making on the salesperson's or broker's behalf.

Historical Note

Editorial correction new language subsection (D)(2) (Supp. 75-1). Former Section R4-28-16 repealed, new Section R4-28-16 adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (T) effective March 13, 1981 (Supp. 81-2). Amended subsection (F) effective June 9, 1982 (Supp. 82-3). Amended effective August 1, 1986 (Supp. 86-4). Former Section R4-28-16 renumbered without change as Section R4-28-504 (Supp. 87-1). Section R4-28-504 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

ARTICLE 6. REPEALED

R4-28-601. Repealed

Historical Note

Former Section R4-28-17 repealed, new Section R4-28-17 adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-17 renumbered without change as Section R4-28-601 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing Disclosure

A real estate broker shall disclose to all the parties in a transaction, in writing before closing, the name of each employing broker who represents a party to the transaction and who will receive compensation from the transaction.

Historical Note

Former Section R4-28-18 repealed, new Section R4-28-18 adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (B) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-18 renumbered without change as Section R4-28-701 (Supp. 87-1). Section R4-28-701 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3).

ARTICLE 8. DOCUMENTS

R4-28-801. Repealed

Historical Note

Former Section R4-28-19 repealed, new Section R4-28-19 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 28, 1986 (Supp. 86-4). Former Section R4-28-19 renumbered without change as Section R4-28-801 (Supp. 87-1). Amended subsection (A) effective November 27, 1987 (Supp. 87-4). Correction to subsection (D), from "...management shall..." to "...management agreement shall..." as certified effective August 28, 1986. Amended subsections (A), (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-801 repealed by

final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-802. Conveyance Documents

A. Upon execution of any transaction document a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.

B. During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson's or broker's client all offers to purchase or lease the listed property. Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property. The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily submit offers to the seller or lessor regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement is terminated.

C. Transaction statements. In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of all receipts and disbursements, or copies of the executed and delivered escrow closing statements that evidence all receipts and disbursements in the transaction.

Historical Note

Former Section R4-28-20 repealed, new Section R4-28-20 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-20 renumbered without change as Section R4-28-802 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-802 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3).

R4-28-803. Contract Disclosures

A. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development that requires a public report contains substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> THE DEVELOPER SHALL GIVE A PROSPECTIVE PURCHASER A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE THE PROSPECTIVE PURCHASER SIGNS THIS DOCUMENT.

B. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development conspicuously discloses the nature of the document at or near the top of the document.

C. The contract shall indicate where the earnest money or down payment, if any, will be deposited and shall include the name of the title company, the name of the broker's trust account, or other depository.

D. Any agreement or contract for the sale or lease of a property interest in a development where a down payment, earnest money deposit, or other advanced money, if any, is paid directly to the seller and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale.

> Prospective purchasers are advised that earnest money deposits, down payments, and other advanced money will not be placed in a neutral escrow. This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended Exhibit effective March 13, 1981 (Supp. 81-2). Former Section R4-28-21 renumbered without change as Section R4-28-803 (Supp. 87-1). Section R4-28-803 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-804. Rescission of Contract

A. Any agreement or contract for the purchase or lease of an unimproved subdivided lot, or any unsubdivided land, shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement.

B. Any agreement or contract for the purchase or lease of a timeshare interval shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

> The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement.

C. An opportunity to exercise the seven-day right of rescission shall be provided by conspicuously disclosing the complete current name, address, and telephone number of the seller on the face of all agreements and contracts.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-22 renumbered without change as Section R4-28-804 (Supp. 87-1). Section R4-28-804 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-805. Public Report Receipt

When a public report is required, the developer shall complete the following public report receipt and obtain the purchaser's signature to verify that the prospective purchaser has received a copy of the public report:

PUBLIC REPORT RECEIPT

The developer shall furnish you, as a prospective customer, with a copy of the public report required by the Arizona Department of Real Estate. It is recommended that you read the report before you make any written offer to purchase or lease an interest in the development and before you pay any money or other consideration toward the purchase or lease of an interest in the development.

FOR YOUR PROTECTION, DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT. BY SIGNING THIS RECEIPT, THE BUYER HAS ACCEPTED THE PUBLIC REPORT AND ACKNOWLEDGES THE INFORMATION IT CONTAINS.

_____ _____

Public Report Registration No. Development Name and Lot No.

I understand the report is not a recommendation or endorsement of the development by the Arizona Department of Real Estate, but is for information only.

_____ _____

Buyer's Name Address

_____ _____

Date

Historical Note

New Section R4-28-805 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 9. REPEALED

R4-28-901. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (E) effective August 28,1986 (Supp. 864). Former Section R4-28-23 renumbered without change as Section R4-28-901 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

R4-28-902. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 90-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-24 renumbered without change as Section R4-28-902 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

ARTICLE 10. REPEALED

R4-28-1001. Repealed

Historical Note

Adopted effective May 31, 1980 (Supp. 80-3). Amended subsection (A) effective August 1, 1986 (Supp. 864). Former Section R4-28-26 renumbered without change as Section R4-28-1001 (Supp. 87-1). Section R4-28-1001 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1002. Expired

Historical Note

New Section R4-28-1002 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1893, effective February 29, 2004 (Supp. 04-2).

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

A. A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests. The licensee shall also deal fairly with all other parties to a transaction.

B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:
1. Any information that the seller or lessor is or may be unable to perform;
2. Any information that the buyer or lessee is, or may be, unable to perform;
3. Any material defect existing in the property being transferred; and
4. The existence of a lien or encumbrance on the property being transferred.

C. A licensee shall expeditiously perform all acts required by the holding of a license. A licensee shall not delay performance, either intentionally or through neglect.

D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a licensee to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve a controversy.

E. A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:
1. Salesperson or broker has a license and is acting as a principal;
2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

F. A salesperson or broker shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

G. A salesperson or broker shall not accept any compensation, including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without that person's prior written acknowledgement of the compensation. This prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction.

H. The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client

in writing and the client subsequently employs the salesperson or broker.

I. A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.

J. A salesperson or broker shall not:
1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.

K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-27 renumbered without change as Section R4-28-1101 (Supp. 87-1). Section R4-28-1101 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1102. Property Negotiations

Except for owner listed properties, negotiations shall be conducted exclusively through the principal's broker or the broker's representative unless:
1. The principal waives this requirement in writing, and
2. No licensed representative of the broker is available for 24 hours.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-28 renumbered without change as Section R4-28-1102 (Supp. 87-1). Section R4-28-1102 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1103. Broker Supervision and Control

A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, procedures, and systems to:
1. Review and manage:
   a. Transactions requiring a salesperson's or broker's license; and
   b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02;
2. Manage:
   a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);
   b. Handling of trust funds; and
   c. Use of unlicensed assistants by a salesperson or broker;
3. Oversee delegation of authority to others to act on behalf of the broker;
4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate, or the sale of cemetery property or membership camping contracts; and
5. Review and inspect:
   a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and
   b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.

B. A designated broker shall establish a system for monitoring compliance with statutes, rules, and the employing broker's policies, procedures, and systems.

C. A designated broker shall supervise associate brokers, salespersons, and employees of the employing broker and shall exercise reasonable supervision and control over activities by the employing broker for which a license is required.

D. An employing broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.

E. A designated broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of the employing broker's employees.

F. A designated broker who, upon learning of a violation of real estate statutes or rules by a salesperson or associate broker under the broker's supervision, immediately reports the violation to the Department is not subject to disciplinary action by the Department for failure to supervise the salesperson or broker.

G. If an employing broker maintains one office and employs a designated broker, no more than one other licensed person, and no more than one unlicensed person, the employing broker and designated broker are not required to develop and maintain written policies, procedures, and systems as described in subsection (A).

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 1496, effective June 4, 2005 (Supp. 05-2).

ARTICLE 12. DEVELOPMENTS

R4-28-1201. Renumbered

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (B) effective June 9, 1982 (Supp. 82-3). Former Section R4-28-29 renumbered without change as Section R4-28-1201 (Supp. 87-1). Former Section R4-28-1201 renumbered to R4-28-B1205 by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1202. Repealed

Historical Note
Former Section R4-28-30 repealed effective May 1, 1980, new Section R4-28-30 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-30 renumbered without change as Section R4-28-1202 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

R4-28-1203. Renumbered

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-31 renumbered without change as Section R4-28-1203 (Supp. 87-1). Former Section R4-28-1203 renumbered to R4-28-B1203 by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1204. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-32 renumbered without change as Section R4-28-1204 (Supp. 87-1). Section R4-28-1204 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

R4-28-A1201. Development Name; Lot Sales; Applicant

A. Any person may submit a development application for a public report, a certificate of authority, or a special order of exemption, provided the applicant has a recorded ownership interest in the land, such as a deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner. The application for a public report or certificate of authority shall contain the following information, as applicable:
1. The name of the development or cemetery, as shown on the recorded map, and the marketing name if one will be used;
2. The list of the lots to be offered, including the description of the sales offering;
3. The name, address, telephone number, and fax number, if any, of the applicant; and
4. The applicable information in this Article, Parts A and B.

B. If the applicant is a corporation, the application shall contain the following information:
1. A Certificate of Good Standing from the Arizona Corporation Commission, dated no earlier than one year from the date of the application;
2. A corporate resolution, authorizing the person signing the application on behalf of the corporation; and
3. The name and address of each officer, director, and shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the entity.

C. If the applicant is a partnership, the application shall contain the following information:
1. A copy of all partnership agreements;
2. Proof of registration with the Secretary of State if any partnership is a limited partnership, foreign or domestic;
3. If the general partner is a corporation, the information requested in subsection (B);
4. If the general partner is a limited liability company, the information requested in subsection (D); and
5. The name and address of each partner in the partnership.

D. If the applicant is a limited liability company, the application shall contain the following information:
1. A copy of the Articles of Organization, stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the original filing with the Arizona Corporation Commission and the filing date of the development application, a Certificate of Good Standing from the Arizona Corporation Commission is required;
2. A copy of the operating agreement and any amendments;
3. If not included in the operating agreement or Articles of Organization, a copy of the company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act on behalf of the company and sign the application;
4. The name and address of each member, manager, and managerial employee, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
5. If a member is a corporation, the information requested in subsection (B);
6. If a member is a partnership, the information requested in subsection (C).

E. If the applicant is a trust, the application shall contain the name and address of each trustee, beneficiary, and anyone in control of the trust.

F. If the applicant is a subsidiary corporation, the application shall contain the name and address of the parent corporation.

Historical Note

Section R4-28-A1201 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1202. Development Map; Location; Land Characteristics

A. The applicant shall submit a legible copy, no larger than 11" x 17", of the recorded development map showing, as applicable:
1. The county recorder's recording information, including the book and page of maps and recording date;
2. County or city approval;
3. Applicable dedications;
4. Monuments, distances, and bearings; and
5. Registered land surveyor certification.

B. The applicant shall identify the location of the development, including the street, city, county, and state, and:
1. The miles and direction from the nearest city or town, if applicable; and
2. The most direct route for getting to the development from a federal, state, county, or city road.

C. The application shall include a description of the physical characteristics of the land and any unusual factors that may affect it, such as if it has level or hilly terrain, rocky, loose, or alkaline soil, and
1. The gross acreage of the development;
2. The total number of lots within the development, including a description of phasing, if applicable; and
3. Whether and how lots are permanently or temporarily staked or marked for easy location.

Historical Note

Section R4-28-A1202 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions

The applicant shall state, or include as applicable:
1. Whether the development is subject to any known flooding or drainage problems and a letter bearing the signature and seal of a professional civil, city, and county engineer, or county flood district detailing the drainage conditions and flood hazards. The letter shall include the effect of any flood plain and its location, the effect of a 100 year frequency storm, and whether flood insurance is required.

2. Whether the development lots are subject to subsidence or expansive soils. If subsidence or expansive soils exist, a professional engineer's letter addressing the effects of the condition, remedies, and a buyer's on-going responsibilities in plain language;
3. A description of the existing and proposed land uses in the vicinity of the development that may cause a nuisance or adversely affect lot owners, such as freeways, airports, sewer plants, railroads, and canals, including:
   a. Any unusual safety factors within or near the development, and
   b. A description of all current and proposed adjacent land uses.
4. Whether the development is affected by any unusual or unpleasant odors, noises, pollutants, or other nuisances;
5. A description of any agricultural activity or condition in the area that may adversely affect a lot owner, including any odors, cultivation and related dust, agricultural burning, application of pesticides, or irrigation and drainage;
6. Whether the development lots are subject to any known geological or environmental condition that would or may be detrimental to a purchaser's health, safety, or welfare; or
7. Whether the development lots are located within the boundary of a federal, designated Superfund site or a state designated Water Quality Assurance Revolving Fund site.

Historical Note
Section R4-28-A1203 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1204. Utilities
The applicant shall include information about electrical, telephone, and natural gas utilities available to the development, including:

1. The names, addresses, and telephone numbers of the electrical, telephone, and natural gas company that will provide service;
2. The location of existing electrical, telephone, and natural gas utilities in relation to the development;
3. The name of each person responsible for extending each utility to the lot lines;
4. The estimated completion date for extending each utility to the lot lines;
5. If the developer will only install conduit, a description of the arrangement made to complete operational utilities to lot lines;
6. The estimated cost a lot purchaser will be required to pay for completion of each utility to the purchaser's lot line, and, if the offer is for unimproved lots, the estimated costs to provide service from the lot line to the dwelling;
7. Upon completion of the utilities, other costs or requirements that must be addressed before the lot purchaser receives service, including the current service charges, hookup fees, turn-on fees, meter fees, and fees for pulling wire through conduit;
8. If propane gas will be used, a letter from the supplier stating that it will be providing service to the development, with a description of requirements to be met and costs to be paid by the lot purchaser for receiving the service; and
9. If street lights will be available, the person responsible for completion, the estimated completion date and the person who will pay for the electricity.

Historical Note
Section R4-28-A1204 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1205. Water Supply
An applicant shall include information about any water supply to the development, including:

1. The type of water provider such as a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler, or other source;
2. The name, address, and telephone number of the water provider;
3. The compliance status of the water provider with federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the water lines closest to the development;
5. The name of the person responsible for extending the water lines to the lot lines;
6. The estimated completion date for extending the water lines to the lot lines;
7. The estimated cost a lot purchaser will be required to pay for completion of the water lines to the purchaser's lot line;
8. The estimated cost a lot purchaser will pay for completion of water lines from the lot line to a dwelling;
9. Other costs or requirements before the lot purchaser receives water service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development, other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;
13. If the source of water is a private well and domestic water cannot be obtained from a private well, whether the purchaser will be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the water provider if domestic water will be transported or hauled by the lot purchaser. A cost estimate computed on a monthly basis for a four-member family, including the cost of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;
15. A water adequacy report from ADWR if the development is a subdivision or part of a subdivision located outside of a groundwater active management area;
16. A water availability report from ADWR if the development is unsubdivided land. A copy of the report or a brief summary of the report, approved by the Department, shall be displayed in all promotional material and contracts for sale; and
17. If a water provider is a public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued and, if not, an explanation of why a Certificate has not been issued.

Historical Note
Section R4-28-A1205 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-A1206. Sewage Disposal

The applicant shall include information about sewage disposal for the development, including:

1. Whether the sewage disposal will be provided by a municipality, improvement district, public utility, private company, or individual sewage disposal system;
2. The name, address, and telephone number of the sewage disposal company;
3. The compliance status of the sewage disposal provider with the ADEQ as of the date of the application. If in noncompliance, provide an explanation;
4. The name of the person responsible for extending the sewage disposal utility to the lot lines;
5. The estimated completion date for extending the utility to the lot lines;
6. The estimated cost the lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
7. If offering an unimproved lot, the estimated cost a lot purchaser will pay for completion of the utility from the lot line to the dwelling;
8. Upon completion of the utility, other costs or requirements that must be addressed before the lot purchaser receives service, including the service charge, hookup fees, tap-in fees, and development fees;
9. The name of the person responsible for maintenance of the sewage disposal utility within the development, other than from lot line to dwelling;
10. The name of the person who is or will be responsible for maintenance of the sewage disposal utility outside the development;
11. What cost, if any, will the lot purchaser pay toward maintenance of the sewage disposal utility;
12. If a sewage disposal provider is a for-profit public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued, and if not, an explanation of why a Certificate has not been issued;
13. A description of the type of individual sewage disposal system the lot purchaser will be required to install in accordance with the standards and requirements of ADEQ or its designee;
14. A description of all requirements and costs involved to install an operational individual sewage disposal system, including any cost for governmental licensing and permitting, equipment, and other installation, maintenance, and operation costs;
15. If an operational individual sewage disposal system cannot be installed, will the lot purchaser be offered a refund of the purchase price, and if so, an explanation of any condition or restriction involving the refund; and
16. If a dry sewer system will be installed for future connection to a future provider, the name of the future provider, all requirements and costs for lot purchasers, and the estimated connection date.

Historical Note

Section R4-28-A1206 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1207. Streets and Access

A. The applicant shall include a statement attesting that:

1. Exterior streets providing access are private; or federal, state, and county highways; or municipal streets;
2. The interior streets are public or private; and
   a. If any streets are private, a description of what provisions have been made to assure purchasers of a legal right to use the private streets;
   b. Whether the streets are completed;
   c. The standards to which the streets will be or are constructed;
   d. If the streets are not completed, the person responsible for completion and the estimated completion date;
   e. The type of existing and proposed surfacing;
   f. The cost, if any, the lot purchaser will pay toward street completion;
   g. The name of the person responsible for exterior and interior street maintenance;
   h. Whether a city or county is responsible for maintaining the streets and the approximate date when streets will be accepted for maintenance; and
   i. The cost, if any, the lot purchaser will pay toward street maintenance.

B. The applicant shall demonstrate that there is permanent access to the land over terrain that may be traversed by conventional 2-wheel drive automobiles and emergency vehicles by providing any of the following information or documents necessary to make the demonstration:

1. A statement from a title insurance company, signed by an authorized title officer, affirming that legal access exists to the development and lots within the development. The statement shall:
   a. Describe the legal access by listing all recorded instruments which establish legal access,
   b. Be accompanied by a map on which legal access is shown with accurate references to the recorded instruments,
   c. Be accompanied by a legible copy of each recorded instrument listed in the statement.
2. A statement bearing the seal and signature of a registered land surveyor or professional engineer, affirming that legal access to and within the development, as described in the title insurance company legal access statement, is over terrain that can be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The statement shall affirm that:
   a. The legal access corresponds with the actual physical access to the development and to the lots,
   b. The legal access is permanent and describe how that permanence is assured.
3. The recorded subdivision map which shows approval by the applicable city or county officials.
4. Recorded easements or road dedications whether public or private. If private, the applicant shall ensure that development lot owners, emergency vehicles, and utility service providers have access rights.
5. Land, on which easements and roads are provided, is traversable by conventional 2-wheel drive automobiles and emergency vehicles.
6. Road maintenance programs that assure permanent access. Road maintenance programs include those administered by city or county governments, city or county improvement districts, or private property owner associations.
7. Recorded documentation that establishes legal and permanent access for development lot owners through federal or state lands.

Historical Note

Section R4-28-A1207 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1208. Flood Protection and Drainage Improvements

The applicant shall include with the application the following information about flood protection and drainage improvement:

1. A description of any current or proposed improvement;
2. The name of the person responsible for completion of the improvement;
3. The estimated completion date of the improvement;
4. The cost, if any, the lot purchaser will pay for completion of the improvement;
5. The name of the person responsible for the continuing maintenance and expense of the improvement;
6. If a city or county is responsible for maintenance, the approximate date when the improvement will be accepted for maintenance; and
7. The cost, if any, the lot purchaser will pay toward completion and maintenance of the improvement.

Historical Note

Section R4-28-A1208 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1209. Common, Community, or Recreational Improvements

The applicant shall provide with the application a list of all common, community, or recreational improvements, located within the development, and include the following information:

1. The name of the person responsible for completion of each improvement;
2. The estimated completion date of each improvement;
3. The estimated cost a lot purchaser will be required to pay for the completion of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will be responsible for paying toward the maintenance of each improvement.

Historical Note

Section R4-28-A1209 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1210. Master Planned Community

The applicant shall include the following information about a master planned community:

1. A list of all improvements located outside the development, but included in the development offering, including all common, community and recreational improvements;
2. The name of the person responsible for completing each improvement;
3. The estimated completion date of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will pay toward the completion and maintenance of each improvement.

Historical Note

Section R4-28-A1210 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1211. Assurances for Completion and Maintenance of Improvements

A. The applicant shall identify:

1. Whether arrangements have been made to assure the completion, delivery, and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210; and
2. Whether the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;

B. An applicant shall provide one or more of the following assurances for completion:

1. A surety or completion bond from an insurance company licensed in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
   d. State when and how the third party may draw on the funds;
   e. Be in an amount 10% greater than the estimated amount to complete all improvements; and
   f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements.
2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona. The irrevocable letter of credit shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
   d. State when and how the third party may draw on the funds;
   e. Be in an amount 10% greater than the estimated amount to complete all improvements;
   f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
   g. State that repayment is the responsibility of the developer and not of the third party; and
   h. State that the irrevocable letter of credit is noncancelable.
3. A loan commitment and agreement from a lender licensed in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
   d. State when and how the third party may draw on the funds;
   e. Be in an amount 10% greater than the estimated amount to complete all improvements;
   f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
   g. State that repayment is the responsibility of the developer and not of the third party even if the third party draws on the funds.
4. A trust or escrow account with a financial institution or escrow company licensed in Arizona. The trust or escrow account shall specify which improvements are included and shall:

a. Be stipulated by and payable to a third party who is not the developer;
b. Be accepted and signed by all parties;
c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date;
d. State when and how the third party may draw on the funds;
e. Be in an amount 10% greater than the estimated amount to complete all improvements;
f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.

5. City and county trust agreement. A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed:
a. The trustee is an escrow company licensed in Arizona, and
b. The agreement is recorded.
6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and prohibit close of escrow until all improvements are complete. The agreement shall contain the following stipulations:
a. The funds are not released nor the purchaser's deed or other relevant documents recorded until the developer's architect or engineer certifies to the Department and the escrow agent that the project is complete, ready for occupancy, and in compliance with all city and county requirements;
b. If the completion date is not met:
i. The developer will give purchasers notice that completion dates were not met and an updated completion schedule,
ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent,
iii. The public report is invalid and all sales are suspended; and
iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.
7. Subdivision assurances. The municipal or county government shall prohibit occupancy and an subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.
a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.
b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.
c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.
d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.
e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.
f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.
8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).

C. If the construction of any improvement is completed in phases, the applicant shall provide a description of the phased schedule of completion, including the lots in each phase and estimated completion dates.

Historical Note
Section R4-28-A1211 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-A1212. Schools and Services

A. The applicant shall include the following information about schools:
1. The location of and distance to the nearest public elementary, junior, and high schools and whether school bus or other transportation is available;
2. The type and location of any other school located within a 1/2 mile radius of the exterior boundaries of the development.

B. The applicant shall include the following information about services:
1. Community shopping. The location and distance from the development of the nearest community shopping area where food, drink, and medical supplies may be purchased;
2. Public transportation. The type, provider, location, and distance to the nearest access point to public transportation for the development;
3. Medical facility. The type, provider, location, and distance to the nearest medical facility;
4. Fire protection. Whether fire protection is available to the development, the name of the provider and the cost to the lot purchaser;
5. Ambulance service. Whether ambulance service is available to the development and whether the development is in a 911 service area. If 911 service is not available, the name, address, and telephone number of the ambulance service.
6. Police service. Whether police service is available to the development, and the name of the provider;
7. Refuse collection. Whether provisions have been made for refuse collection, the name of the service provider, and the cost to the lot purchaser. If no provisions have been made, what a buyer will do to dispose of refuse.

Historical Note
Section R4-28-A1212 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1213. Property Owners' Association
The applicant shall provide the following information about a property owner's association:

1. The name of the association, if any;
2. The name of the master property owners' association, if any;
3. The amount of the association assessment that property owners will be required to pay, and how it will be paid;
4. Whether the association is legally formed and operational;
5. When and under what conditions control of the association will be released to lot purchasers;
6. When and under what conditions title to the common areas will be transferred to the association;
7. Whether the common areas are subject to any lien or encumbrance. If yes, explain how purchasers' use and enjoyment of common areas will be protected in the event of default;
8. Whether all lot owners will be required to be members of the association. If not, explain;
9. Whether nonmembers will be liable for payments to the association; and
10. A copy of the Articles of Incorporation and Bylaws in effect.

Historical Note
Section R4-28-A1213 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1214. Development Use
The applicant shall provide the following information about development use:

1. Whether unimproved (vacant) lots or improved (with building) lots will be sold or leased;
2. The use for which development lots will be offered and an identification of the lots and their proposed use if more than one use is contemplated;
3. Whether the development or any lot is subject to adult occupancy or age restrictions;
   a. If yes, explain the restriction;
   b. If yes, explain whether this restriction is in compliance with the Federal Fair Housing Act.
4. Whether all or any portion of the development is located in an open range or area in which livestock may roam at large under the laws of this State and what provisions, if any, have been made for the fencing of the development to prevent livestock from roaming within the development and on a purchaser's lot. If land is located in an open range or area in which livestock may roam at large, the purchase contract shall contain:
   a. Any provisions for the fencing of the development to prevent livestock from roaming within the development; and
   b. Any fencing requirements for the buyers to prevent livestock from roaming on their property.
5. Whether mineral rights are, or will be, reserved from the development lots and what the effect will be on lot owners if the minerals are extracted from the development; and
6. A full written disclosure of any condition or provision not specified in subsections (1) through (5) that may limit the use or occupancy of the property.

Historical Note
Section R4-28-A1214 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1215. Development Sales
The applicant shall provide a description of the sales offering and:

1. A description of how sales or leases will be made and the manner by which title, right, or other interest is to be conveyed to the purchaser, including copies of sales and lease transaction documents;
2. Indicate whether cash sales are allowed and when the purchaser takes title;
3. Indicate where the purchaser's deposit and earnest monies will be deposited and held;
4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be refunded;
5. Indicate when the lot purchaser will be permitted to use and occupy the lot;
6. An explanation if the purchaser will not receive title free and clear of all liens;
7. The estimated average sales price for the lots;
8. Indicate whether any of the property will be leased, and if so;
   a. Provide a description of any provision for increase of rental payments during the term of the lease and any provisions in the lease prohibiting assignment or subletting, or both;
   b. Indicate whether the lease prohibits the lessee from mortgaging or otherwise encumbering the leasehold; and
   c. Indicate whether the lessee is permitted to remove an improvement when the lease expires.
9. The name, address, and telephone number of the Arizona broker who will be responsible for sales. If none, explain why;
10. The name and telephone number of the custodian of the development records and the physical location where the records will be kept;
11. Indicate whether the property has been or will be offered for sale before the date of the development application. If yes, explain; and
12. Indicate whether the sales documents contain all contract disclosures required by rule and statute.

Historical Note
Section R4-28-A1215 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-A1216. Title Reports and Encumbrances
The applicant shall provide the following information concerning title reports and encumbrances:

1. Copies of any unrecorded liens or encumbrances against the property;
2. A title report showing:
   a. An effective date not more than 30 days before Department receipt. The Department may request that the applicant update the title report so that it is not more than 30 days old when the public report is issued;
   b. A legal description based upon a recorded map, condominium or timeshare declaration. Metes and bounds legal descriptions shall be used only for membership camping application title reports;
   c. The applicant's interest in the property;

d. The name and telephone number of the person who prepared the title report;
e. A requirement page, if applicable; and
f. The following statement after the title exceptions: "There are no further matters of record affecting the land."

3. Legible copies of all recorded and unrecorded documents reflected by the title report, or known to applicant, such as restrictions, easements, liens, encumbrances, trust agreements, options, and maps.

Historical Note
Section R4-28-A1216 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1217. ADEQ Approval
The applicant shall obtain subdivision approval from ADEQ or its designee.

Historical Note
Section R4-28-A1217 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1218. Property Registrations in Other Jurisdictions
The applicant shall provide a list of the jurisdictions where a property registration was filed with or accepted by another department of real estate or similar regulatory agency.

Historical Note
Section R4-28-A1218 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1219. Condominium Developments
The applicant shall provide the following information about condominium developments:

1. A copy of the recorded condominium declaration, map, and amendments in effect, and
2. An opinion letter from an attorney licensed to practice in Arizona, stating that the condominium plat and declaration of condominium are in compliance with the requirements of A.R.S. §§ 33-1215 and 33-1219.

Historical Note
Section R4-28-A1219 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1220. Foreign Developments

A. Unless exempt pursuant to A.R.S. § 32-2181.02, an applicant shall ensure that any development located outside the state that is advertised, promoted, or sold within the state complies with all Arizona laws and rules as if the land was located in the state.

B. Any law or rule that is specific to Arizona may be waived by the Department, or the Department may request and accept the domicile state or country's equivalent form of documentation.

C. The applicant shall provide evidence that the domicile state or country has authorized the sale of lots and that the development is in compliance and good standing. If the domicile state or country issues a public report or equivalent, the application shall include the report.

Historical Note
Section R4-28-A1220 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1221. Cemetery Developments
The applicant shall provide the following information about cemetery developments:

1. A statement that there are no liens on the cemetery property,
2. An accounting of the endowment care fund for an existing perpetual care cemetery, and
3. A financial statement of the applicant.

Historical Note
Section R4-28-A1221 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1222. Membership Camping Developments
The applicant shall provide the following information about a membership camping development:

1. If the interest of the operator is evidenced by a lease, license, franchise, or a reciprocal agreement, a copy of the document and any amendments;
2. A description of any lakes or streams available for recreational use; and
3. A description of any exchange network and the responsibilities, obligations, and rights of the operator and purchaser, and copies of all exchange network documents.

Historical Note
Section R4-28-A1222 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-A1223. Affidavit
The applicant shall sign an affidavit attesting that the information found in the application is true and correct.

Historical Note
Section R4-28-A1223 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

PART B. GENERAL INFORMATION

R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands

A. A developer may use the expedited public report registration by preparing the public report and submitting the appropriate application documents and fees established in A.R.S. §§ 32-2183(B) or 32-2195.03(B) to the Department. The Department shall assign a registration number to each application and verify the following:

1. The correct application form has been used and is two-hole punched at the top in standard placement. The application is placed on a two-prong AACO-type fastener in a file folder and delivered to the Department in an expanding file folder. Maps may be left off the fastener, folded, and placed in the expanding file. The application shall include:
   a. The Expedited Registration Request letter signed by the applicant; and
   b. The completed Department checklist for administrative completeness which indicates inclusion of the documents required by A.R.S. Title 32, Chapter 20, Article 4 and 4 A.A.C. 28, Article 12, Part A.
2. The filing fees have been included with the application;
3. All application questions have been answered;
4. The application signature page has been properly executed;
5. All required documents have been submitted; and
6. A complete and accurate public report in the Department's published format on a computer diskette, formatted in a word processing program compatible with the Department's current computer operating system and word processing software, has been submitted and all exhibits used for disclosure have been included on the diskette. (The developer may obtain a diskette containing the public report template from the Department upon request.)

B. The Department may allow the applicant to correct a deficiency within the administrative completeness time-frame provided in A.R.S. §§ 32-2183(B) and 32-2195.03(B), in which case the overall 15 business day limitation is suspended until the applicant corrects the deficiency.

Historical Note
Section R4-28-B1201 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1202. Conditional Sales Exemption

A. Any developer applying for a special order of exemption authorizing the offer for sale of a subdivision lot or unsubdivided land before issuance of a public report shall provide the following information to the Department:
1. The completed and executed Petition for Conditional Sales Exemption;
2. The completed and executed subdivision or unsubdivided land application for a public report;
3. The purchase contract containing all required contract disclosures and the Conditional Sales Addendum;
4. A current title report showing the ownership interest of the developer and acceptable condition of title;
5. A copy of the recorded development map, or if not recorded, a copy of the unrecorded map;
6. A copy of the Condominium Declaration, if applicable;
7. A Certificate of Assured Water Supply, or a letter from the ADWR or other evidence that the property is located in an area designated as having an assured water supply, if the property is located in a groundwater active management area;
8. A water adequacy report from the ADWR or evidence that the property is located in an area designated as having an adequate water supply, if the property is located outside of a groundwater active management area; and
9. Any other information revealed necessary after preliminary review.

B. The conditional sales exemption shall expire upon issuance or denial of the public report, or upon issuance of an order to summarily suspend sales, to cease and desist, or a voluntary suspension of sales by the developer or owner.

Historical Note
Section R4-28-B1202 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1203. Material Change; Public Report Amendments

A. The developer shall notify the Department of all material changes in the information required by A.R.S. Title 32, Chapter 20, Articles 4, 7, 9, and 10, or 4 A.A.C. 28, Article 12, Part A.

B. According to material changes reported in subsection (A), the Department may require the developer to amend the public report.

C. Completion Date Extension.
1. A developer may apply to the Department for an amendment to a public report to extend the completion date of any improvement by providing an affidavit from the developer attesting that each purchaser, owner, and the city or county officials responsible for improvements were provided written notice of the completion status of the improvement, including a list of all people who were provided notice.
2. The Department may deny the application to extend the completion date beyond the first extension if a purchaser, owner, or city or county official opposes issuance of an amended public report to extend a completion date.
3. If an extension is denied, the developer shall provide the Department with a written agreement to suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).

D. To amend a public report, a developer shall submit payment of the applicable amendment fee and the following information:
1. The name and registration number of the development;
2. The name and signature of the developer;
3. A list of the changes to the development and sales offering or in the information previously provided to the Department;
4. Status of sales as prescribed in subsections (C) and (E); and
5. A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.

E. Suspension of sales.
1. If necessary for the protection of purchasers, the Department may suspend approval to sell or lease pending amendment of the report.
2. In lieu of issuing a suspension order under A.R.S. § 32-2157, the Department may accept a developer's written agreement to suspend sales until the amended public report has been issued by the Department.

F. If the Department determines that a suspension of sales is not necessary for the protection of purchasers and approves the proposed disclosure of the change, sales may continue if the prospective purchaser is provided a copy of the current public report and disclosure of all changes before signing a contract. Completion of sales is conditioned upon the developer obtaining and delivering to each purchaser under contract the amended public report.

G. Upon obtaining the amended report, the developer shall provide a copy to prospective purchasers in place of the earlier public report and obtain a receipt for the amended public report.

H. If an application to amend a public report is denied, the Department shall notify the developer in writing of the statutory basis for the denial and of the developer's right to a fair hearing.

Historical Note
Section R4-28-B1203 renumbered from R4-28-1203 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-B1204. Cemetery Notice; Amendments

A change to information required pursuant to the provisions of Title 32, Chapter 20, Article 6, R4-28-301(A), or any other Section, requires amendment of the notice filed pursuant to A.R.S. 32-2194.01.

Historical Note
Section R4-28-B1204 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1205. Contiguous Parcels

Except for lots in a platted subdivision, if two or more contiguous parcels of land are acquired by a single owner, the Department shall classify the lots as a single parcel for purposes of subdivision laws.

Historical Note
Section R4-28-B1205 renumbered from R4-28-1201 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1206. Filing with HUD
If the subdivider requests that a subdivision public report be certified by the Department for filing with HUD, the subdivider shall comply with the terms, conditions, and requirements of the HUD certification agreement.

Historical Note
Section R4-28-B1206 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1207. Subsequent Owner
A. Except as provided in A.R.S. § 32-2181.02, any developer who is a successor in interest to six or more lots within a subdivision on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any lot.
B. Any developer who is a successor in interest to six or more parcels within an unsubdivided land development on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any parcel.
C. Any developer who is a successor in interest to 12 or more time-share intervals within a time-share project on which the Department previously issued a public report shall file an application for and obtain a new public report, before offering or selling any interval.
D. The Department shall not issue a new public report to a subsequent owner of a development if the previous developer failed to complete proposed improvements in accordance with estimated completion dates specified in the previously issued public report until one of the following occurs:
1. The subsequent owner makes financial arrangements, as described in R4-28-A1211, in favor of the local governmental authority and for the benefit of purchaser, securing the owner's promise to complete the previously proposed improvements by a designated date; or
2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Department is furnished satisfactory evidence that all proposed improvements have been completed or accepted by the city or county; or
3. Permission is obtained by all previous purchasers in the development for completion of the proposed improvements by the new designated date for completion; or
4. The subsequent owner establishes to the satisfaction of the Department that adequate financial arrangements have been made to assure completion of the proposed improvements by the new designated date for completion.

E. A developer who is a new owner of property that is the subject of a pending application for a public report shall not replace or be substituted for the applicant of the pending application.

Historical Note
Section R4-28-B1207 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

R4-28-B1208. Public Report Correction
If the public report contains an error, the Department shall correct the report at its own expense. Additional or changed information that was known to the developer before issuance of the report is not an error. The Department shall not correct the public report after it has been in effect for 10 days. After 10 days, the developer shall change the report through the development amendment process, established in R4-28-B1203, with payment of the applicable amendment fee.

Historical Note
Section R4-28-B1208 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1209. Options; Blanket Encumbrances; Releases
A. The Department shall not issue or amend a public report for any lot held under option or subject to a blanket encumbrance if a condition precedent to the optionee's right to acquire the lot or to release from the blanket encumbrance shows that the lot shall:
1. Be acquired or released in a particular sequence,
2. Be acquired or released only after one or more additional lots have been acquired or released, or
3. Not be released if the encumbrance is in default because of a cross-default provision contained in the encumbrance,

B. The developer may require payment of a premium to permit the acquisition or release of the lot.
C. When a blanket encumbrance clouds title to a development, the developer shall place a written statement from the holder of the blanket encumbrance in the public report application, quoting the provisions that enable a buyer to acquire title to a lot, free of the blanket encumbrance.

Historical Note
Section R4-28-B1209 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1210. Earnest Money
The developer shall deposit earnest money and down payments in a neutral depository if:
1. The seller is in bankruptcy;
2. The sale is conditional pursuant to R4-28-B1202; or
3. The Department perceives a risk to the buyer.

Historical Note
Section R4-28-B1210 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-B1211. Recordkeeping
If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records as required by A.R.S. § 32-2151.01(A) and (C).

Historical Note
Section R4-28-B1211 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 13. ADMINISTRATIVE PROCEDURES

R4-28-1301. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-33 renumbered without change as Section R4-28-1301 (Supp. 87-1). Section R4-28-1301 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1302. Service of Pleadings Subsequent to Complaint and Notice
A. Service of pleadings subsequent to complaint and notice of hearing shall be made by personal service or by mail to the last known address of record of the party or the party's counsel. If service is made by mail, response time shall be increased by five days. Service by mail is complete upon mailing.

B. Any person filing a pleading or brief with the Department shall also file with the Attorney General.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-34 renumbered without change as Section R4-28-1302 (Supp. 87-1). Section R4-28-1302 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1303. Information Obtained in an Investigation

A. The Department shall ensure that information and documents in open audits and investigations remain confidential. Officers and employees of the Department shall not make confidential information or documents available to anyone other than the Attorney General or the Attorney General's representative, or authorized employees of the Department, unless the Commissioner authorizes disclosure of the information or production of documents as being in the public interest.

B. Upon request, the Department shall disclose the existence of and make available for review audit and investigative files that were closed within five years of the request for the information, subject to redaction of confidential or privileged information such as date of birth, social security number, bank and trust account numbers, home address and telephone number of active-status licensees, criminal history reports, attorney-client privileged communications, work product, and information regarding settlement negotiations.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-35 renumbered without change as Section R4-28-1303 (Supp. 87-1). Section R4-28-1303 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1304. Response; Default

A. A response shall specifically admit, deny, or state that the party does not have, or is unable to obtain, sufficient information to admit or deny each allegation in the complaint. A statement of a lack of information shall have the effect of a denial. Any allegation not denied is deemed to be admitted. When a party intends in good faith to deny only a part of an allegation, the party shall admit so much of it as is true and shall deny the remainder.

B. If the party fails to file a response or after being served notice, fails to appear at a hearing within the time provided by the statute under which the hearing is commenced, the Department may file an Affidavit of Default against the party, and proceed to take action against the party based upon the allegations of the charges. This action may be taken before the hearing date established in the Notice of Hearing. The party may file a motion to vacate the default and any action taken by the Commissioner within 15 days after receiving a copy of the default and the action or order by the Commissioner. For good cause, the Commissioner may vacate a default and any action taken and reschedule a hearing.

C. Every response filed pursuant to this Section shall be signed by the filing party or by at least one attorney, in the attorney's individual name, who represents the party, and shall be verified.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-36 renumbered without change as Section R4-28-1304 (Supp. 87-1). Amended subsection (D) effective November 27, 1987 (Supp. 87-4). Section R4-28-1304 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1305. Notice of Appearance of Counsel

A. A party may participate in the party's own behalf or be represented by a member of the State Bar of Arizona.

B. Any person intending to appear at a contested case hearing or appealable agency action as counsel or representative of a party shall file a Notice of Appearance which shall advise the Department of the person's intent to appear on behalf of a party. The notice shall be filed with the Office of Administrative Hearings and served on all parties and shall contain:
1. The title of the case,
2. The name of the agency ordering the hearing,
3. The current address and telephone number of the person appearing, and
4. The name of the party for whom the person is appearing.

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-37 renumbered without change as Section R4-28-1305 (Supp. 87-1). Amended subsections (B) and (C) effective November 27, 1987 (Supp. 87-4). Section R4-28-1305 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1306. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-38 renumbered without change as Section R4-28-1306 (Supp. 87-1). Amended subsections (A), (B), and (C) effective November 27, 1987 (Supp. 87-4). Section R4-28-1306 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1307. Expired

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (E) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-39 renumbered without change as Section R4-28-1307 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1307 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1893, effective February 29, 2004 (Supp. 04-2).

R4-28-1308. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-40 renumbered without change as Section R4-28-1308 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1308 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1309. Repealed

Historical Note
Adopted effective May 1, 1980 (Supp. 80-3). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-41 renumbered without change as Section R4-28-1309 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1309 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1310. Rehearing or Review of Decision; Response; Decision

A. Unless otherwise provided by statute or rule, any party to a hearing before the Office of Administrative Hearings who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file with the Commissioner a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the Commissioner rules upon the motion.

B. A rehearing or review of the decision may be granted for any one of the following causes that materially affect the moving party's rights:

1. Irregularity in the proceedings or any order or abuse of discretion by the administrative law judge that deprived a party of a fair hearing;
2. Misconduct by the Department, administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring during the proceeding;
7. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
8. That the findings of fact or decision is not supported by the evidence or is contrary to law.

C. Presenting specific grounds for rehearing or review, affidavits and relief sought.

1. Each party filing a motion for rehearing or review shall specify in the motion which of the grounds listed in subsection (B) the motion is based upon and shall set forth specific facts and law in support of the rehearing or review. The party may cite relevant portions of testimony by reference to pages or lines of the reporter's transcript of the hearing or to the date and time range of the Office of Administrative Hearings audio record, and may cite hearing exhibits by reference to the exhibit number.
2. When a party files a motion for rehearing or review based upon an affidavit, the person shall attach the affidavit to the motion before filing the motion unless leave for later filing of an affidavit is granted by the Commissioner. The leave may be granted ex parte.
3. Each party filing a motion for rehearing or review shall specify the specific relief sought by the motion, such as a different decision or penalty, a new hearing, a dismissal of the complaint, or other relief. A party may seek multiple forms of relief, in the alternative.

D. Any party may file a written response to the motion. An affidavit may be attached to and filed with the response and shall not be later filed unless leave for later filing of affidavits is granted by the Commissioner. The original response shall be filed with the Department pursuant to R4-28-102, within 15 days after the date the motion for rehearing or review is filed, and a copy shall be served upon all other parties to the hearing.

E. Within 30 days after a decision is rendered, the Commissioner may, on the Commissioner's own initiative, order a rehearing or review of a decision for any reason for which a motion for rehearing or review might have been granted. The Commissioner shall specify the grounds for rehearing or review in the order.

F. Upon review of a motion for rehearing or review of the decision, and any response, the Commissioner shall issue a ruling granting or denying the motion. If granted, the Commissioner may modify the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-42 renumbered without change as Section R4-28-1310 (Supp. 87-1). Amended subsections (B), (C), and (D) effective November 27, 1987 (Supp. 87-4). Section R4-28-1310 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

R4-28-1311. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-43 renumbered without change as Section R4-28-1311 (Supp. 87-1). Amended subsections (A), (B), and (C) effective November 27, 1987 (Supp. 87-4). Section R4-28-1311 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1312. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (B) effective March 13, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Former Section R4-28-44 renumbered without change as Section R4-28-1312 (Supp. 87-1). Section R4-28-1312 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

R4-28-1313. Correction of Clerical Mistakes

Clerical mistakes in opinions, orders, rulings, any process issued by the Department, or other parts of the record, and errors arising from oversight or omission, may be corrected by the administrative law judge before transmission of the Department hearing file to the Commissioner, or by the Commissioner after transmission of the file, either upon the initiative of the administrative law judge or Commissioner, or upon motion of any party.

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-45 renumbered without change as Section R4-28-1313 (Supp. 87-1). Amended effective November 27, 1987 (Supp. 87-4). Section R4-28-1313 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

ARTICLE 14. REPEALED

R4-28-1401. Repealed

Historical Note

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-46 renumbered without change as Section R4-28-1401 (Supp. 87-1). Repealed effective November 27, 1987 (Supp. 87-4).

32-2107. Powers and duties of commissioner; compensation; administration of department; seal; revolving fund

A. The commissioner shall have charge of the department with power to administer it in accordance with the provisions of and to carry out the purposes of this chapter. The commissioner shall adopt a seal which shall bear the words "real estate commissioner, state of Arizona", which shall be used for the authentication of proceedings of the department and the official documents thereof. The commissioner's principal office shall be at the state capitol. The commissioner may have branch offices the commissioner deems necessary in other cities.

B. The commissioner shall receive compensation as determined pursuant to section 38-611.

C. The commissioner shall prepare and cause to be produced and circulated among the licensees and the general public educational matter the commissioner deems helpful and proper for the guidance and assistance of both licensees and the public. The commissioner may assess a fee for each of these educational products that does not exceed a level reasonably estimated to be sufficient to recover production and distribution costs.

D. In cooperation with industry educators, content experts and other professionals, the commissioner may develop, sponsor or hold educational seminars and workshops for the benefit of licensees.

E. A real estate department education revolving fund is established consisting of monies received from the sale of educational matter under subsection C of this section and grants of monies to be used in the production of educational products. Monies in the fund shall be used for the printing of a compilation of real estate laws and rules and other educational publications and for other educational efforts the commissioner deems helpful and proper for the guidance and assistance of licensees and the public, including sponsoring and holding educational seminars or workshops for educators and other licensees. The department shall establish the revolving fund as a separate account. The department shall make a full accounting of its use to the department of administration annually or as required by the department of administration. Expenditures from the fund and reimbursement to the fund shall be as prescribed by rules of the department of administration. Monies received in the real estate department education revolving fund are not subject to reversion, except that all monies in the fund in excess of twenty-five thousand dollars at the end of the fiscal year revert to the state general fund.

F. The commissioner shall adopt rules, in accord with this chapter, as the commissioner deems necessary to carry out this chapter.

G. The commissioner may approve standardized legal forms for use in the sale or lease of real estate for the purpose of recognizing compliance of the forms with this chapter and the rules adopted pursuant to this chapter.

32-2102. Administration of chapter by real estate department; purpose

This chapter shall be administered by the state real estate department under the direction of the real estate commissioner. The purpose of the department in administering this chapter is to protect the public interest through licensure and regulation of the real estate profession in this state.

32-2108. Powers and duties of commissioner to make investigations and require information

A. The commissioner on the commissioner's own motion may, and on a verified complaint in writing shall, investigate the actions of any natural person or entity engaged in the business or acting in the capacity of a broker, salesperson or developer and may at any time examine the books and records used in connection with the business insofar as the commissioner reasonably believes the books or records pertain to the transfer, sale, rental, lease, use or management of real property. In connection with an investigation, the commissioner or the commissioner's representative may take testimony and may examine and copy documents and other physical evidence that relate to the investigation. If necessary, the commissioner or the commissioner's representative may issue subpoenas to compel the testimony of witnesses and the production of documents and other evidence. If a person refuses to comply with a subpoena, the commissioner or the commissioner's representative may apply to the superior court for an order to compel compliance.

B. The commissioner shall establish a certification and enforcement unit that is charged with investigative duties relevant to the rules of the commissioner and the laws of this state, including applications for certification, investigations and enforcement and other duties as the commissioner prescribes.

C. The commissioner may require any reasonably necessary additional information about an applicant for or holder of a license or public report or renewal or amendment of a license or public report. For the purposes of this subsection, "applicant" or "holder" means a person and, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding ten percent or more beneficial interest, stockholder owning ten percent or more stock and person exercising control of the entity. The information may include:

1. Prior criminal records.

2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.

3. An affidavit setting out whether the applicant or holder has:

(a) Been convicted of a felony or a misdemeanor.

(b) Had any business or professional license denied, suspended or revoked or had any other disciplinary action taken or administrative order entered against the applicant or holder by any regulatory agency.

(c) Had a public report denied or suspended.

(d) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare intervals, membership camping campgrounds or contracts or securities or involving consumer fraud or the racketeering laws of this state.

(e) Had any adverse decision or judgment entered against the applicant or holder arising out of the conduct of any business in or involving a transaction in real estate, cemetery property, timeshare intervals or membership camping campgrounds or contracts involving fraud, dishonesty or moral turpitude.

(f) Filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

(g) Participated in, operated or held an interest or exercised control in any entity to which subdivision (b), (c), (d), (e) or (f) of this paragraph applies.

32-2124. Qualifications of licensees

A. Except as otherwise provided in this chapter, the commissioner shall require proof, through the application or otherwise, as the commissioner deems advisable with due regard to the interests of the public, as to the competency of the applicant and shall require that the applicant has:

1. If for an original real estate broker's license, at least three years' actual experience as a licensed real estate salesperson or real estate broker during the five years immediately preceding the time of application.

2. If for an original cemetery broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a cemetery salesperson or broker or as a licensed real estate salesperson or broker during the five years immediately preceding the time of application.

3. If for an original membership camping broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a licensed membership camping salesperson or broker or as a licensed real estate salesperson or broker during the five years immediately preceding the time of application.

4. If for any type of broker's or salesperson's license, not had a license denied within one year immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.

5. If for any type of broker's or salesperson's license, not had a license revoked within the two years immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.

6. If reapplying for a license that expired more than one year before the date of application, met all current education and experience requirements and retakes the examination the same as if the applicant were applying for the license for the first time.

7. If for a real estate, cemetery or membership camping broker's license, other than a renewal application, an equivalent amount of active experience within the immediately preceding five years in the field in which the applicant is applying for the broker's license, as a substitute for the licensed active experience otherwise required in paragraphs 1, 2 and 3 of this subsection. The licensed active experience required may be met if the applicant can demonstrate to the commissioner's satisfaction that the applicant has an equivalent amount of experience in the past five years that, if the applicant had held a license, would have been sufficient to fulfill the licensed experience requirement.

B. All applicants other than renewal applicants under section 32-2130 for a real estate salesperson's license shall show evidence satisfactory to the commissioner that they have completed a real estate salesperson's course that is prescribed and approved by the commissioner and that is at least ninety classroom hours, or its equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. An applicant may complete the real estate salesperson's course prescribed by this subsection through a live classroom course or an online course if the live classroom course or online course is offered by a real estate school that is certified by the commissioner. The applicant must complete an examination on the live classroom course or the online course in person. An applicant may complete the required course or instructional segments in any combination of in-person or synchronous remote delivery methods. The real estate salesperson's course completion or its equivalent may not be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate-related field and education that together are equivalent to the prelicensure education requirement. The commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven-hour Arizona-specific course, for an applicant who holds a current real estate license in another state.

C. All applicants other than renewal applicants under section 32-2130 for a real estate broker's license shall show evidence satisfactory to the commissioner that they have completed a real estate broker's course that is

prescribed and approved by the commissioner and that is at least ninety classroom hours, or the equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. An applicant may complete the real estate broker's course prescribed by this subsection through a live classroom course or an online course if the live classroom course or online course is offered by a real estate school that is certified by the commissioner. The applicant must complete an examination on the live classroom course or online course in person. An applicant may complete the required course or instructional segments in any combination of in-person or synchronous remote delivery methods. The real estate broker's course completion or its equivalent may not be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate-related field and education that together are equivalent to the prelicensure education requirement. The commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven-hour Arizona-specific course, for an applicant who holds a current real estate license in another state.

D. Before receiving any license provided for by this chapter, an applicant must be at least eighteen years of age.

E. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a real estate license has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of arithmetical computations common to real estate practices.

2. At a minimum, an understanding of the general purpose and legal effect of any real estate practices, principles and related forms, including agency contracts, real estate contracts, deposit receipts, deeds, mortgages, deeds of trust, security agreements, bills of sale, land contracts of sale and property management, and of any other areas that the commissioner deems necessary and proper.

3. A thorough understanding of the obligations between principal and agent, the principles of real estate and business opportunity practice, the applicable canons of business ethics, the provisions of this chapter and rules adopted pursuant to this chapter.

4. An appropriate knowledge of other real estate practices and principles as determined by the commissioner.

F. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a license as a cemetery broker or a cemetery salesperson has:

1. Appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) Cemetery associations, cemetery corporations and duties of cemetery directors and officers.

(b) Plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases.

(c) Establishing, dedicating, maintaining, managing, operating, improving, preserving and conducting a cemetery.

(d) The provisions of this chapter and rules adopted pursuant to this chapter relating to the organization and regulation of cemeteries and the licensing and regulation of cemetery brokers and cemetery salespersons.

3. A general understanding of the obligations between principal and agent, the principles of cemetery practice and the canons of business ethics pertaining to the operation of cemeteries and the sale of cemetery property.

G. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a license as a membership camping broker or a membership camping salesperson has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) The general purposes and legal effect of contracts and agency contracts.

(b) Establishing, maintaining, managing and operating a membership campground.

(c) The provisions of this chapter and rules adopted pursuant to this chapter relating to the organization and regulation of membership campgrounds and the licensing and regulation of membership camping brokers and membership camping salespersons.

3. A general understanding of the obligations between principal and agent and the canons of business ethics pertaining to the operation and promotion of membership campgrounds.

H. A renewal applicant for a real estate, cemetery or membership camping broker's or salesperson's license is not required to submit to an examination if the application is made within twelve months after the license expires and the license is not canceled, terminated or suspended at the time of application.

I. The examination for a broker's license shall be more exacting and stringent and of a broader scope than the examination for a salesperson's license.

J. An applicant for a real estate salesperson's or broker's license who currently holds at least an equivalent license in another state may be exempt from taking the national portion of the real estate examination if the applicant can demonstrate passing a national examination within the past five years that is satisfactorily similar to the one administered by the department.

K. Identification of each applicant whose licensing requirement was allowed to be met by an equivalent alternative pursuant to this section shall be included in the annual performance report presented by the board to the governor pursuant to section 32-2104.

L. An applicant for an original real estate salesperson's license, after completing the requirements of subsection B of this section, shall provide certification to the department at the time of application evidencing completion of six hours of instruction in real estate contract law and contract writing. This instruction shall include participation by the applicant in drafting contracts to purchase real property, listing agreements and lease agreements.

M. The commissioner shall not issue a license to a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction.

N. The commissioner shall require an out-of-state applicant for a license that is issued pursuant to section 32-4302 to pass an examination specific to the laws of this state relating to this chapter before the commissioner issues the license to the applicant.

32-2153. Grounds for denial, suspension or revocation of licenses; letters of concern; provisional license; retention of jurisdiction by commissioner; definitions

A. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant, within five years immediately preceding, in performing or attempting to perform any acts authorized by the license or by this chapter, has:

1. Pursued a course of misrepresentation or made false promises, either directly or through others, whether acting in the role of a licensee or a principal in a transaction.

2. Acted for more than one party in a transaction without the knowledge or consent of all parties to the transaction.

3. Disregarded or violated any of the provisions of this chapter or any rules adopted by the commissioner.

4. Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution or circulation of any material false or misleading statement or representation concerning the licensee's business or any land, cemetery property, subdivision or membership campground or camping contract offered for sale in this or any other state.

5. Knowingly used the term "real estate broker", "cemetery broker" or "membership camping broker" without the legal right to do so.

6. Employed any unlicensed salesperson or unlicensed associate broker.

7. Accepted compensation as a licensee for performing any of the acts specified in this chapter from any person who is not authorized to provide compensation pursuant to section 32-2155.

8. Represented or attempted to represent a broker other than the broker to whom the salesperson or associate broker is licensed.

9. Failed, within a reasonable time, to account for or to remit any monies, to surrender to the rightful owner any documents or other valuable property that comes into the licensee's possession and that belongs to others, or to issue an appraisal report on real property or cemetery property in which the licensee has an interest, unless the nature and extent of the interest are fully disclosed in the report.

10. Paid or received any rebate, profit, compensation or commission in violation of this chapter.

11. Induced any party to a contract to break the contract for the purpose of substituting a new contract with the same or a different principal, if the substitution is motivated by the personal gain of the licensee.

12. Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.

13. Solicited, either directly or indirectly, prospects for the sale, lease or use of real property, cemetery property or membership camping contracts through a promotion of a speculative nature involving a game of chance or risk or through conducting lotteries or contests that are not specifically authorized under this chapter.

14. Failed to pay to the commissioner the renewal fee as specified in this chapter promptly and before the time specified.

15. Failed to keep an escrow or trust account or other record of monies deposited with the licensee relating to a real estate transaction.

16. Commingled the monies or other property of the licensee's principal or client with the licensee's own or converted these monies or property to the licensee or another.

17. Failed or refused on demand to produce any document, contract, book, record, information, compilation or report that is in the licensee's possession or that the licensee is required by law to maintain concerning any real estate, cemetery or membership camping business, services, activities or transactions involving or conducted by the licensee for inspection by the commissioner or the commissioner's representative.

18. Failed to maintain a complete record of each transaction that comes within this chapter.

19. Violated the federal fair housing law, the Arizona civil rights law or any local ordinance of a similar nature.

20. Tendered to a buyer a wood infestation report in connection with the transfer of residential real property or an interest in residential real property knowing that wood infestation exists or that the wood infestation report was inaccurate or false as of the date of the tender or that an inspection was not done in conjunction with the preparation of the wood infestation report.

21. As a licensed broker, failed to exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ or failed to exercise reasonable supervision and control over the activities for which a license is required of a corporation, limited liability company or partnership on behalf of which the broker acts as designated broker under section 32-2125.

22. Demonstrated negligence in performing any act for which a license is required.

23. Sold or leased a property to a buyer or lessee that was not the property represented to the buyer or lessee.

24. Violated any condition or term of a commissioner's order.

25. Signed the name of another person on any document or form without the express written consent of the person.

26. As a licensed school, failed to exercise reasonable supervision over the activities for which a license is required for an owner, director, administrator or instructor in the school's employ.

B. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant has:

1. Procured or attempted to procure a license under this chapter for the holder or applicant or another by fraud, misrepresentation or deceit or by filing an original or renewal application that is false or misleading.

2. Been convicted in a court of competent jurisdiction in this or any other state of a felony or of any crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense.

3. Made any substantial misrepresentation.

4. Made any false promises of a character likely to influence, persuade or induce.

5. Been guilty of any conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

6. Engaged in the business of a real estate broker, cemetery broker or membership camping broker or real estate, cemetery or membership camping salesperson without holding a license as prescribed in this chapter.

7. Demonstrated incompetence to perform any duty or requirement of a licensee under or arising from this chapter. For the purposes of this paragraph, "incompetence" means a lack of basic knowledge or skill

appropriate to the type of license the person holds or a failure to appreciate the probable consequences of the licensee's action or inaction.

8. Violated the terms of any criminal or administrative order, decree or sentence.

9. Violated any federal or state law, regulation or rule that relates to real estate or securities or that involves forgery, theft, extortion, fraud, substantial misrepresentation, dishonest dealings or violence against another person or failure to deal fairly with any party to a transaction that materially and adversely affected the transaction. This paragraph applies equally to violations of which the licensee was convicted in any lawful federal or state tribunal and to any admissions made in any settlement agreement by the licensee to violations.

10. Failed to respond in the course of an investigation or audit by providing documents or written statements.

C. A judgment based on a court's finding or stipulation of fraud by a licensee following a trial on the merits or a criminal conviction of a licensee that results in a payment from the real estate recovery fund is prima facie evidence of a violation and grounds for discipline under this section.

D. The commissioner may deny, suspend or revoke the issuance of a license on application by a corporation, a limited liability company or a partnership if it appears that an owner, officer, director, member, manager, partner, stockholder owning ten percent or more of the stock in the corporation or limited liability company or person exercising control of the entity is a current or former licensee whose license as a broker or a salesperson has been denied, suspended or revoked.

E. The lapsing or suspension of a license by operation of law or by order or decision of the commissioner or a court of law or the voluntary surrender of a license by a licensee does not deprive the commissioner of jurisdiction to do any of the following:

1. Proceed with any investigation of or action or disciplinary proceeding against the licensee.

2. Render a decision suspending or revoking the license or denying the renewal or right of renewal of the license.

3. Assess a civil penalty pursuant to section 32-2160.01.

F. For the purposes of this section:

1. "Letter of concern" means an advisory letter to notify a licensee that, while the conduct or evidence does not warrant other disciplinary action, the commissioner believes that the licensee should modify or eliminate certain practices and that continuation of the activities may result in further disciplinary action against the licensee.

2. "Provisional license" means a license that the department issues and that allows a licensee to practice subject to either a consent order as prescribed in section 32-2153.01 or the commissioner's terms, conditions and restrictions.

32-2175. Property management records; requirements; audits

A. Property management firms shall keep a residential rental agreement, including any lease amendments and addenda, and related residential rental agreement documents for one year after the expiration of the rental agreement or until the rental agreement and related documents are given to the owner at the termination of any property management agreement. For the purposes of this subsection, related documents may include copies of any of the following:

1. Rental applications with tenant-identifying information.

2. Move-in forms.

3. Default notices.

B. Property management firms shall keep records of all finder fees that are paid to tenants for three years after the payment is made or until the records are given to the owner at the termination of the property management agreement.

C. Property management firms shall keep all financial records pertaining to clients for at least three years from the date each document was executed, including bank statements, canceled checks or bank generated check images, deposit slips, bank receipts, receipts and disbursement journals, owner statements, client ledgers and applicable bills, invoices and statements.

D. Only the designated broker or the broker's authorized real estate licensee, on behalf of the broker, may sign nonresidential rental agreements. The broker shall execute in writing and shall file any delegation of authority in the broker's employee file. Fully executed residential lease agreements are not required to be reviewed and initialed.

E. The property management firms shall consecutively number or file all signed property management agreements in compliance with a system that is orderly, easily accessible by the commissioner or the commissioner's representative and consistent with generally accepted professional standards of the industry for that type of real estate.

F. Property management firms shall maintain each nonresidential real estate lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives. For nonresidential lease transactions, transaction folders shall contain:

1. Confirmation that the deposits or other monies that were handled by or through the broker were handled according to instructions given by or agreed on by the parties to the transaction.

2. A complete copy of the nonresidential lease or rental agreement.

3. If applicable, a copy of the listing agreement.

G. Property management firms shall number on-site residential rental transaction folders according to dwelling unit number or other systematic manner that is easily accessible by the commissioner or the commissioner's representative. A broker is not required to maintain duplicate residential rental transaction folders.

H. All records required under this section shall be kept at the broker's main office or branch office, electronically or at an off-site storage location in this state if the broker provides to the department prior written notification and a street address of the off-site storage location. Trust account records shall be kept pursuant to section 32-2151. For the purposes of this subsection, "off-site storage location" includes a multifamily leasing office.

I. On request by the commissioner or the commissioner's representatives for routine audit purposes the broker shall make available within a reasonable amount of time all records relative to property management accounts, including lease agreements, lease related documents and trust account records. The department is limited to auditing those areas that are related to the business activities of a broker and that have a material bearing on the accuracy of the audit. This subsection does not limit the immediacy or scope of an audit if a violation of real estate statutes or rules is suspected.

32-2181. Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

A. Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention. The notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The name and address of the subdivider.

3. The legal description and area of the land.

4. A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and any other information the owner or the owner's agent or subdivider desires to present.

6. A map of the subdivision that has been filed in the office of the county recorder in the county in which the subdivision is located.

7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.

8. A statement of the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.

10. A statement of the use or uses for which the proposed subdivision will be offered.

11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision, together with copies of any restrictive covenants affecting all or part of the subdivision.

12. The name and business address of the principal broker selling or leasing, within this state, lots or parcels in the subdivision.

13. A true statement of the approximate amount of indebtedness that is a lien on the subdivision or any part of the subdivision and that was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.

14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness that has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district,

within the boundaries of which the subdivision, or any part of the subdivision, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part of the subdivision.

15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.

16. A statement of the provisions for easements for permanent access for irrigation water where applicable.

17. A true statement of assurances for the completion of off-site improvements, such as roads, utilities, community or recreational facilities and other improvements to be included in the offering or represented as being in the offering, and approval of the offering by the political subdivision with authority. This statement shall include a trust agreement or any other evidence of assurances for delivery of the improvements and a statement of the provisions, if any, for the continued maintenance of the improvements.

18. A true statement of the nature of any improvements to be installed by the subdivider, the estimated schedule for completion and the estimated costs related to the improvements that will be borne by purchasers of lots in the subdivision.

19. A true statement of the availability of sewage disposal facilities and other public utilities, including water, electricity, gas and telephone facilities in the subdivision, the estimated schedule for their installation, and the estimated costs related to the facilities and utilities that will be borne by purchasers of lots in the subdivision.

20. A true statement as to whether all or any portion of the subdivision is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the subdivision to preclude livestock from roaming within the subdivided lands.

21. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries is or has been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are all twenty acres or more in size.

22. A true statement identifying all other subdivisions, designated in paragraph 21 of this subsection, in which any of the following is or, within the last five years, has been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The subdivider.

(c) Any principal or officer in the holder or subdivider.

23. A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone.

24. If the subdivision is a conversion from multifamily rental to condominiums as defined in section 33-1202, a true statement as to the following:

(a) That the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

25. Other information and documents and certifications as the commissioner may reasonably require provided that the subdivider shall not be required to disclose any critical infrastructure information as defined in section 41-1801 or any information contained in a report issued pursuant to section 41-4273.

B. The commissioner, on application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section. The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located. The statement shall further refer to the original approval by the commissioner.

C. If the subdivision is within an active management area, as defined in section 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources along with proof that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection if the subdivider provides proof to the commissioner that all applicable fees have been paid pursuant to sections 48-3772 and 48-3774.01.

D. It is unlawful for a person or group of persons acting in concert to attempt to avoid this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method that ultimately results in the division of the lands into a subdivision or the sale of subdivided land. The plan or offering is subject to this article. Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to this article. A familial relationship alone is not sufficient to constitute unlawful acting in concert.

E. A creation of six or more lots, parcels or fractional interests in improved or unimproved land, lots or parcels of any size is subject to this article except when:

1. Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this state, including to the centerline of dedicated roads or easements, if any, contiguous to the land in which the interests are held.

2. The lots, parcels or fractional interests are the result of a foreclosure sale, the exercise by a trustee under a deed of trust of a power of sale or the grant of a deed in lieu of foreclosure. This paragraph does not allow circumvention of the requirements of this article.

3. The lots, parcels or fractional interests are created by a valid order or decree of a court pursuant to and through compliance with title 12, chapter 8, article 7 or by operation of law. This paragraph does not allow circumvention of the requirements of this article.

4. The lots, parcels or fractional interests consist of interests in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

5. The lots, parcels or fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under section 44-1844, 44-1845 or 44-1846.

6. The commissioner by special order exempts offerings or dispositions of any lots, parcels or fractional interests from compliance with this article on written petition and on a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

7. A sale or lease of a lot, parcel or fractional interest occurs ten or more years after the sale or lease of another lot, parcel or fractional interest and the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, upon investigation by the commissioner, there is evidence of intent to subdivide.

F. In areas outside of active management areas established pursuant to title 45, chapter 2, article 2:

1. If the subdivision is located in a county that has adopted the provision authorized by section 11-823, subsection A, or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the subdivider shall accompany the notice with a report issued by the director of water resources pursuant to section 45-108 stating that the subdivision has an adequate water supply, unless one of the following applies:

(a) The subdivider submitted the report to a city, town or county before approval of the plat by the city, town or county and this has been noted on the face of the plat.

(b) The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

(c) The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director under section 45-108.03. If the plat was approved pursuant to an authorized exemption, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in the subdivision adequately display the following:

(i) The director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

(ii) A statement describing the exemption under which the subdivision was approved, including the specific conditions of the exemption that were met. If the plat was approved by the legislative body of a city or town pursuant to an exemption authorized by section 9-463.01, subsection K or by the board of supervisors of a county pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, the subdivider shall record the document required by section 33-406.

(d) The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If this subdivision applies, the state real estate commissioner shall require that all promotional materials and contracts for the sale of lots in the subdivision adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

2. If the subdivision is not located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, and if the director of water resources, pursuant to section 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commissioner shall require

that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

G. The commissioner may require the subdivider to supplement the notice of intention to subdivide lands and may require the filing of periodic reports to update the information contained in the original notice of intention to subdivide lands.

H. The commissioner may authorize the subdivider to file as the notice of intention to subdivide lands, in lieu of some or all of the requirements of subsection A of this section, a copy of the statement of record filed with respect to the subdivision pursuant to the federal interstate land sales full disclosure act if the statement complies with the requirements of the act and the regulations pertinent to the act.

I. Neither a real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in subdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether the property is located within or outside of the boundaries of the subdivision. All contractual provisions that conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

J. Before offering subdivided lands for lease or sale, the subdivider who makes any promises through any form of advertising media that the subdivided lands will be exclusively a retirement community or one that is limited to the residency of adults or senior citizens shall include the promises in the deed restrictions affecting any interest in real property within the subdivided lands.

K. Except as otherwise provided in this section, a subdivider shall not be required to disclose items that are over one mile from the subdivision boundaries. The existence of foreign nations or tribal lands shall also be disclosed if located within the one mile radius of the subdivision boundaries.

32-2197.13. Hearing on denial of public report

Any applicant objecting to the denial of a public report may, within thirty days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

32-2123. Application for license as broker or salesperson

A. Every application for an original license shall be either submitted in writing and signed by the applicant or submitted electronically and contain an electronic or digital identifier that the commissioner deems appropriate. The application shall be accompanied by all applicable fees.

B. An application for an original license as a broker or salesperson shall set forth:

1. The applicant's residence address and legal name and any derivative of the applicant's first name or middle name or a nickname that the applicant regularly uses for advertising purposes.

2. The applicant's employers and employment history for the immediately preceding ten years and any experience in real estate sales, appraisals, transfers or similar business in which the applicant previously engaged, if the commissioner determines that this information is needed to reasonably evaluate the applicant.

3. The name and place of business of the applicant's present employer, if any.

4. Whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, where and when committed and the disposition of the conviction, or whether the applicant has been disbarred or suspended from the practice of law.

5. Whether the applicant has ever been refused a broker's or salesperson's license or any other occupational license in this or any other state, whether the applicant's license as a broker or salesperson has been revoked or suspended in this or any other state or whether the applicant has had any other occupational or professional license, certificate or registration revoked or suspended in this or any other state.

6. The name of any corporation, company or partnership that is or ever has been licensed by the department in which the applicant exercised any control.

7. If the applicant is a natural person, the applicant's social security number. If the applicant, due to bona fide religious convictions or other bona fide reasons that the applicant documents on the application to the satisfaction of the commissioner, does not have a social security number, the applicant may provide the applicant's federal tax identification number with the application. The state real estate department shall use the applicant's social security number or federal tax identification number to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents, and for no other purpose.

C. An application for a license as a broker additionally shall set forth:

1. The name under which the business is to be conducted.

2. The situs and mailing address of the applicant's place of business, or if more than one, the situs and mailing addresses of each.

D. An applicant for a broker's or salesperson's license shall provide information that the commissioner determines is reasonably necessary. The information may include:

1. Prior criminal records.

2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.

3. An affidavit setting out whether the applicant has participated in, operated or held an interest in any land development company that has filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

E. Each person licensed pursuant to this article, whether the license is active or inactive, shall have available for the licensee's use a current copy of the department's statutes, rules and annotations pertaining to real estate laws.

Failure to comply with this requirement shall not be deemed grounds for a civil penalty or for denial, suspension or revocation of a license.

32-2125. Licenses for corporations, limited liability companies or partnerships

A. A corporation, limited liability company or partnership applying for a broker's license for the entity shall designate a natural person who is licensed as a broker and who is an officer of the corporation, manager of the limited liability company if management of the limited liability company is vested in one or more managers, member of the limited liability company if management is vested in the members or partner of the partnership who shall act as designated broker. The license shall extend no authority to act as designated broker to any other person. This subsection does not apply to a corporation or limited liability company applying for a license under subsection B of this section. An entity's broker's license issued pursuant to this subsection shall run concurrently with the corporation's, limited liability company's or partnership's designated broker's license.

B. An employing broker may engage the services of salespersons and associate brokers who act through and on behalf of professional corporations or professional limited liability companies that are licensed by the department. A designated broker who acts on behalf of an employing real estate entity is allowed to become a professional corporation or a professional limited liability company. Any person so engaged shall be separately licensed. The department shall issue to or renew a license under this subsection only for a professional corporation or a professional limited liability company whose shareholders, members or managers hold active real estate licenses. A corporation licensed under this subsection shall meet the requirements of title 10, chapter 20. A limited liability company licensed under this subsection shall meet the requirements of title 29, chapter 7, article 11. A professional corporation or professional limited liability company shall not be licensed as an employing broker.

C. The license of a corporation or limited liability company licensed under subsection B of this section terminates only on the death of a shareholder, member or manager or any other change of shareholders, members or managers, except that any remaining shareholder, member or manager who was an authorized officer and shareholder prior to the change remains authorized to continue business under the corporation's or limited liability company's license for up to an additional ninety days pending the issuance of a new license.

D. The commissioner may suspend, revoke or deny renewal or the right of renewal of the license of a corporation, limited liability company or partnership licensed under this section if the corporation, limited liability company or partnership or any shareholder, officer, agent, partner or member of a corporation, limited liability company or partnership violates any of the provisions of this chapter.

E. This section does not enlarge the functions of salespersons, allow salespersons to assume any of the responsibilities or functions of brokers or relieve the commissioner of any regulatory power or authority over salespersons or brokers.

F. A corporation, limited liability company or partnership licensed under subsection A of this section or a professional corporation or professional limited liability company licensed under subsection B of this section is exempt from the education requirements imposed pursuant to this chapter. The commissioner shall not charge a license fee or a renewal fee pursuant to section 32-2132 to a corporation, professional corporation, limited liability company, professional limited liability company or partnership licensed or approved under this section.

G. A corporation, limited liability company or partnership licensed under this section shall report to the department within ten days:

1. Any change in officers, directors, members, managers or partners or any change of control of the entity.

2. Any amendment to its articles of incorporation or organization or to its partnership agreement.

3. If a corporation, when a person becomes an owner of ten percent or more of the stock in the corporation.

4. The dissolution of the corporation, limited liability company or partnership.

32-2130. Renewal of licenses; education requirements; broker licensee renewal as salesperson licensee

A. A license may be renewed in a timely manner by filing an application for renewal in the manner prescribed by the commissioner, by paying the renewal fee specified in this chapter and by presenting evidence of attendance at a school certified by the commissioner during the preceding license period of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G, or a lesser number of credit hours prescribed by the commissioner, of real estate oriented continuing education courses prescribed and approved by the commissioner. The total number of credit hours shall be accrued at a rate of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G during each twenty-four month period of licensure. The department shall maintain a current list of approved courses. The commissioner may waive all or a portion of the continuing education requirement for good cause shown. The commissioner shall determine by rule the content of the renewal credit hours. The renewal credit hours may include the commissioner's current topics, including short sales. For the purposes of this subsection, "short sales" means real estate transactions in which the sales price is insufficient to pay the loan encumbering the property in addition to the costs of sale and the seller is unable to pay the difference.

B. If an applicant is renewing a license within one year after it expired, the applicant may apply continuing education hours completed after the expiration toward the continuing education required for renewal.

C. Each renewal application shall contain, as applicable, the same information required in an original application pursuant to section 32-2123.

D. Cemetery brokers and salespersons and membership camping brokers and salespersons are exempt from the educational requirements of this section.

E. Nothing in this section requires a licensee to attend department produced or sponsored courses if approved courses are otherwise available.

F. Between the expiration date of the license and the date of renewal of the license, the rights of the licensee under the license expire. While the license is expired it is unlawful for a person to act or attempt or offer to act in a manner included in the definition of a real estate, cemetery or membership camping broker or salesperson. If the license of an employing broker expires under this subsection, the licenses of persons who are employed by the employing broker shall be severed from the employing broker on the license expiration date of the employing broker. These persons may be rehired on renewal of the employing broker's license. The department shall terminate a license that has been expired for more than one year.

G. Except as provided in section 32-4301, no more than one year after the license expiration date, the department shall renew a license without requiring the applicant to submit to an examination if the applicant held a license that was not canceled or suspended at the time of expiration. Except as provided in section 32-4301, the license period for a license renewed pursuant to this subsection commences the day after the expiration date of the expired license. Except as provided in section 32-2131, subsection A, paragraph 4 or 6, an applicant whose license has been terminated or revoked does not qualify for license renewal.

H. Any employee or immediate family member of any employee of this state who, pursuant to section 32-2110 or any other law, rule or requirement, is prohibited from using a license issued under this chapter shall have, on the request of the employee or family member, the license placed on inactive status, shall have the right to renew the license and shall not be required to pay further fees until the employee or family member is again eligible to use the license. Renewal fees for the license shall not be required for only as long as the employee or family member is prohibited from using the license.

I. The department shall not renew the license of a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction. This subsection

does not limit the commissioner's authority and discretion to deny the renewal for any other reason pursuant to this chapter.

J. A real estate broker licensee may renew as a real estate salesperson licensee without having to meet the requirements prescribed by section 32-2124, subsection B. If a person renews as a real estate salesperson pursuant to this subsection, the person shall pay the salesperson's renewal fee as prescribed in section 32-2132. If the person subsequently wants to obtain a real estate broker license, the person must meet the requirements of this chapter, including the requirements prescribed by section 32-2124, subsection C.

32-2131. Reinstatement of license

A. The commissioner may reinstate a license that was issued under this article and that expired or was canceled, terminated, suspended or revoked as follows:

1. For a license that expired pursuant to section 32-2130, subsection F, by renewal application pursuant to this article.

2. For a license canceled pursuant to section 32-2126, subsection A or section 32-2129, subsection B or any other lawful authority:

(a) If within the license period, by reapplication and payment of applicable fees.

(b) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

3. For a license terminated pursuant to section 32-2188, subsection I, by:

(a) Repayment in full to the real estate recovery fund.

(b) Original application pursuant to this article.

(c) Providing evidence that the judgment that caused the recovery fund payment has been fully satisfied.

4. For a license terminated pursuant to section 32-2130, subsection F, by original application pursuant to this article.

5. For a license suspended pursuant to section 32-2153, 32-2154 or 32-2157 or any other lawful authority:

(a) If suspended for failure on the part of the licensee to meet procedural or educational requirements for maintaining the license, and the requirements have subsequently been fully met, and the suspension has been vacated:

(i) If within the license period, by reapplication and payment of applicable fees.

(ii) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

(b) If suspended by order of the commissioner for a specified length of time, and the suspension period has ended:

(i) If within the license period, by reapplication and payment of applicable fees.

(ii) If after expiration of the license, by original or renewal application, as appropriate, pursuant to this article.

6. For a license revoked pursuant to section 32-2153 or any other lawful authority, by original application pursuant to this article.

7. For a license suspended or revoked by order of the commissioner and this order is subsequently vacated as to the licensee, by reapplication only. No fees may be assessed. The reapplication may be initiated by the department on behalf of the licensee.

B. Except for canceled licenses, reinstatement of a license pursuant to subsection A of this section shall not be made for any licensee who is the subject of a department investigation into alleged violations of this chapter or of a pending administrative proceeding pursuant to article 3 of this chapter.

C. This section shall not be interpreted to lessen or reduce the qualifications otherwise required of license applicants under this article or the department's authority to deny a person's application for license reinstatement

who does not otherwise meet all of the requirements.

32-2134. Temporary cemetery salesperson's license

Notwithstanding any other provision of law to the contrary, the commissioner may issue without examination to any person who has applied and otherwise qualifies for a cemetery salesperson's license, a temporary cemetery salesperson's license good for a period not to exceed ninety days from the date of issuance. An applicant shall not be entitled to more than one temporary license without examination. An employing cemetery broker shall certify by affidavit to the commissioner that the temporary license applicant has been trained in applicable Arizona cemetery and contract law.

32-2134.01. Membership camping salesperson certificate of convenience

Notwithstanding any other licensing requirement under this chapter, the commissioner may issue a one time thirty day certificate of convenience without examination to any person who has applied and otherwise qualifies for a membership camping salesperson's license. An employing membership camping broker shall certify by affidavit to the commissioner that the salesperson applicant will be trained in applicable membership camping and contract laws before participation in any offer or sale.

32-2135. Real estate schools; courses of study; instructors; certification

A. Except as provided in section 32-4301, before offering a course of study towards completion of the education requirement for real estate licensure or renewal of licensure, a school shall obtain from the commissioner a certificate of approval or renewal to operate a school for a period of at least four years. A school shall also obtain a certificate of course approval for each course offered for credit that is not currently approved for another school. Each school is responsible for the content of any course it offers and for the professional administration and teaching of the course. Prelicensure education live classroom courses, continuing education live classroom courses, online courses and distance learning continuing education courses are subject to approval pursuant to this section.

B. Each approved school shall issue a certificate of real estate course attendance to each person who completes an approved prelicensure or continuing education course. An applicant for renewal of licensure as provided by section 32-2130 shall file evidence of the certificates issued by the school with the commissioner showing the number of credit hours and course of study required for renewal.

C. The commissioner may withdraw or deny certification or approval of real estate schools, educational courses or real estate instructors for any acts inconsistent with the requirements of this chapter, including:

1. Committing or failing to report a violation by an approved school or instructor of any provision of this chapter or rules adopted pursuant to this chapter.

2. Improperly certifying student attendance or performance.

3. Committing any act that is grounds for discipline under section 32-2153.

4. Teaching information or using course materials that have not been approved by the commissioner.

5. Failing to attend any continuing education course required by the commissioner.

6. Filing any false or misleading application, report or documentation with the department.

7. Teaching course content that is not current or that has substantially changed from the course as approved.

D. A real estate school, through any owner, director, administrator, instructor or other agent, shall not:

1. Offer a course of study for credit that is not approved by the department, except that the school may advertise a course as pending approval before its approval.

2. Promote or advertise the school using false or misleading statistics or testimonials or any other form of deceptive advertisement.

E. The commissioner may determine minimal content requirements for approving educational courses and appropriate professional qualifications for approving instructors to teach individual educational courses.

F. Except as provided in subsection G of this section, at least thirty days before holding a course of study for completion of the education requirements leading to licensure of real estate applicants or for license renewal requirements, an application for a certificate of course approval or renewal must be filed with the department. For a live classroom course, the application shall include a course outline with sufficient detail to clearly identify the scope and content of the course. The outline shall state a desired instructional outcome for the course. A prelicensure education course outline that is submitted for approval shall be divided into estimated fifty-minute instructional segments. Course approval shall not be unreasonably withheld and shall not be issued later than thirty days after filing with the department for a live classroom course. A continuing education distance learning course approval shall not be issued later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the course shall be

automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the course submission. A provisional approval may be withdrawn by the department on fifteen days' advance notice if the department's review of the course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the course approval shall remain approved for the entire course approval period. Course approval shall be for a period of at least four years if the contents of the course remain current and substantially unchanged. The course may not be taught if the content ceases to be current or is substantially changed. The department may establish by rule additional appropriate requirements for approval of a distance learning course.

G. At least ninety days before holding an online course of study for completion of the education requirements leading to licensure of real estate applicants, an application for a certificate of online course approval must be filed with the department. An online course outline that is submitted for approval shall be divided into estimated fifty-minute instructional segments. Online course approval shall not be unreasonably withheld and shall be issued not later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the online course shall be automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the online course submission. A provisional approval may be withdrawn by the department on fifteen days' advance notice if the department's review of the online course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the online course approval shall remain approved for the entire online course approval period. Online course approval shall be for a period of at least four years if the contents of the online course remain current and substantially unchanged. The online course may not be taught if the content ceases to be current or is substantially changed. Approved online courses must provide for student participation, feedback and remedial instruction. The department may establish by rule additional appropriate requirements for approval of an online course.

H. For a currently approved course or online course:

1. The school shall submit notice to the department at least fourteen days before holding the course to allow department employees to monitor the course. The notice is not otherwise subject to review and approval by the department.

2. With the permission of the school that received original approval for the course, another school that desires to offer the course is subject only to the fourteen-day notice requirement before holding the same course. No additional review and approval by the department is required.

I. The department shall approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held in this state.

J. The department may approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held outside this state. On the commissioner's request, the school shall either:

1. Provide the department with a videotape or videotapes of the course.

2. Make arrangements that are approved by the department for monitoring the course.

K. An instructor shall file with the department an application for instructor approval or renewal. Instructor approval shall be for at least four years from the date of approval and is subject to amendment during the license period only if information material to the instructor's qualifications has changed. A person holding instructor approval to teach specific subject matter is not subject to additional or duplicate approval requirements during the original approval period, except that an additional instructor competency area may be added during the license period on submission by the instructor of evidence of competency in such additional competency area.

L. In the twenty-four months before application, each instructor original or renewal applicant, other than a panelist, guest speaker, attorney or out-of-state instructor, shall attend at least a three-hour professional seminar

or workshop, approved by the department, emphasizing instruction methods, techniques and skills. At the discretion of the commissioner this requirement may be waived based on individual request review.

M. The course filing time frames prescribed in this section may be waived by the department for good cause shown.

N. Unless subject to a violation or suspected violation listed in subsection C of this section, the department's approval of a school, school official, instructor or course shall be processed in a time frame consistent with the time frames set forth in this section.

O. This section does not affect the department's ability to withdraw or deny certification or approval of real estate schools, education courses or real estate instructors for a violation of this chapter.

32-2183.01. Advertising material; contents; order prohibiting use; costs of investigation; drawings or contests

A. Within ten days after request by the commissioner, the subdivider shall file with the commissioner a copy of any advertising material used in connection with sales of the subdivided lands.

B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, shall contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made.

2. Any statement or representation that the lot or parcels are offered without risk or that loss is impossible.

3. Any statement or representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating the improvements are proposed and the scenes do not exist.

4. Any statement or representation that the lot or parcels are suitable as homesites or building lots unless either of the following is true:

(a) Potable water is available from a certificated public utility or a municipal corporation and either an individual sewage disposal system will operate or a sewer system is available from a certified public utility or a municipal corporation.

(b) Facts to the contrary are clearly and conspicuously included in each advertisement pertaining to the property.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2181 and the public report pursuant to section 32-2183. The subdivider shall retain and have available for department review copies of all advertising materials used in marketing lots in the subdivision for three years after the last use of the advertising materials.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin such person from continuing such violation.

E. The commissioner may adopt such rules and guidelines as the commissioner deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, subdivider, agent or employee of any subdivision or other person with intent directly or indirectly to sell or lease lots or parcels subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. Nothing contained in this section shall apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter wherein such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

H. For any subdivision investigation made under section 32-2183 of an out-of-state subdivision or any in-state subdivision to which the commissioner issues any order necessary to protect the public interest and insure compliance with the law, rules or public report, the subdivider shall reimburse travel and subsistence expenses incurred by the department.

I. A subdivider may hold a drawing or contest to induce prospective buyers to visit a subdivision if all of the following requirements are met:

1. The subdivision has in effect a current public report.

2. The subdivider is not the subject of an ongoing investigation by the department. The department may give permission to hold a drawing or contest to a subdivider who is the subject of an ongoing investigation.

3. The details of the contest or drawing, including the method of awarding any prize, are submitted to the department for review and approval prior to holding the contest or drawing.

4. Any drawing or contest is limited in time, scope and geographic location.

5. The material terms of the drawing or contest are fully disclosed in writing to participants.

6. No fee is charged to any person who participates in a drawing or contest.

7. No participant in a drawing or contest, as a condition of participation, must attend a sales presentation or take a tour.

8. The subdivider is in compliance with all other applicable federal, state and local laws involving drawings or contests.

9. The subdivider is responsible at all times for the lawful and proper conduct of any drawing or contest.

32-2132. Fees

A. Except as provided in subsection D of this section, the following fees shall be charged and shall not be refunded by the commissioner after issuance of a receipt for payment:

1. A broker's examination application fee of not more than $125.

2. A broker's examination fee of not more than $100.

3. A broker's license fee of not more than $250.

4. A broker's renewal fee of not more than $400.

5. A salesperson's examination application fee of not more than $75.

6. A salesperson's examination fee of not more than $50.

7. A salesperson's license fee of not more than $125.

8. A salesperson's renewal fee of not more than $200.

9. A branch office broker's license fee or renewal fee of not more than $200.

10. A fee for a change of name and address of licensee on records of the department of not more than $20.

11. A duplicate license fee of $5.

12. A fee for reinstatement of license within the license period of $5.

13. A fee for each certificate of correctness of copy of records or documents on file with the department of $1, plus the cost to the department for reproducing the records or documents.

14. A temporary broker's license fee of not more than $50.

15. A temporary cemetery salesperson's license fee of not more than $50.

16. A membership camping salesperson certificate of convenience fee of not more than $50.

17. Fees in an amount to be determined by the commissioner by rule for the following:

(a) A certificate of approval or renewal to operate a school.

(b) An instructor or other school official approval or renewal fee.

(c) A continuing education live classroom course approval or renewal fee.

(d) A prelicensure education live classroom course or prelicensure online course approval or renewal fee. The prelicensure course fee imposed by this subdivision shall be the same and the renewal course fee imposed by this subdivision shall be the same regardless of the instructional format a person uses to complete a prelicensure education course or instructional segment or a renewal education course or instructional segment.

(e) A continuing education distance learning course approval or renewal fee.

B. A corporation, partnership or limited liability company shall not be assessed a fee for the issuance of a broker's license.

C. The commissioner may contract for the processing of applications and the examination of applicants for licensure. The contract may provide for specific fees or a reasonable range for fees as determined by the commissioner for examination applications and examinations to be paid directly to the contractor by the applicant. These fees may not exceed the amounts prescribed in subsection A, paragraphs 1, 2, 5 and 6 of this section.

D. For good cause shown the commissioner may refund fees previously collected.

32-2182. Examination of subdivision by commissioner; fee; time limit to determine violation

A. The commissioner shall examine any subdivision offered for sale or lease and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the subdivider on the basis of actual cost to the department. A filing fee of five hundred dollars or such lesser fee as determined by the commissioner shall accompany the written notification required in section 32-2181. The commissioner may allow the developer to outsource and pay for the cost of physical inspections so long as the department approves the inspector and the inspection for content.

B. The commissioner may, but is not required to, inspect a subdivision site if all of the following apply:

1. The commissioner has previously inspected the subdivision within the past two years.

2. All proposed improvements were complete at the time of the previous inspection.

3. The sales offering does not include any changes to the physical aspects of the subdivision, including the plat, site and locations of improvements.

C. The commissioner is not required to complete the inspection of the subdivision site before issuing a public report. Nevertheless, if the commissioner discovers anything during any subsequent inspection that would have been grounds to deny issuance of the public report or anything that would have warranted additional disclosure in the public report, the commissioner may issue a summary order as provided in section 32-2157.

D. Notwithstanding any other law, the commissioner has no more than five years after the date of an initial complaint or initiation of an investigation by the commissioner to determine if the sale or lease violated this article.

32-2194.02. Examination by commissioner; fee

Before cemetery plots are offered for sale the commissioner shall examine the cemetery and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the cemetery or his agent, on the basis of actual cost to the department. An initial filing fee of five hundred dollars or such lesser fee as determined by the commissioner shall accompany the written notification required in section 32-2194.01.

32-2195.02. Examination of unsubdivided land by commissioner; fee

The commissioner shall examine any unsubdivided land offered for sale or lease pursuant to this article, and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the unsubdivided land or his agent, or the subdivider of the project, on the basis of actual cost to the department. An initial filing fee of five hundred dollars shall accompany the written notification required in sections 32-2195 and 32-2195.10.

32-2197.07. Examination of plan by commissioner; fees

A. The commissioner shall examine any timeshare plan offered for sale or lease in this state or located in this state and shall make public his findings.

B. The commissioner may physically inspect any timeshare plan offered for sale or lease in this state or located in this state.

C. An initial filing fee of twenty dollars per interest with a maximum fee of not more than one thousand dollars shall accompany the notice of intention filed pursuant to section 32-2197.02. A filing fee as established by rule shall accompany the application to amend the timeshare public report required in section 32-2197.04.

D. The developer of the timeshare plan shall bear the total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, on the basis of actual cost to the department.

32-2198.04. Examination of project by commissioner

The commissioner, pursuant to an investigation conducted under section 32-2108 or an application for public report pursuant to section 32-2198.01, may examine any membership campground project offered or sold in this state and make his findings public. The total cost of travel and subsistence expenses incurred by the department in the examination shall be borne by the owner of the project on the basis of the actual cost to the department.

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.

32-2125.02. Nonresident licensees; service of process; employment

A. An application for and acceptance of a license as a nonresident salesperson or broker shall be deemed to constitute irrevocable appointment of the commissioner as the agent or attorney in fact of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of the licensing, out of transactions under the license or in any action which may result in payment from the real estate recovery fund.

B. Duplicate copies of any process shall be served on the commissioner. The plaintiff at the time of service shall pay the commissioner fifteen dollars, taxable as costs in the action. On receiving this service the commissioner shall promptly forward a copy of the service by certified mail to the licensee at the licensee's last address of record with the commissioner. Process served on the commissioner pursuant to this subsection constitutes service of process on the licensee as though the licensee were personally served with the process in this state.

C. A nonresident licensee shall accept employment or compensation as a nonresident licensee only under section 32-2155 and only from a broker who is actively licensed in this state.

D. A nonresident broker shall maintain in this state the records required by section 32-2151.01 and shall notify the commissioner of the address where the records are kept.

E. Broker or salesperson license applicants who do not reside in this state are required to complete a minimum of a twenty-seven hour course that is specific to this state's real estate statutes, rules, practices and procedures and that is prescribed and approved by the commissioner and are required to pass the real estate school examination before taking this state's examination. The subject matter and course outline shall cover areas specific to this state's real estate practice and law. The requirements of this subsection also apply, to the extent applicable, to broker or salesperson applicants who wish to use college credit in fulfillment of the required ninety prelicensure hours.

F. The commissioner may adopt rules necessary for the regulation of nonresident licensees.

32-2101. Definitions

In this chapter, unless the context otherwise requires:

1. "Acting in concert" means evidence of collaborating to pursue a concerted plan.

2. "Advertising" means attempting by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to this chapter, including the land sales contract to be used and any photographs, drawings or artist's presentations of physical conditions or facilities existing or to exist on the property. Advertising does not include:

(a) Press releases or other communications delivered to newspapers, periodicals or other news media for general information or public relations purposes if no charge is made by the newspapers, periodicals or other news media to publish or use any part of these communications.

(b) Communications to stockholders as follows:

(i) Annual reports and interim financial reports.

(ii) Proxy materials.

(iii) Registration statements.

(iv) Securities prospectuses.

(v) Applications for listing of securities on stock exchanges.

(vi) Prospectuses.

(vii) Property reports.

(viii) Offering statements.

3. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.

4. "Associate broker" means a licensed broker who is employed by another broker. Unless otherwise specifically provided, an associate broker has the same license privileges as a salesperson.

5. "Barrier" means a natural or man-made geographic feature that prevents parcels of land from being practicably, reasonably and economically united or reunited and that was not caused or created by the owner of the parcels.

6. "Blanket encumbrance":

(a) Means either:

(i) Any mortgage, any deed of trust or any other encumbrance or lien that secures or evidences the payment of monies and that affects more than one lot or parcel of subdivided land.

(ii) An agreement that affects more than one lot or parcel by which the subdivider holds the subdivision under an option, contract to sell or trust agreement.

(b) Does not include taxes and assessments that are levied by public authority.

7. "Board" means the real estate advisory board.

8. "Broker", when used without modification, means a person who is licensed as a broker under this chapter or who is required to be licensed as a broker under this chapter.

9. "Business broker" means a real estate broker who acts as an intermediary or agent between sellers or buyers, or both, in the sale or purchase, or both, of businesses or business opportunities where a lease or sale of real property is either a direct or incidental part of the transaction.

10. "Camping site" means a space that is designed and promoted for the purpose of locating any trailer, tent, tent trailer, pickup camper or other similar device used for camping.

11. "Cemetery" or "cemetery property" means any one, or a combination of more than one, of the following in a place that is used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault entombments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

(d) A cemetery plot, including interment rights, mausoleum crypts, niches and burial spaces.

12. "Cemetery broker" means a person other than a real estate broker or real estate salesperson who, for another, for compensation:

(a) Sells, leases or exchanges cemetery property or interment services of or for another, or on the person's own account.

(b) Offers for another or for the person's own account to buy, sell, lease or exchange cemetery property or interment services.

(c) Negotiates the purchase and sale, lease or exchange of cemetery property or interment services.

(d) Negotiates the purchase or sale, lease or exchange, or lists or solicits, or negotiates a loan on or leasing of cemetery property or interment services.

13. "Cemetery salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed cemetery or real estate broker, or through and on behalf of a corporation, partnership or limited liability company that is licensed as a cemetery or real estate broker, to perform any act or transaction included in the definition of cemetery broker.

14. "Commissioner" means the state real estate commissioner.

15. "Common promotional plan" means a plan, undertaken by a person or a group of persons acting in concert, to offer lots for sale or lease. If the land is offered for sale by a person or group of persons acting in concert, and the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land is presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. Separate subdividers selling lots or parcels in separately platted subdivisions within a master planned community shall not be deemed to be offering their combined lots for sale or lease as part of a common promotional plan.

16. "Compensation" means any fee, commission, salary, monies or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.

17. "Contiguous":

(a) Means lots, parcels or fractional interests that share a common boundary or point.

(b) Does not include lots, parcels or fractional interests that are separated by either of the following:

(i) A barrier.

(ii) A road, street or highway that has been established by this state or by any agency or political subdivision of this state, that has been designated by the federal government as an interstate highway or that has been regularly maintained by this state or by any agency or political subdivision of this state and has been used continuously by the public for at least the last five years.

18. "Control" or "controlled" means a person who, through ownership, voting rights, power of attorney, proxy, management rights, operational rights or other rights, has the right to make decisions binding on an entity, whether a corporation, a partnership or any other entity.

19. "Corporation licensee" means a lawfully organized corporation that is registered with the Arizona corporation commission and that has an officer licensed as the designated broker pursuant to section 32-2125.

20. "Department" means the state real estate department.

21. "Designated broker" means a natural person who is licensed as a broker under this chapter and who is either:

(a) Designated to act on behalf of an employing real estate, cemetery or membership camping entity.

(b) Doing business as a sole proprietor.

22. "Developer":

(a) Means a person who offers real property in a development for sale, lease or use, either immediately or in the future, on the person's own behalf or on behalf of another person, under this chapter.

(b) Does not include a person whose involvement with a development is limited to listing property within the development for sale, lease or use.

23. "Development" means any division, proposed division or use of real property that the department has authority to regulate, including subdivided and unsubdivided lands, cemeteries, condominiums, timeshares, membership campgrounds and stock cooperatives.

24. "Employing broker" means a person who is licensed or is required to be licensed as a:

(a) Broker entity pursuant to section 32-2125, subsection A.

(b) Sole proprietorship if the sole proprietor is a broker licensed pursuant to this chapter.

25. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size created for the purpose of sale or lease and evidenced by any receipt, certificate, deed or other document conveying the interest. Undivided interests in land, lots or parcels created in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting together as part of a single transaction, acquire the interests without a purpose to divide the interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

26. "Improved lot or parcel" means a lot or parcel of a subdivision on which there is a residential, commercial or industrial building or concerning which a contract has been entered into between a subdivider and a purchaser that obligates the subdivider directly, or indirectly through a building contractor, to completely construct a

residential, commercial or industrial building on the lot or parcel within two years after the date on which the contract of sale for the lot is entered into.

27. "Inactive license" means a license that is issued pursuant to article 2 of this chapter to a licensee who is on inactive status during the current license period and who is not engaged by or on behalf of a broker.

28. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

29. "License" means the whole or part of any agency permit, certificate, approval, registration, public report, charter or similar form of permission required by this chapter.

30. "Licensee" means a person to whom a license for the current license period has been granted under any provision of this chapter, and, for the purposes of section 32-2153, subsection A, includes original license applicants.

31. "License period" means the two-year period beginning with the date of original issue or renewal of a particular license and ending on the expiration date, if any.

32. "Limited liability company licensee" means a lawfully organized limited liability company that has a member or manager who is a natural person and who is licensed as the designated broker pursuant to section 32-2125.

33. "Live classroom course" means a course or instructional segment delivered in either an in-person classroom instructional format or a synchronous remote instructional format that allows students to observe and participate remotely in an instructional segment via livestreaming.

34. "Lot reservation" means an expression of interest by a prospective purchaser in buying at some time in the future a subdivided or unsubdivided lot, unit or parcel in this state. In all cases, a subsequent affirmative action by the prospective purchaser must be taken to create a contractual obligation to purchase.

35. "Master planned community" means a development that consists of two or more separately platted subdivisions and that is either subject to a master declaration of covenants, conditions or restrictions, is subject to restrictive covenants sufficiently uniform in character to clearly indicate a general scheme for improving or developing real property or is governed or administered by a master owner's association.

36. "Member" means a member of the real estate advisory board.

37. "Membership camping broker" means a person, other than a salesperson, who, for compensation:

(a) Sells, purchases, lists, exchanges or leases membership camping contracts.

(b) Offers to sell, purchase, exchange or lease membership camping contracts.

(c) Negotiates or offers, attempts or agrees to negotiate the sale, purchase, exchange or lease of membership camping contracts.

(d) Advertises or holds himself out as being engaged in the business of selling, buying, exchanging or leasing membership camping contracts or counseling or advising regarding membership camping contracts.

(e) Assists or directs in procuring prospects calculated or intended to result in the sale, purchase, listing, exchange or lease of membership camping contracts.

(f) Performs any of the foregoing acts as an employee or on behalf of a membership camping operator or membership contract owner.

38. "Membership camping contract" means an agreement that is offered or sold in this state evidencing a purchaser's right or license to use the camping or outdoor recreation facilities of a membership camping operator and includes a membership that provides for this use.

39. "Membership camping operator":

(a) Means an enterprise, other than one that is tax exempt under section 501(c)(3) of the internal revenue code of 1986, as amended, that solicits membership paid for by a fee or periodic payments and has as one of its purposes camping or outdoor recreation, including the use of camping sites primarily by members.

(b) Does not include camping or recreational trailer parks that are open to the general public and that contain camping sites rented for a per use fee or a mobile home park.

40. "Membership camping salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed membership camping or real estate broker, or by or on behalf of a corporation, partnership or limited liability company that is licensed as a membership camping or real estate broker, to perform any act or participate in any transaction in a manner included in the definition of membership camping broker.

41. "Online course" means prelicensure education that is a planned learning experience with a geographic separation that may be synchronous or asynchronous, that does not require real-time interaction between a student and an instructor and that uses a platform with self-paced or prerecorded lessons and materials that a student can access via the internet to proceed at the student's own pace.

42. "Partnership licensee" means a partnership with a managing general partner who is licensed as the designated broker pursuant to section 32-2125.

43. "Permanent access", as required under article 4 of this chapter, means permanent access from the subdivision to any federal, state or county highway.

44. "Perpetual care" or "endowed care":

(a) Means maintaining and caring, in all places where interments have been made, for the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery.

(b) Does not include maintaining or repairing monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

45. "Perpetual or endowed-care cemetery" means a cemetery in which lots or other burial spaces are sold or transferred under the representation that the cemetery will receive perpetual care or endowed care free of further cost to the purchaser after payment of the original purchase price for the lot, burial space or interment right.

46. "Person" means any individual, corporation, partnership or company and any other form of multiple organization for carrying on business, foreign or domestic.

47. "Private cemetery" means a cemetery or place that is not licensed under article 6 of this chapter, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are not made to the public and in which not more than ten interments or burials occur annually.

48. "Promotion" or "promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in or use of real property subject to this chapter, including meetings with prospective purchasers, arrangements for prospective purchasers to visit real property, travel allowances and discount, exchange, refund and cancellation privileges.

49. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.

50. "Real estate broker" means a person, other than a salesperson, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents or leases real estate, businesses and business opportunities or timeshare interests.

(b) Offers to sell, exchange, purchase, rent or lease real estate, businesses and business opportunities or timeshare interests.

(c) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate, businesses and business opportunities or timeshare interests.

(d) Lists or offers, attempts or agrees to list real estate, businesses and business opportunities or timeshare interests for sale, lease or exchange.

(e) Auctions or offers, attempts or agrees to auction real estate, businesses and business opportunities or timeshare interests.

(f) Buys, sells, offers to buy or sell or otherwise deals in options on real estate, businesses and business opportunities or timeshare interests or improvements to real estate, businesses and business opportunities or timeshare interests.

(g) Collects or offers, attempts or agrees to collect rent for the use of real estate, businesses and business opportunities or timeshare interests. This subdivision does not apply to a person who is not a licensee, who works for a real estate broker or a real estate salesperson, who collects in-person rent and related fees on behalf of the real estate broker or real estate salesperson for the use of real estate as part of the person's clerical duties and who provides a receipt when rent is paid.

(h) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate, businesses and business opportunities or timeshare interests or counseling or advising regarding real estate, businesses and business opportunities or timeshare interests.

(i) Assists or directs in procuring prospects that are calculated to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests.

(j) Assists or directs in negotiating any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests.

(k) Incident to the sale of real estate, businesses and business opportunities negotiates or offers, attempts or agrees to negotiate a loan secured or to be secured by any mortgage or other encumbrance on or transfer of real estate, businesses and business opportunities or timeshare interests subject to section 32-2155, subsection D. This subdivision does not apply to mortgage brokers as defined in and subject to title 6, chapter 9, article 1.

(l) Engages in the business of assisting or offering to assist another in filing an application for the purchase or lease of, or in locating or entering on, lands owned by the state or federal government.

(m) Claims, demands, charges, receives, collects or contracts to collect an advance fee in connection with any employment enumerated in this section, including employment undertaken to promote the sale or lease of real property by advance fee listing, by furnishing rental information to a prospective tenant for a fee paid by the prospective tenant, by advertising or by any other offering to sell, lease, exchange or rent real property or selling kits connected therewith. This does not include the activities of any communications media of general circulation or coverage not primarily engaged in advertising real estate or any communications media activities that are specifically exempt from applicability of this article under section 32-2121.

(n) Engages in any of the acts listed in subdivisions (a) through (m) of this paragraph for the sale or lease of other than real property if a real property sale or lease is a part of, contingent on or ancillary to the transaction.

(o) Performs any of the acts listed in subdivisions (a) through (m) of this paragraph as an employee of, or in behalf of, the owner of real estate, or interest in the real estate, or improvements affixed on the real estate, for compensation.

(p) Acts as a business broker.

51. "Real estate sales contract" means an agreement in which one party agrees to convey title to real estate to another party on the satisfaction of specified conditions set forth in the contract.

52. "Real estate salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a limited liability company, partnership or corporation that is licensed as a real estate broker, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to section 32-2155.

53. "Sale" or "lease" includes every disposition, transfer, option or offer or attempt to dispose of or transfer real property, or an interest, use or estate in the real property, including offering the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.

54. "Salesperson", when used without modification, means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation licensed under this chapter or any person required to be licensed as a salesperson under this chapter.

55. "School" means a person or entity that offers a course of study toward completion of the education requirements leading to licensure or renewal of licensure under this chapter.

56. "Stock cooperative" means a corporation to which all of the following apply:

(a) The corporation is formed or used to hold title to improved real property in fee simple or for a term of years.

(b) All or substantially all of the shareholders of the corporation each receive a right of exclusive occupancy in a portion of the real property to which the corporation holds title.

(c) The right of occupancy may only be transferred with the concurrent transfer of the shares of stock in the corporation held by the person having the right of occupancy.

57. "Subdivider":

(a) Means any person who offers for sale or lease six or more lots, parcels or fractional interests in a subdivision or who causes land to be subdivided into a subdivision for the subdivider or for others, or who undertakes to develop a subdivision.

(b) Does not include a public agency or officer authorized by law to create subdivisions.

58. "Subdivision" or "subdivided lands":

(a) Means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.

(b) Includes a stock cooperative, lands divided or proposed to be divided as part of a common promotional plan and residential condominiums as defined in title 33, chapter 9.

(c) Does not include:

(i) Leasehold offerings of one year or less.

(ii) The division or proposed division of land located in this state into lots or parcels each of which is or will be thirty-six acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel.

(iii) The leasing of agricultural lands or apartments, offices, stores, hotels, motels, pads or similar space within an apartment building, industrial building, rental recreational vehicle community, rental manufactured home community, rental mobile home park or commercial building.

(iv) The subdivision into or development of parcels, plots or fractional portions within the boundaries of a cemetery that has been formed and approved pursuant to this chapter.

(v) A sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest if the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, on investigation by the commissioner, there is evidence of intent to subdivide.

59. "Timeshare" or "timeshare property" means real property ownership or right of occupancy in real property pursuant to article 9 of this chapter. For the purposes of this chapter, a timeshare is not a security unless it meets the definition of a security under section 44-1801.

60. "Trustee":

(a) Means a person who either:

(i) Is designated under section 32-2194.27 to act as a trustee for an endowment-care cemetery fund.

(ii) Holds bare legal title to real property under a subdivision trust.

(b) Does not include a developer, subdivider, broker or salesperson within this chapter.

61. "Unimproved lot or parcel" means a lot or parcel of a subdivision that is not an improved lot or parcel.

62. "Unsubdivided lands":

(a) Means land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests and the lots or parcels are thirty-six acres or more each but less than one hundred sixty acres each, or that are offered, known or advertised under a common promotional plan for sale or lease, except that agricultural leases shall not be included in this definition.

(b) Includes any land that is sold and that would otherwise constitute the sixth lot, parcel or fractional interest if the sale occurs ten or more years after the earliest of the previous five sales and if all of the sales consist of property that was originally contained within the same parcel that is thirty-six acres or more and less than one hundred sixty acres.

32-2121. Applicability of article; exceptions

A. This article does not apply to:

1. A natural person, a corporation through its officers, a partnership through its partners or a limited liability company through its members or managers that deals in selling, exchanging, purchasing, renting, leasing, managing or pledging the person's or entity's own property, including cemetery property and membership camping contracts, and that does not receive special compensation for a sales transaction or does not receive special compensation or other consideration, including property management fees or consulting fees for any property management services performed, if the majority of an officer's, partner's, member's or manager's activities do not involve the acts of a real estate broker, cemetery broker or membership camping broker as defined in section 32-2101.

2. A person holding a valid power of attorney that is being used for a specific purpose in an isolated transaction and not as a method of conducting a real estate business.

3. An attorney performing the attorney's duties as an attorney. This paragraph does not allow an attorney to otherwise engage in any acts requiring a license under this article.

4. Any receiver, a trustee in bankruptcy or any other person acting under an order of a court.

5. A trustee selling under a deed of trust.

6. Natural persons who are acting as residential leasing agents or on-site managers of residential rental property, who are performing residential leasing activities on residential income property at not more than one location during the period of the agents' or on-site managers' regular workday, who do not receive special compensation for the acts described in subdivisions (a) through (e) of this paragraph and who are employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment. A bonus that is paid to a residential leasing agent or on-site manager working under the supervision of a licensed real estate broker and that is based on performance, that is received not more frequently than monthly and that does not exceed one-half of the agent's or on-site manager's total compensation for the time period does not constitute special compensation for the acts described in subdivisions (a) through (e) of this paragraph. For the purposes of this paragraph, "residential leasing agents or on-site managers" means natural persons who are employed by the owner or the owner's licensed management agent and whose normal duties and responsibilities include any one or a combination of the following:

(a) Preparing and presenting to any person a residential lease, application or renewal or any amendment of the lease.

(b) Collecting or receiving a security deposit, a rental payment or any related payment for delivery to and made payable to a property, a property manager, an owner or the location.

(c) Showing a residential rental unit to any prospective tenant.

(d) Executing residential leases or rental agreements adopted under title 33, chapter 10.

(e) Acting on behalf of the owner or the owner's licensed management agent to deliver notice pursuant to title 12, chapter 8 and title 33, chapters 10 and 11.

7. Any officer or employee of a governmental agency who is not a contract or temporary employee of the agency in conducting the officer's or employee's official duties.

8. One natural person who acts as a property manager for one nonresidential income property or for two or more contiguous nonresidential income properties that are under common ownership and who is employed by the

owner or the owner's licensed management agent to perform the duties customarily associated with that employment.

9. Natural persons who are employed by an employing broker, a person otherwise licensed under this chapter or a person or entity exempt under this section, who are unlicensed and perform clerical, bookkeeping, accounting and other administrative and support duties, who are not engaged in any other acts requiring a license under this chapter and whose employment is not conditioned on or designed to perform duties otherwise requiring a license under this chapter.

10. Natural persons who are employed by an employing broker and who perform telemarketing services that are limited to soliciting interest in engaging the services of a licensee or broker or gathering demographic information that will be used by a licensee or broker to solicit prospective buyers, sellers, lessees and lessors.

11. Communications media or their representatives that are primarily engaged in advertising real estate and that perform no other acts requiring a real estate license, if:

(a) The communications media or their representatives do not, directly or indirectly, compile or represent that they compile information about specific prospective purchasers or tenants, except that general information about prospective purchasers or tenants, such as demographic and marketing information, may be compiled.

(b) The communications media or their representatives do not make representations to prospective real property sellers or landlords, or their representatives, concerning specific prospective purchasers or tenants or specific sales or leasing leads.

(c) The fee charged for advertising is based solely on the advertising services provided.

(d) The advertisements provide for direct contact between the seller or landlord and the prospective buyers or tenants, or for contact through a licensed real estate broker or property management firm. The communications media or their representatives shall not act as intermediaries or assist in any intermediary action between prospective parties to a real estate transaction, except that additional information about advertised properties may be provided to prospects on request.

12. Persons who perform residential property management services or marketing and promotional services solely for nursing care institutions as defined in section 36-401 or pursuant to life care contracts as defined in section 20-1801.

13. A person who offers to sell or lease property that constitutes a security as defined in section 44-1801 and that is offered, sold or leased in compliance with title 44, chapter 12 if the person is a registered securities dealer or salesperson pursuant to title 44, chapter 12, article 9.

14. A person who manages a hotel, motel or recreational vehicle park.

15. A person who, on behalf of another, solicits, arranges or accepts reservations or monies, or both, for occupancies of thirty-one or fewer days in a dwelling unit.

16. An escrow agent in performing the escrow agent's duties as an escrow agent, a title insurer in performing the title insurer's duties as a title insurer or a title insurance agent in performing the title insurance agent's duties as a title insurance agent. This paragraph does not allow an escrow agent, a title insurer or a title insurance agent to otherwise engage in acts requiring a license under this article.

17. Notwithstanding paragraph 1 of this subsection, a corporation through its officers and employees that purchases, sells, exchanges, rents, leases, manages or pledges its property if both of the following apply:

(a) The activity is only incidental to the business of the corporation.

(b) The officers and employees engaged in the activity do not receive special compensation or other consideration for the activity.

18. A trust company owned by a bank holding company regulated by the federal reserve board or a bank in exercising its fiduciary duties under the terms of a trust agreement to which real property is subject.

19. A person who receives a finder fee pursuant to section 32-2176 or 32-2197.21.

B. The commissioner may grant an exemption from the licensure requirements of this article to any corporation that applies for an exemption on a finding that both of the following apply:

1. The corporation is a nonprofit corporation that provides project-based housing services and operates solely as a charitable organization as defined in section 44-6551.

2. The corporation's sole activities related to real estate involve ownership or management of residential property owned or controlled by the corporation.

32-2122. License required of brokers and salespersons

A. This article applies to any person acting in the capacity of a:

1. Real estate broker.

2. Real estate salesperson.

3. Cemetery broker.

4. Cemetery salesperson.

5. Membership camping broker.

6. Membership camping salesperson.

B. It is unlawful for any person, corporation, partnership or limited liability company to engage in any business, occupation or activity listed in subsection A of this section without first obtaining a license as prescribed in this chapter and otherwise complying with this chapter.

C. A person, corporation, partnership or limited liability company that is licensed as a salesperson or broker pursuant to this article or that is engaging in any work for which a license is required under this article is subject to the requirements of this chapter in performing any acts included in the definition of a broker unless otherwise provided in this chapter.

D. Except as otherwise provided in this subsection, any act, in consideration or expectation of compensation, that is included in the definition of a real estate broker, cemetery broker or membership camping broker, whether the act is an incidental part of a transaction or the entire transaction, constitutes the person offering or attempting to perform the act of a real estate broker or real estate salesperson, a cemetery broker or cemetery salesperson or a membership camping broker or a membership camping salesperson within the meaning of this chapter. A person who is not a licensee may collect in-person rent and related fees for the use of real estate as part of the person's clerical duties if the person works for a licensee, the rent collection is on behalf of the licensee and the person provides a receipt when rent is paid.

32-2125.01. Issuance of license; multiple licenses; use

A. When the requirements for application, examination and payment of fees are completed to the satisfaction of the commissioner, the commissioner shall issue the license applied for to the applicant. Any person who has passed the state examination for broker or salesperson must become licensed within one year from the date of the examination. Failure to comply with this section will necessitate the submission to and passing of another examination.

B. Not more than one license shall be issued and outstanding to or in favor of a licensee at any one time, except that a person licensed as a real estate broker or real estate salesperson may engage in cemetery or membership camping sales activities without being separately licensed to engage in these activities. A real estate licensee may have only one employing broker in each of the following categories:

1. Cemetery.

2. Membership camping.

3. Real estate.

C. A designated or employing real estate broker may engage in cemetery or membership camping sales activities and may employ cemetery and membership camping salespersons and associate brokers without being separately licensed as a cemetery or membership camping broker or salesperson.

32-2126. Place of business required; notice of change in location; failure to give notice as cancellation of license; signs

A. Each employing broker shall have and maintain a definite place of business. Notice of change of business location shall be given to the commissioner in writing and the commissioner shall issue a new license for the unexpired period. Change or abandonment of a business location without notice shall automatically cancel the broker's license and shall sever the license of any salesperson or associate broker employed by the employing broker. If an employing broker's license is cancelled pursuant to this subsection and the broker's license is later reinstated, any salesperson or associate broker employed by the employing broker whose license was severed pursuant to this subsection may be rehired.

B. Each designated broker and, if applicable, each employing broker shall cause a sign to be affixed at the entrance to the broker's place of business, in a place and position clearly visible to all entering the place of business, with the name of the broker, the name under which the broker is doing business if other than the broker's given name, and sufficient wording to establish that the person is a real estate broker, cemetery broker or membership camping broker. In addition to any other applicable law, the sign shall conform to rules adopted by the commissioner.

C. Upon removal from any location the broker shall remove the sign from the location. A broker shall not display any name at designated places of business named in the broker's license other than the name under which the broker is licensed.

32-2127. Licenses for additional places of business; branch office manager; broker's temporary absence

A. When a broker maintains more than one place of business within the state he shall be required to procure an additional license for each branch office maintained.

B. Branch office licenses shall be issued in the same name as the principal office license is issued, and the license must be posted in the branch office. Branch office signs shall conform to the provisions for the principal office and shall include the designation "branch office".

C. Each branch office shall be under the management of a broker or a licensed salesman.

D. If a designated broker is unable to act within twenty-four hours, he may designate a licensee whom he employs or another designated broker to act in his behalf. The designated broker shall make this designation in writing and shall keep the original designation at his office for one year from its effective date. A copy of this designation must be attached to any hire, sever or renewal form submitted to the department which is signed by the designated broker's designee. This designation shall not exceed thirty days' duration and may authorize the designee to perform any and all duties the designated broker may legally perform, except that a salesperson shall not be authorized to hire or sever licensees. A written designation is required for each temporary absence.

32-2128. Display and possession of license certificates; electronic records

A. The designated broker's and, if applicable, the employing broker's license certificate shall be prominently displayed in the office of the broker, and all other license certificates shall be readily available. A salesperson's or associate broker's license certificate shall remain in the possession of the employer until it is cancelled, terminated, suspended or revoked by the department or until the licensee is severed from employment, when the designated broker shall dispose of the license certificate.

B. A designated broker may comply with the possession requirements for a salesperson's or associate broker's license certificate prescribed by subsection A of this section by doing both of the following:

1. Accessing the licensee's record in the department's public database that the department posts on its website.

2. Printing a copy of the record that shows current and active licensure or having the record available electronically.

32-2133. Temporary broker's license

A. Notwithstanding any other law, the commissioner may issue a temporary license as a broker to a licensed or unlicensed person for the purpose of winding up the existing or pending business of a licensed broker in the following cases:

1. To the surviving spouse or next of kin or to the administrator or personal representative or the employee of the administrator or personal representative of a deceased licensed broker.

2. To the spouse, next of kin, employee, legal guardian or conservator of a licensed broker in a state of disability by sickness, injury or insanity.

B. Each temporary license is for a period of not over ninety days and shall not be extended for a longer period, except that a license issued to a personal representative or administrator or the employee of the personal representative or administrator pursuant to subsection A, paragraph 1 continues until the personal representative or administrator disposes of the deceased broker's business, but not to exceed a period of fifteen months.

C. No more than one temporary license may be issued to or with respect to the same individual within any one year period.

D. A temporary licensee has the same license powers and obligations as under a permanent license.

32-2151. Disposition of funds; trust money deposit requirements

A. Unless otherwise provided in writing by all parties to a transaction, any licensed real estate broker who does not immediately place all funds entrusted to the broker, in the broker's capacity as a real estate broker, in a neutral escrow depository in this state shall upon receipt place all such funds in a trust fund account in a federally insured or guaranteed account in a depository located in this state. The commissioner may adopt such rules as are necessary to provide for records to be maintained and the manner in which such trust fund account deposits may be made.

B. The following minimum requirements apply to each broker's trust fund account:

1. The broker shall make deposits to trust fund accounts by deposit slips. Receipts or other documentation shall identify each transaction, the date and the amount of each deposit and the names of parties involved in the transaction represented by the deposit and monies shall be used only for the purpose for which the monies were deposited.

2. The broker shall retain a complete record of all monies received in connection with a real estate transaction in the main or branch office of the designated broker in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department. A broker's records shall be kept according to generally accepted accounting principles and shall include a properly descriptive receipts and disbursement journal and client ledger. The broker shall keep any computerized records in a manner allowing reconstruction in the event of destruction of electronic data. The broker shall maintain a trust fund account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust fund account at least once every twelve months. A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a broker deposits monies not exceeding three thousand dollars to keep the account open or to avoid charges for an insufficient minimum balance.

C. An agreement to place monies entrusted to the broker in a depository that is located outside of this state is valid if all parties to the transaction agree in writing and either:

1. The monies are placed in a property management trust account established pursuant to section 32-2174 and:

(a) The account is federally insured or guaranteed.

(b) The property management agreement contains:

(i) Disclosure that the department's regulatory protections of the owner's monies may be significantly hampered.

(ii) Disclosure that the owner may not have access to or any control over the trust account, except to audit and review the status of the account.

(iii) An addendum that has the signed authorization by an appropriately empowered official of the depository in which the trust account is placed that the trust account and all related documentation will be open to examination by the department and the owner.

2. If the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside this state.

D. This section shall not be construed to allow a broker to commingle monies entrusted to the broker with the broker's own monies, unless the commissioner adopts rules that allow commingling.

32-2154. Cease and desist orders; hearing

A. If it appears to the commissioner that any person has engaged, is engaging or is preparing to engage in any act, practice or transaction that constitutes a violation of this chapter or any rule adopted or order issued by the commissioner, the commissioner may issue an order directing any person to cease and desist from engaging in the act, practice or transaction or doing any act in furtherance of the act, practice or transaction, to make restitution or to take appropriate affirmative action, within a reasonable period of time as prescribed by the commissioner, to correct the conditions resulting from the act, practice or transaction.

B. A person aggrieved by a cease and desist order issued by the commissioner pursuant to this section may request a hearing pursuant to title 41, chapter 6, article 10 and the commissioner may issue the order or orders as the commissioner deems necessary to protect the public interest. The commissioner may also bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing in violation of this chapter. These proceedings shall be promptly instituted and determined.

32-2155. Restriction on employment or compensation of person as broker or salesperson

A. A broker shall employ and pay only active licensees, and a licensee shall accept employment and compensation as a licensee only from either or both of the following:

1. The legally licensed broker to whom the licensee is licensed.

2. An employer other than the legally licensed broker as described in paragraph 1 of this subsection if the all of the following apply:

(a) The employer holds a license.

(b) The licensee is the employer's employee and receives a federal form W-2 wage and tax statement.

(c) The employer has the same employing broker as the licensee.

(d) The employer obtains written permission from the employing broker to pay the licensee.

B. If the licensee is licensed through a professional corporation or a professional limited liability company, the employing broker may pay and the licensee may receive compensation only through the licensed professional corporation of which the licensee is an officer and shareholder or the licensed professional limited liability company of which the licensee is a member or manager.

C. It is unlawful for a person, firm or corporation, whether an obligor, escrow holder or otherwise, to pay or deliver to anyone compensation for performing any of the acts specified by this chapter, as a broker, who is not licensed at the time the service is rendered. An identification card or certificate of license issued by the state real estate department showing that the person, firm or corporation holds a license for the year in which the payment is made or earned is sufficient proof to relieve from any penalty for a violation of this section the obligor, escrow holder or other person who relied in good faith on the card or certificate.

D. A real estate broker or real estate salesperson shall not collect compensation for rendering services in negotiating loans secured by real property unless all of the following apply:

1. The broker or salesperson is licensed pursuant to title 6, chapter 9 or is an employee, officer or partner of a corporation or partnership licensed pursuant to title 6, chapter 9.

2. The broker or salesperson has disclosed to the person from whom the compensation is collected that the broker or salesperson is receiving compensation both for real estate brokerage, when applicable, and for mortgage broker services.

3. The compensation does not violate any other state or federal law.

E. Notwithstanding subsection A or B of this section, brokers licensed under this chapter may employ residential leasing agents or managers of residential rental properties, as prescribed by section 32-2121, subsection A, paragraph 6. The exemption of residential leasing agents or managers of residential rental property under article 2 of this chapter does not exempt the designated broker from the responsibility to exercise reasonable supervision over these leasing agents or managers.

32-2163. Unlawful acts; out-of-state broker; cooperation agreement

A. It is unlawful for any licensed broker in this state to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter if the person is not also a licensed broker in this state, or a salesperson licensed under the broker employing or compensating the salesperson, except that a licensed broker in this state may pay compensation to and receive compensation from a broker who is lawfully operating in another state.

B. Notwithstanding that pursuant to subsection A of this section a licensed broker in this state may pay to and receive compensation from an out-of-state broker, this authority does not allow an out-of-state broker to conduct activity in this state that would otherwise require a broker's license issued by the department.

C. A licensed broker in this state may cooperate with an out-of-state broker who would otherwise require licensure in this state if:

1. The licensed broker and the out-of-state broker enter into a written cooperation agreement before the out-of-state broker conducts any activity otherwise requiring a broker's license pursuant to this chapter. The cooperation agreement shall include the following:

(a) A list of the real estate activities to be conducted by the out-of-state broker.

(b) A statement that the out-of-state broker agrees to fully comply with the laws of this state and submit to the regulatory jurisdiction of the department for activities subject to real estate broker licensure pursuant to this chapter.

(c) A statement that the licensed broker in this state understands and accepts responsibility for the acts of the out-of-state broker.

2. All negotiations in this state or with people who own property in this state are conducted through the licensed broker in this state.

3. The licensed broker in this state assumes all responsibility for the acts of the out-of-state broker.

4. All principal funds handled by either the licensed broker in this state or the out-of-state broker are subject to the deposit and handling requirements of section 32-2151.

D. The offering of real estate brokerage services specified by section 32-2101, paragraph 50 for compensation or any other thing of value pertaining to real property located in this state through an internet website constitutes activity that requires a broker's license issued by the department.

E. This section does not allow an out-of-state broker who is not licensed in this state to list, market or advertise in this state real property located in this state for sale, lease or exchange.

F. Signs shall not be placed on real property in this state by an out-of-state broker. An out-of-state broker shall not use a cooperation agreement as authority to sell, lease, rent, exchange or attempt to sell, lease, rent or exchange real property to a resident of this state.

32-2174. Property management accounts

A. All property management accounts shall be designated as trust accounts and shall include descriptive wording, substantially similar to one of the following, in the trust account title:

1. "Trust account".

2. "Fiduciary account".

3. "In trust for (individual or entity name)".

4. "Trustee for (individual or entity name)".

5. "Fiduciary for (individual or entity name)".

B. A broker's trust account is required for all of the owner's monies, except if the owner directs the broker to deposit the monies directly into the owner's account. The broker shall not have access to the owner's account. Trust accounts may be interest bearing.

C. The designated broker for a property management firm may authorize either a licensee or an unlicensed natural person in the direct employ of the broker to transfer monies or to be a signatory on the property management firm's trust accounts. If the person who is designated to sign on behalf of the designated property management broker is an unlicensed person, that person shall be a bona fide officer, member, principal or employee of the property management firm. The broker may require dual signatures on checks and may use a facsimile signature according to the broker's business policies and procedures. The designation of a licensed or unlicensed person to transfer monies or to be a signatory on trust accounts does not lessen the broker's responsibility or liability for any monies handled.

D. Within three banking days after receiving monies that are not subject to dispute or contingency, the property management firm shall deposit the monies in either the owner's direct account or the property management firm's trust account for the benefit of the owner. A property management firm may remit an owner's monies under its control to or for the owner by any lawful means available.

E. Each rental agreement executed by a property manager shall include a provision that clearly states the disposition of any tenant deposits.

32-2136. Broker management clinics

A. The department shall determine the instructor qualifications for teaching broker management clinics and the course content of broker management clinics for persons required to attend these clinics pursuant to subsection C of this section.

B. A broker management clinic shall consist of three courses of three hours each. The course topics shall be broker statute and rule requirements, including instruction on department audits, and the legal obligations of designated brokers, broker policy development and employee supervision and broker responsibilities and related topics. A broker management clinic shall address record keeping requirements, trust fund accounts, advertising and promotions, employment agreements, contracts, fiduciary duties, material disclosures, department investigations and risk management. A broker management clinic may be designed to address property management activities, a specialty field of real estate or sales activities, or any combination described in this subsection.

C. An applicant for an original real estate broker's license shall attend a broker management clinic before activating the license. A broker shall attend a broker management clinic before becoming a designated broker, unless the broker has attended a broker management clinic during the preceding twenty-three months. All designated brokers and associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G, shall attend a broker management clinic once during each twenty-four months of licensure after their initial attendance.

D. Attendance at a broker management clinic constitutes three courses of three hours each for a total of nine credit hours of real estate oriented education pursuant to section 32-2130, subsection A.

32-2164. Unlawful subdivision lot sales

It is unlawful for a licensed real estate broker or salesperson to assist a subdivider or agent of such subdivider in the offer, sale or lease of a subdivision lot or parcel in violation of any provision of this chapter or any rule adopted or order issued by the commissioner if the licensee knew or should have known of the violation.

32-2166. Activities while incarcerated; violation; classification

A. While incarcerated a person who is licensed pursuant to this chapter shall not perform acts that require a license under this chapter.

B. A person who violates this section is guilty of a class 6 felony.

32-2161. False statements or publications concerning land, subdivision or membership camping contract for sale or lease; classification; definition

A. Every person who knowingly authorizes or directs any publication or any false statement or representation concerning any land, subdivision or membership camping contract offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning the land, subdivision or membership camping contract contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes it or causes it to be issued, circulated, published or distributed, or who in any respect knowingly violates or fails to comply with any order, permit, decision, demand or requirement of the commissioner under the provisions of this chapter, is guilty of a class 6 felony and, if a licensee, shall be tried before the commissioner for suspension or revocation of his license.

B. For purposes of this section, "knowingly" or "with knowledge" includes, but is not limited to, engaging in any conduct prohibited in subsection A if such person knew or should have known of the falsity of any statement or representation.

32-2183. Subdivision public reports; denial of issuance; unlawful sales; voidable sale or lease; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of a subdivision, the commissioner, unless there are grounds for denial, shall issue to the subdivider a public report authorizing the sale or lease in this state of the lots, parcels or fractional interests within the subdivision. The report shall contain the data obtained in accordance with section 32-2181 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the lots, parcels or fractional interests within the subdivision are located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, under a military training route as delineated in the military training route map prepared pursuant to section 37-102, under restricted air space as delineated in the restricted air space map prepared pursuant to section 37-102 or contained in the military electronics range as delineated in the military electronics range map prepared pursuant to section 37-102, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A, section 32-2183.05 or section 32-2183.06 and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B or section 37-102, the report shall include a copy of the map. The military airport report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or before December 31 of the year in which the lots, parcels or fractional interests within a subdivision become territory in the vicinity of a military airport or ancillary military facility. The military training route report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2004. The restricted air space report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2006. The military electronics range report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2008. The commissioner shall require the subdivider to reproduce the report, make the report available to each initial prospective customer and furnish each initial buyer or lessee with a copy before the buyer or lessee signs any offer to purchase or lease, taking a receipt therefor.

B. This section shall not be construed to require a public report issued sixty or fewer days prior to the filing of the military electronics range map prepared pursuant to section 37-102 to meet the military electronics range notification requirements of this section.

C. A public report issued sixty-one or more days after the filing of the military electronics range map prepared pursuant to section 37-102 shall meet all of the requirements of subsection A of this section.

D. Notwithstanding subsection A of this section, a subdivider may elect to prepare a final public report for use in the sale of improved lots as defined in section 32-2101, as follows:

1. The subdivider shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2181 and 32-2184 and shall comply with all other requirements of this article.

2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The subdivider shall place the number on each public report.

4. On receipt of the notification and public report, the department shall review and issue within ten business days either a certification that the notification and public report are administratively complete or a denial letter if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public. If the commissioner has received the notification and public report but has not issued a certification or a denial letter within ten business days pursuant to this paragraph, the notification and public report are administratively complete.

5. A subdivider may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness or, if applicable, after the notification and public report are deemed to be administratively complete pursuant to paragraph 4 of this subsection, the department may examine any public report, subdivision or applicant that has applied for or received the certificate. If the commissioner determines that the subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that the commissioner may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

E. The commissioner may suspend, revoke or deny issuance of a public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of all streets, sewers, electric, gas and water utilities, drainage and flood control facilities, community and recreational facilities and other improvements included in the offering.

5. Failure to make a showing that the lots, parcels or fractional interests can be used for the purpose for which they are offered.

6. The owner, agent, subdivider, officer, director or partner, subdivider trust beneficiary holding ten per cent or more direct or indirect beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Controlled an entity to which subdivision (b), (c), (d) or (e) applies.

7. Procurement or an attempt to procure a public report by fraud, misrepresentation or deceit or by filing an application for a public report that is materially false or misleading.

8. Failure of the declaration for a condominium created pursuant to title 33, chapter 9, article 2 to comply with the requirements of section 33-1215 or failure of the plat for the condominium to comply with the requirements of section 33-1219. The commissioner may require an applicant for a public report to submit a notarized statement signed by the subdivider or an engineer or attorney licensed to practice in this state certifying that the condominium plat and declaration of condominium are in compliance with the requirements of sections 33-1215 and 33-1219. If the notarized statement is provided, the commissioner is entitled to rely on this statement.

9. Failure of any blanket encumbrance or valid supplementary agreement executed by the holder of the blanket encumbrance to contain provisions that enable the purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance, on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the commissioner containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

10. Failure to demonstrate permanent access to the subdivision lots or parcels.

11. The use of the lots presents an unreasonable health risk.

F. It is unlawful for a subdivider to sell any lot in a subdivision unless one of the following occurs:

1. All proposed or promised subdivision improvements are completed.

2. The completion of all proposed or promised subdivision improvements is assured by financial arrangements acceptable to the commissioner. The financial arrangements may be made in phases for common community and recreation facilities required by a municipality or county as a stipulation for approval of a plan for a master planned community.

3. The municipal or county government agrees to prohibit occupancy and the subdivider agrees not to close escrow for lots in the subdivision until all proposed or promised subdivision improvements are completed.

4. The municipal or county government enters into an assurance agreement with any trustee not to convey lots until improvements are completed within the portion of the subdivision containing these lots, if the improvements can be used and maintained separately from the improvements required for the entire subdivision plat. The agreement shall be recorded in the county in which the subdivision is located.

G. If the subdivision is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless the subdivider has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

H. In areas outside of active management areas, if the subdivision is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the subdivision has an adequate water supply.

2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The plat was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

I. A subdivider shall not sell or lease or offer for sale or lease in this state any lots, parcels or fractional interests in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02, and a certificate of administrative completeness issued pursuant to this section. Unless exempt, the sale or lease of subdivided lands prior to issuance of the public report or failure to deliver the public report to the purchaser or lessee shall render the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction shall be brought within three years of the date of execution of the purchase or lease agreement by the purchaser or lessee. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

J. On a print advertisement in a magazine or newspaper or on an internet advertisement that advertises a specific lot or parcel of a subdivider, the subdivider shall include a disclosure stating that "a public report is available on the state real estate department's website".

K. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

L. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the subdivider or the subdivider's agent is violating this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the subdivider. For the purpose of examination, the subdivider shall keep and maintain records of all sales transactions and funds received by the subdivider pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

M. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that any person has violated this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report or special order of exemption, or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report as provided in subsection A of this section, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or provide notice and hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report or the commissioner may bring action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation. The court may make orders or judgments, including the appointment of a receiver, necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, that may have been acquired by means of any practice in this article declared to be unlawful.

N. When it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave the state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

O. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require notice be given as the court deems satisfactory.

P. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person engaged in or engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person that is on file with the state real estate department. The order shall inform the person that the person has the right to request a hearing within ten days of the date of the order and, if requested, the hearing shall be held within thirty days from the date of the order.

32-2197.02. Notice of intent to sell; application for timeshare plan public report; authorization for pre-sales

A. Any person who sells, offers to sell or attempts to solicit prospective purchasers located in this state to purchase a timeshare interest or any person who creates a timeshare plan with an accommodation in this state, whether or not the plan is sold or offered for sale in this state, shall register a notice of intent to sell and application for a public report with the department.

B. Except as otherwise provided in subsection C of this section, an application for a public report for a timeshare plan must contain the following documents and information:

1. The name and address of the owner and developer. If the holder of any ownership interest in the land is other than an individual, including a corporation, partnership, limited liability company, trust or other entity, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. A comprehensive statement of the timeshare plan.

3. The legal description and location of the timeshare property being offered.

4. To the extent required by applicable local or state laws, a recorded map of the timeshare property showing book, page and date of recording or instrument number and date of recording, and if required by applicable local or state laws, approval by the county or city in which the timeshare property is located. A map, survey or location plan is required for incomplete timeshare properties. A timeshare property involving completed buildings where all purchasers are given an on-site tour prior to a financial commitment may not require a plat map. The need for a map, survey, location plan or building plan on such completed timeshare properties will be determined at the time of application.

5. A description of the total timeshare property in terms of the number of buildings, number of stories, number of units, common areas of the timeshare property or public use areas in any hotel, motel or other facility.

6. Proof of adequate financial arrangements and assurances for completion of any improvements included in the offering to be installed by the developer, the estimated schedule for completion of the improvements and provisions, if any, for the continued maintenance of the improvements.

7. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the timeshare property and the estimated schedule for their installation.

8. A statement of the provisions that have been made for permanent access, and provisions, if any, for health department approved sewage and solid waste collection and public utilities, including water.

9. A complete disclosure as to the operating costs of the timeshare plan, including all of the variable costs of operation, management and reserves and method of assessment, including evidence of financial arrangements which provide for the developer's guarantee of payment of assessment on unsold interests, or if the developer is not paying such costs, the effect such nonpayment will have on operating costs.

10. A statement that the developer must notify the commissioner if a timeshare plan accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same timeshare plan. The commissioner may require the developer to notify a prospective purchaser of any potential tax or lien that would materially and adversely affect the prospective purchaser.

11. A current preliminary title report for all accommodations comprising the timeshare property for which the application is being made.

12. The recorded declaration of dedication of the timeshare property or other timeshare instruments or contracts incorporating all covenants of the grantor or lessor and creating the timeshare interests and the provisions of the plan, if any, to include organization of an association.

13. A true statement as to the methods to be used in accordance with section 32-2197.12 to provide that the purchaser of a timeshare interest will not lose or have the purchaser's interest imperiled by the foreclosure of underlying liens, encumbrances or other obligations and that the developer can convey, or cause to be conveyed, the interest in the offering.

14. The terms and conditions as to how a purchaser's interest is to be conveyed including examples of all contracts, purchase agreements, deeds, fact sheets and other instruments to be used in marketing, financing and conveying timeshare interests.

15. A true statement as to title to personal property within the units or timeshare property incident to a purchaser's use and how purchasers will receive assured use of personal property during the term offered.

16. A statement of the provisions made for the management of the timeshare plan, including a copy of the management agreement, relationship with the developer and whether the management entity will be bonded or insured.

17. The name, street address, mailing address and telephone number of:

(a) The designated broker, if any, used by the developer.

(b) A managing entity of the timeshare plan.

18. Copies of all contracts and promotional material pertaining to any exchange program included in the offering.

19. If the timeshare property or timeshare plan being registered is located within the United States, but outside this state, each filing must include evidence that the timeshare property or timeshare plan is qualified for sale in the home state where the timeshare property or timeshare plan is located according to the standards or requirements for the sale of timeshare interests existing in the home state at the time of the filing.

20. If the timeshare property or timeshare plan being registered is located outside the United States, each filing of a foreign timeshare property or timeshare plan must include evidence establishing that all requirements of the country where the timeshare property or timeshare plan is located have been met for the sale of timeshare interests or the local equivalent of timeshare interests in the home country at the time of the filing.

21. A public report that complies with the requirements of section 32-2197.08.

22. Such other information and such other documents and certificates as the commissioner may reasonably require.

C. At the developer's request the commissioner may authorize the developer to conduct pre-sales of the timeshare plan before the issuance of a public report if the application for a public report is administratively complete, as determined by the commissioner or as established by rule. The authorization for pre-sales allows the developer to begin offering and selling timeshare interests while the application for the timeshare public report is in process. To obtain an authorization to conduct pre-sales, the developer shall do all of the following:

1. Submit a formal written request to the commissioner for an authorization to conduct pre-sales.

2. Submit an administratively complete application for a timeshare public report to the commissioner, including all appropriate fees and exhibits required under subsection B of this section.

3. Provide evidence acceptable to the commissioner that all monies received by the developer will be placed in an independent escrow account with instructions that monies will not be released until a timeshare public report has been granted.

4. Give each purchaser and prospective purchaser a copy of the proposed timeshare public report that the developer has submitted to the department with the initial application.

5. Give each purchaser the opportunity to cancel the purchase agreement in accordance with section 32-2197.03. The purchaser shall have an additional opportunity to cancel in accordance with section 32-2197.03 on the issuance of an approved timeshare public report only if the commissioner determines that there is a material and adverse change in the disclosures contained in the approved timeshare public report from those given to the purchaser in the proposed timeshare public report.

32-2197.05. Escrow or trust account; agreement; evidence of completion; financial assurance

A. A developer of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository one hundred per cent of all monies that are received during the purchaser's rescission period. The deposit of these monies shall be evidenced by an executed agreement between the escrow or trust account agent and the developer that includes the following provisions:

1. Monies may be disbursed to the developer by the escrow or trust account agent from the account only after expiration of the purchaser's rescission period and in accordance with the purchase agreement, subject to subsection B.

2. If a purchaser cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the purchaser's monies have been previously refunded by the developer.

B. If a developer contracts to sell a timeshare interest and the construction of any timeshare property in which the timeshare interest is located has not been completed, when the rescission period expires the developer shall continue to maintain in an escrow or trust account all monies received by the developer or on the developer's behalf from the purchaser under a purchase agreement either before or after the rescission period expires. The types of documentation that shall be required for evidence of completion include a certificate of occupancy, a certificate of substantial completion or an equivalent public safety inspection from an agency in the applicable jurisdiction or other evidence of completion acceptable to the commissioner or as provided by rule. Monies shall be released from escrow as follows:

1. If a purchaser properly cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the developer has previously refunded the purchaser's monies.

2. If a purchaser defaults in the performance of the purchaser's obligations under the purchase agreement, the monies shall be paid to the developer.

3. If the developer defaults in the performance of the developer's obligations under the purchase agreement, the monies shall be paid to the purchaser.

4. If the monies of a purchaser have not been previously disbursed in accordance with paragraph 2 of this subsection, the monies may be disbursed to the developer by the escrow agent on the issuance of acceptable evidence of completion of construction.

C. In lieu of placing monies in escrow in accordance with this section, the commissioner may accept from the developer a surety bond, irrevocable letter of credit or other financial assurance acceptable to the commissioner or as provided by rule. Any acceptable financial assurance must be in an amount equal to or in excess of the monies that would otherwise be placed in escrow or in an amount equal to or in excess of the cost to complete the incomplete property in which the timeshare interest is located.

D. The developer shall make documents related to the escrow or trust account or escrow or trust obligation available to the commissioner on the commissioner's request. The developer shall maintain any disputed monies in the escrow account until either of the following occurs:

1. The developer receives a written direction agreed to and signed by all parties.

2. A civil action regarding the monies has been filed, in which case the developer shall deposit the monies with the court of appropriate jurisdiction.

32-2197.08. Issuance of public report and amended public report by commissioner on timeshare plan; denial of issuance; additional information; use of another state's public report

A. On examination of a timeshare plan, the commissioner, unless there are grounds for denial, shall approve for use by the developer a public report authorizing the sale or lease of the timeshare interests within the timeshare plan. For all timeshare interests sold in this state, the commissioner shall require the developer to reproduce the public report and furnish each prospective customer with a copy, taking a receipt for each copy. The public report shall be made available to each prospective purchaser in written format and may also be made available in a CD-ROM or other electronic format as approved by the commissioner. The public report shall include the following:

1. The name and principal address of the owner and developer.

2. A description of the type of timeshare interests being offered.

3. A description of the existing and proposed accommodations and amenities of the timeshare plan, including type and number, any use restrictions and any required fees for use.

4. A description of any accommodations and amenities that are committed to be built, including:

(a) The developer's schedule of commencement and completion of all accommodations and amenities.

(b) The estimated number of accommodations per site that may become subject to the timeshare plan.

5. A brief description of the duration, phases and operation of the timeshare plan.

6. The current annual budget if available or the projected annual budget for the timeshare plan. The budget shall include:

(a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.

(b) The projected common expense liability, if any, by category of expenditures for the timeshare plan.

(c) A statement of any services or expenses that are not reflected in the budget and that the developer provides or pays.

7. A description of any liens, defects or encumbrances on or affecting the title to the timeshare interests.

8. A statement that by midnight of the tenth calendar day after execution of the purchase agreement a purchaser may cancel any purchase agreement for a timeshare interest from a developer together with a statement providing the name and street address where the purchaser should mail any notice of cancellation. If, by agreement of the parties through the purchase agreement, the purchase agreement allows for cancellation of the purchase agreement for a period of time exceeding ten calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding ten calendar days.

9. A description of any bankruptcies, pending suits, adjudications or disciplinary actions material to the timeshare interests of which the developer has knowledge.

10. Any restrictions on alienation of any number or portion of any timeshare interests.

11. Any current or expected fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan.

12. The extent to which financial arrangements have been provided for completion of all promised improvements.

13. If the timeshare plan provides purchasers with the opportunity to participate in any exchange programs, a description of the name and address of the exchange companies and the method by which a purchaser accesses the exchange programs.

14. Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

15. If the developer is offering a multisite timeshare plan, the following information, which may be disclosed in a written, graphic or tabular form:

(a) A description of each component site, including the name and address of each component site.

(b) The number of accommodations and timeshare periods, expressed in periods of use availability, committed to the multisite timeshare plan and available for use by purchasers.

(c) Each type of accommodation in terms of the number of bedrooms, bathrooms and sleeping capacity and a statement of whether or not the accommodation contains a full kitchen. For the purposes of this subdivision, "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven, sink and refrigerator.

(d) A description of amenities available for use by the purchaser at each component site.

(e) A description of the reservation system, including the following:

(i) The entity responsible for operating the reservation system.

(ii) A summary of the rules governing access to and use of the reservation system.

(iii) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-reserved, first-served basis.

(f) A description of any right to make any additions, substitutions or deletions of accommodations or amenities and a description of the basis on which accommodations and amenities may be added to, substituted in or deleted from the multisite timeshare plan.

(g) A description of the purchaser's liability for any fees associated with the multisite timeshare plan.

(h) The location and the anticipated relative use demand of each component site in a multisite timeshare plan as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan.

(i) Any other information reasonably required by the commissioner or established by rule that is necessary for the protection of purchasers of timeshare interests in timeshare plans.

(j) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

16. If a developer offers a nonspecific timeshare interest in a multisite timeshare plan, the information set forth in paragraphs 1 through 14 of this subsection as to each component site.

17. Any other information that the commissioner determines or establishes by rule is necessary to implement the purpose of this article.

B. Except as otherwise provided in this subsection, the requirements prescribed by subsection A of this section apply to a developer's application for approval to use an amended public report for the sale of timeshare interests in a timeshare plan, including an amended public report to disclose and address a material change under section

32-2197.04. A developer may elect to prepare an amended public report for use in the sale of timeshare interests as follows:

1. The developer shall prepare the amended public report and provide a copy of the report to the commissioner with the submission of the application for an amended public report, including any notification required by section 32-2197.04, and shall comply with all other requirements of this article.

2. An amendment filing fee established pursuant to section 32-2197.07 shall accompany the application prescribed by paragraph 1 of this subsection.

3. On receipt of the application and amended public report, the department shall review and, within fifteen business days if the amendment adds less than six new component sites to the timeshare plan or within thirty calendar days if the amendment adds six or more new component sites to the timeshare plan, issue either a certification that the application and amended public report are administratively complete or a denial letter if it appears that the application, amended public report or timeshare plan is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or timeshare plan presents an unnecessary risk of harm to the public. If the commissioner has received the application and amended public report but has not issued a certification or a denial letter within the required time period, the application and amended public report are deemed administratively complete.

4. The developer may commence sales or leasing activities as allowed under this article using an amended public report when the commissioner issues a certification of administrative completeness or as of the date the application and amended public report are deemed administratively complete pursuant to paragraph 3 of this subsection. The certification may be issued on paper or electronically.

5. Before or after the commissioner issues a certification of administrative completeness or, if applicable, after the application and amended public report are deemed to be administratively complete pursuant to paragraph 3 of this subsection, the department may examine any public report, timeshare plan or applicant that has applied for or received the certification. If the commissioner determines that the public report, timeshare plan or applicant is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154, 32-2157 or 32-2197.14. If the developer immediately corrects the deficiency and fully complies with state law, the commissioner shall promptly vacate any action that the commissioner may have commenced pursuant to section 32-2154, 32-2157 or 32-2197.14.

6. The department shall provide forms and guidelines for the submission of the application and amended public report pursuant to this subsection.

C. In the event of denial, suspension or revocation, grounds shall be set forth in writing at the time of denial, suspension or revocation. The commissioner may deny, suspend or revoke the public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the timeshare property, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The developer, including if an entity, an officer, director, member, manager, partner, owner, trust beneficiary holding ten percent or more beneficial interest, stockholder owning ten percent or more of the stock or other person exercising control of the entity, has:

(a) Been convicted of a felony or misdemeanor involving theft, fraud or dishonesty or involving the conduct of any business or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare interests, membership camping campgrounds or contracts, or securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him by a real estate regulatory agency or securities regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d), or (e) of this paragraph applies.

5. If within this state, the timeshare property is incompatible with the existing neighborhood and would introduce into a neighborhood a character of property or use that would clearly be detrimental to property values in that neighborhood.

D. If the timeshare property is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576.

E. In areas outside of active management areas, if the timeshare property is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the timeshare property has an adequate water supply.

2. The developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The timeshare property was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

F. In addition to providing to each prospective customer a copy of the public report as required in subsection A of this section, the developer shall also provide to each customer before the close of any transaction information and materials that identify any timeshare exchange companies currently under contract and disclosure statements regarding the use of the timeshare exchange companies, as well as any additional information the commissioner deems appropriate.

G. The commissioner may authorize for use in this state by a developer of a timeshare plan in which all accommodations are located outside of this state a current public report that is issued by another jurisdiction or an equivalent registration and disclosure document that is required before offering a timeshare plan for sale, lease or use and that is issued by another jurisdiction. This authorization does not constitute an exemption from other applicable requirements of this article.

32-2197.03. Purchase agreements; rescission of contract or agreement; cancellation or termination of timeshare interests

A. A purchase agreement shall be in writing and shall be signed by the purchaser. The developer shall give the purchaser a paper copy of the purchase agreement when the purchaser signs the purchase agreement.

B. The purchaser may rescind the purchase agreement without cause of any kind by sending or delivering a written notice of rescission by midnight of the tenth calendar day following the day on which the purchaser or prospective purchaser executed the purchase agreement. The rescission rights shall be conspicuously disclosed in the purchase agreement. If the developer allows the rescission period to extend beyond ten calendar days, the rescission period disclosure in the purchase agreement shall reflect the longer period of time. The disclosure required by this subsection shall be printed immediately before the space reserved in the purchase agreement for the signature of the purchaser and shall include the following information:

1. The purchaser may cancel the purchase agreement without a penalty or obligation within ten calendar days, or another time period if applicable, after the purchaser signs the purchase agreement.

2. If the purchaser decides to cancel the purchase agreement, the purchaser shall notify the seller in writing of the purchaser's intent to cancel.

3. The purchaser's notice of cancellation is effective on the date the cancellation is sent and shall be sent to the seller at the seller's address. The seller's address and telephone number shall be listed in the purchase agreement.

4. The purchaser may execute all closing documents in advance. However, the closing, as evidenced by delivery of the deed or other document, is prohibited before the ten calendar day cancellation period expires.

C. The denial of a purchaser's rights under this section without a good faith legal basis constitutes an unlawful practice under section 44-1522. The attorney general may investigate and take appropriate action as prescribed by title 44, chapter 10, article 7.

D. This section applies to any timeshare plan approved by the commissioner pursuant to either article 4 of this chapter or this article, regardless of the date of issuance of the public report.

32-2195.03. Unsubdivided land reports; denial of issuance; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of unsubdivided land, the commissioner, unless there are grounds for denial, shall prepare and issue to the owner or agent a public report authorizing the sale or lease of the unsubdivided lands in this state. The report shall contain the data obtained in accordance with section 32-2195 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the unsubdivided land is located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B, the report shall include a copy of the map. These report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or after December 31 of the year in which the unsubdivided land becomes territory in the vicinity of a military airport or ancillary military facility. The commissioner shall require the owner or agent to reproduce the report and furnish each prospective buyer with a copy before the buyer signs an offer to purchase, taking a receipt therefor.

B. Notwithstanding any provision of subsection A of this section, an owner may prepare a final public report for use in the sale of unsubdivided lands as defined in section 32-2101, as follows:

1. The owner shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2195 and 32-2195.10 and shall comply with all other requirements of this article.

2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The owner shall place the number on each public report.

4. The department shall determine within fifteen business days after the receipt of the notification and public report whether the notification and public report are administratively complete. The commissioner may either issue a certification that the notification and public report are administratively complete or may deny issuance of the certification if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public.

5. An owner may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness, the department may examine any public report, development or applicant that has applied for or received the certificate. If the commissioner determines that the owner or development is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the owner immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that he may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

C. The commissioner may deny issuance of a public report on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

5. Failure to make a showing that the parcels can be used for the purpose for which they are offered.

6. Failure to provide in the contract or other writing the use or uses, if any, for which the parcels are offered, together with any covenants or conditions relative to the parcel.

7. Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

8. The owner or agent, officer, director or partner or trust beneficiary holding a ten per cent or more beneficial interest, or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

D. No owner or agent may sell or lease or offer for sale or lease unsubdivided lands without first obtaining a public report and a certificate of administrative completeness from the commissioner. Any sale or lease of unsubdivided lands prior to issuance of the public report shall be voidable by the purchaser. An action by the purchaser to void the transaction shall be brought within three years of the date of execution of the purchase agreement by the purchaser. In any voidance action the prevailing party is entitled to reasonable attorney fees as determined by the court.

E. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

F. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the owner or agent is violating any provision set forth in this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the owner or agent. For the purpose of examination, the owner or agent shall keep and maintain records of all sales transactions and funds received by the owner or agent pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

G. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that grounds exist as provided in subsection C of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report. If, after the hearing, the violation of the law, rules or public report continues, the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation.

32-2151.02. Real estate employment agreements; definition

A. All real estate employment agreements shall:

1. Be written in clear and unambiguous language.

2. Fully set forth all material terms, including the terms of broker compensation.

3. Have a definite duration or expiration date, showing dates of inception and expiration.

4. Be signed by all parties to the agreement.

B. An employing broker shall not assign a real estate employment agreement to another broker without the express written consent of all parties to the agreement at the time of the assignment.

C. A licensee shall not procure, or attempt to procure, a real estate employment agreement from a party who is already subject to an existing exclusive real estate employment agreement unless the licensee has received written acknowledgment from the party that the execution of additional real estate employment agreements could expose the party to liability for substantial additional commissions. Nothing in this subsection shall be construed to abrogate any civil liability of a licensee arising out of this conduct.

D. A real estate employment agreement is not required for a licensee to represent a party in a transaction.

E. For the purposes of this section, "real estate employment agreement" means a written agreement by which a real estate broker is entitled to compensation for services rendered pursuant to section 44-101, paragraph 7.

32-2151.01. Broker requirements; record keeping requirements; definition

A. Each licensed employing broker shall keep records of all real estate, cemetery, time-share or membership camping transactions handled by or through the broker and shall keep employment records, including copies of employment status, for all current and former employees. The records required by this section shall include copies of earnest money receipts, confirming that the earnest money has been handled in accordance with the transaction, closing statements showing all receipts, disbursements and adjustments, sales contracts and, if applicable, copies of employment agreements. The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives. The records of each transaction and employment records shall be kept by the broker for a period of at least five years from the date of the termination of the transaction or employment. The records shall be kept in the employing broker's principal office or licensed branch office in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.

B. Except as provided by section 32-2174, subsection C, a broker shall not grant any person authority to withdraw monies from the broker's trust fund account unless that person is a licensee under that broker's license.

C. A broker shall specifically state in the real estate purchase contract, lease agreement or receipt for earnest money the type of earnest money received in any real estate transaction, whether it is cash, a check, a promissory note or any other item of value.

D. All licensees shall promptly place all cash, checks or other items of value received as payment in connection with a real estate transaction in the care of the designated broker.

E. The broker shall maintain each real estate purchase contract or lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives.

F. Sales transaction folders shall include:

1. Confirmation that the earnest monies or other monies handled by or through the broker were handled according to instructions given by or agreed to by the parties to the transaction.

2. A complete copy of the sales contract, any escrow account receipt, any closing or settlement statement and, if applicable, a copy of the escrow instructions, listing agreement, employment agreement and release of escrow monies.

G. The designated broker shall review each listing agreement, purchase or nonresidential lease agreement or similar instrument within ten business days of the date of execution by placing the broker's initials and the date of review on the instrument on the same page as the signatures of the parties. A designated broker may authorize in writing an associate broker who the designated broker employs to review and initial these instruments on the designated broker's behalf.

H. The broker shall retain all real estate purchase and nonresidential lease contracts and employment agreements, or copies of these documents, in the employing broker's principal office or licensed branch office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.

I. The broker shall retain an original, a copy or a microfilm copy of any document evidencing a rejected offer to purchase real property as a matter of record for at least one year. In instances that result in binding contracts, the broker shall retain prior rejected offers for at least five years.

J. If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records required by subsections A and C of this section.

K. For the purposes of this section, "business day" means a day that is not a Saturday, a Sunday or any other legal holiday in this state.

32-2171. Definitions

In this article, unless the context otherwise requires:

1. "Property management firm" means any corporation, partnership or limited liability company licensed pursuant to section 32-2125, subsection A or a designated broker that by written agreement, manages rental property or properties for compensation.

2. "Rental agreement" means a lease or leasing agreement.

32-2172. Scope of article

This article supersedes all provisions of law and rules that relate to property management.

32-2173. Property management agreements; contents, termination

A. A property management firm shall write property management agreements in clear, unambiguous language, and the property management agreements:

1. Shall:

(a) State all material terms and conditions of the property management firm's services, obligations, duties and responsibilities to the property owner.

(b) Be signed by the property owner or his agent and the property management firm's designated broker or the broker's authorized real estate licensee.

(c) Specify a beginning and an ending date.

(d) Contain cancellation provisions that are agreeable to both parties.

(e) Provide for the manner of disposition of all monies collected by the property management firm, including any tenant deposits.

(f) Specify the type and frequency of status reports to the owner.

(g) State the amount and purpose of monies the property management firm holds as an operating reserve for emergency and other purposes.

(h) Provide for the disposition and allocation of interest earned on trust account monies.

(i) State the terms and conditions of compensation the property owner pays for services pursuant to the property management agreement.

(j) Not be assigned to another licensee or licensed entity without the express written consent of the property owner.

2. May:

(a) Contain an automatic renewal provision, if the property management firm sends the owner a reminder notice at least thirty days before the renewal date. The notice does not negate any other cancellation term otherwise agreed to.

(b) Provide for reasonable liquidated damages or cancellation fees for early termination of the agreement.

(c) Allow the property management firm's broker to authorize a licensed or unlicensed person in the direct employment of the broker, pursuant to section 32-2174, subsection C, to transfer monies from or to be a signatory on a property management trust account to which the property management firm deposits the owner's monies.

(d) Require more than one signature on checks written from a property management account.

(e) Contain any other provisions that are agreed to between the property management firm and the owner and that are not in conflict with the requirements of this chapter.

B. Immediately on termination of a property management agreement, the property management firm shall provide the owner with:

1. All originals or other copies of all rental agreements or related documents in the property management firm's possession for current and previous tenants. These documents shall include any applications, property

inventories, leases, pet permits, default notices, lease amendments or addenda in the property management firm's possession. The broker is not required to keep copies of residential rental lease agreements or related rental lease documents after termination of the property management agreement.

2. All building plans, environmental studies, conditions, covenants and restrictions, inspection reports, contracts, keys, warranties, personal property or other documents in the possession of the property management firm.

C. On termination of the property management agreement the property management firm shall provide the owner with a final accounting of the property's financial status that includes at a minimum:

1. Within five days, a list of all tenant security obligations.

2. Within thirty-five days, reimbursement for all monies remaining in the property accounts maintained by the property management firm, except for monies needed for unpaid obligations incurred during the term of the property management agreement.

3. Within seventy-five days, a final accounts receivable and payable list.

4. Within seventy-five days, a final bank account reconciliation.

D. If there is an on-site management office and any of the records or documents described in subsection B of this section are located on site, the property management firm may leave the items there for the benefit of the owner on termination of the property management agreement. The property management firm shall inform the owner in writing immediately as to the location of these records.

32-2181.01. Power of commissioner to exempt certain subdivisions or fractional interests by special order

A. The commissioner may in his discretion by special order exempt from any one or all of the provisions of this article certain subdivided lands or fractional interests therein upon written petition and upon a showing by the petitioner, satisfactory to the commissioner, that compliance with the provisions of this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the subdivided lands or fractional interests therein or the limited character and duration of the offer for sale, lease or financing or the special characteristics or limited number of fractional interests.

B. Special orders issued pursuant to this section shall relate to specific lands or specific fractional interests.

C. A petition filed under this section shall be accompanied by an initial fee of one hundred dollars. No fees shall be returnable irrespective of the nature of the action upon the petition.

32-2181.02. Exempt sales and leases

A. The following are exempt under this article:

1. The sale or lease in bulk of six or more lots, parcels or fractional interests to one buyer in one transaction.

2. The sale or lease of lots or parcels of one hundred sixty acres or more.

B. The following are exempt from section 32-2181, subsection A and section 32-2183, subsection A:

1. The sale or lease of parcels, lots, units or spaces that are zoned and restricted to commercial or industrial uses.

2. The sale or lease of lots or parcels located in a single platted subdivision by a subdivider if:

(a) A public report has been issued within the past five years pursuant to this article on the subdivision lots or parcels.

(b) The subdivision meets all current requirements otherwise required of a subdivision under this article.

(c) The method of sale or lease of lots or parcels meets all current requirements under this article.

(d) The lots or parcels are included on a recorded subdivision plat that is approved by a municipal or county government.

(e) All roads within the subdivision, all utilities to the lots or parcels being offered for sale or lease and all other required improvements within the subdivision, other than a residence to be built, are complete, paid for and free of any blanket encumbrances.

(f) The roads, utilities or other improvements are not complete, but the completion of all improvements is assured pursuant to section 32-2183, subsection F.

(g) Except for matters relating to ownership and financing, there have been no material changes to the information set forth in the most recent public report issued for the subdivision lots that would require an amendment to the public report.

(h) No owner of a ten per cent or greater interest, subdivider, director, partner, agent, officer or developer of the subdivision has:

(i) Been convicted of a felony or any crime involving theft, dishonesty, violence against another person, fraud or real estate, regardless of whether the convictions were subsequently expunged.

(ii) Had a civil judgment entered against the person in a case involving allegations of misrepresentation, fraud, breach of fiduciary duty, misappropriation, dishonesty or, if the subject matter involved real property, securities or investments.

(iii) Had a business or professional license, including a real estate license, denied, suspended or revoked or voluntarily surrendered a business or professional license during the course of an investigative or disciplinary proceeding or other disciplinary action taken in this state or any other state.

(i) The sale of the subdivided lands violates no laws or ordinances of any governmental authority.

(j) Before the buyer's or lessee's execution of a purchase contract or lease, the subdivider has provided the buyer or lessee with a copy of the most recent public report on the lot and has taken a receipt from the buyer for the copy.

(k) The subdivider has provided to the buyer or lessee, along with the public report, a signed statement that the subdivider has reviewed and is in compliance with the terms of the exemption provided in this paragraph.

(l) Before sale or lease, the subdivider has notified the commissioner, on a form provided by the department, of the subdivider's intent to sell or lease lots or parcels pursuant to this paragraph. The notice shall include:

(i) The name, address and telephone number of the subdivider.

(ii) The name, address and telephone number of any real estate broker retained by the subdivider to make sales or leases of the lots.

(iii) The name and location of the subdivision.

(iv) The most recent subdivision public report reference number on the lots.

(v) The completion status of subdivision improvements.

3. The conveyance to a person who previously conveyed the lot to a home builder for the purpose of constructing a dwelling for the person.

4. The sale or lease by a person of individual lots or parcels that were separately acquired by the person from different persons and that were not acquired for the purpose of development if:

(a) The lots or parcels are not located in a platted subdivision.

(b) Each lot or parcel bears the same legal description that it bore when the lot or parcel was acquired by the person.

(c) The seller or lessor is in compliance with all other applicable state and local government requirements.

5. The sale of an improved lot in a subdivision that is located outside of this state if:

(a) The subdivision is located within the United States and the sale is exempt from the interstate land sales full disclosure act (P.L. 90-448; 82 Stat. 590; 15 United States Code sections 1701 through 1720).

(b) The subdivider is required by the state where the subdivision is located to deliver a public report or equivalent disclosure document to prospective purchasers and the subdivider delivers the report or equivalent disclosure document.

6. The sale of an improved lot in a subdivision located in this state where five or more sales were previously made by the seller if:

(a) The sale is the seller's first or second sale in the subdivision within the previous twelve month period.

(b) The subdivision is located within the corporate limits of a town or city.

(c) Electricity and telephone service are complete and available to the improved lot.

(d) Water and sewage service is complete and available to the improved lot.

(e) Streets and roads located outside of the subdivision provide permanent access to the subdivision and are complete and maintained by the county, town or city, or by a legally created and operational property owners' association.

(f) Streets within the subdivision are dedicated, provide permanent access to the lot, are complete to town or city standards and are maintained by the town or city or, in the case of private streets, a legally created and

operational property owners' association accepts the responsibility of perpetual maintenance.

(g) All subdivision common area improvements, including landscaping, recreational facilities and other jointly used and maintained improvements, are complete and maintained by a legally created and operational property owners' association.

(h) The purchaser's down payment, earnest money, deposit or other advanced money is placed and held in a neutral escrow depository in this state until escrow closes and the deed is delivered to the purchaser.

(i) Within the previous twelve months the seller has not had an ownership interest in more than two lots in the subdivision, including an interest by option, an agreement for sale, a beneficial interest under a trust or a purchase contract.

C. Nothing in this section shall be construed to increase, decrease or otherwise affect any rights or powers granted the commissioner under this chapter.

D. This section does not apply to lands on which the commissioner has issued orders pursuant to sections 32-2154 and 32-2157 and section 32-2183, subsection M unless the commissioner has issued a public report on those lands subsequent to the date of the orders.

E. Nothing in this section shall be construed to increase, to decrease or to otherwise affect any rights or powers granted to political subdivisions of this state with respect to their jurisdictions.

32-2194.01. Notice to commissioner of intention to sell cemetery property; exceptions; restrictions

A. Before offering cemetery plots for sale, the owner or agent shall notify the commissioner in writing and the notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the cemetery is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The legal description and area of the lands.

3. A true statement of the condition of the title to the land, including all encumbrances on the land.

4. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and other information the owner or agent desires to present.

5. A map of the cemetery which has been filed in the office of the county recorder in the county in which the cemetery is located.

6. A comprehensive statement describing the land on and the locality in which the cemetery is located.

7. A true statement of the use or uses for which the proposed cemetery will be offered.

8. A true statement of the provisions, if any, limiting the use of the plots in the cemetery, together with copies of any restrictive covenants affecting all or part of the cemetery.

9. The name and business address of the designated broker selling within this state plots in the cemetery. If the designated broker is changed the cemetery shall advise the department in writing without the requirement of an amended filing.

10. A true statement of the approximate amount of indebtedness which is a lien on the cemetery or any part of the cemetery and which was or will be incurred to pay for the construction of any on-site or off-site improvement or other facilities.

11. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district within the boundaries of which the cemetery or any part of the cemetery is located and any amounts which are to be obtained by ad valorem tax or assessment, or by a special assessment or tax on the cemetery or any part of the cemetery.

12. Proof of financial responsibility for completing the cemetery and its related facilities for its initial development.

13. A true statement of provisions made for financing any related facilities to be included. The statement shall include evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of such facilities.

14. A true statement that the cemetery is not subject to any known flooding or drainage hazards.

15. A true statement of the nature of any improvements to be installed in the developed portion of the cemetery, the estimated schedule for completion and the estimated costs related to such improvements which shall be borne by the developed portion of the cemetery.

16. A true statement of the availability of department of health services approved water and sewage disposal facilities and other public utilities including electricity, gas and telephone facilities in the cemetery, the estimated schedule for their installation and the estimated costs related to such facilities and utilities which shall be borne by the cemetery.

17. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any cemeteries in this state in which the parent or any of its subsidiaries are or have been involved in the last five years.

18. Such other information and such other documents as the commissioner may reasonably require.

19. If the cemetery has been previously licensed in this state and the ownership or control of the cemetery has transferred, a statement from a certified public accountant certified pursuant to chapter 6 of this title, showing that all required funds have been deposited in the irrevocable trust fund and that only lawful withdrawals were made. An audit that meets generally accepted accounting standards shall be used by the certified public accountant to prepare the statement required by this paragraph.

B. The commissioner may require the owner or agent to supplement the notice of intention to develop a cemetery and may require the filing of periodic reports to update the information contained in the original notice of intention to develop a cemetery.

C. The conveyance of a plot in a cemetery does not limit the right of the purchaser or the purchaser's representative to appear and testify before any public body regarding changes or other official acts affecting the cemetery property. All contractual provisions which conflict with this subsection are deemed to be against public policy.

D. The commissioner by special order may exempt from any one or all of the provisions of this article certain cemeteries otherwise required to comply with this article on written petition and on a showing by the petitioner, satisfactory to the commissioner, that compliance with this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the cemetery.

32-2194.03. Issuance or denial of certificate of authority; voidable sale; order prohibiting sale; investigations by commissioner; public hearings; summary orders

A. After examination of a cemetery application, the commissioner, unless there are grounds for denial, shall issue a certificate of authority authorizing the sale in this state of cemetery plots within the cemetery. The commissioner shall notify the department of health services when the commissioner issues a certificate of authority pursuant to this section.

B. The commissioner may deny issuance of a certificate of authority on any of the following grounds:

1. The applicant fails to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale of plots within the cemetery would constitute misrepresentation to or deceit or fraud of the purchasers.

3. The applicant has procured or attempted to procure a certificate of authority under this chapter for itself or another by fraud, misrepresentation or deceit or by filing an original or renewal application which is false or misleading.

4. The applicant is unable to deliver title or other interest contracted for.

5. The applicant is unable to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all off-site and other cemetery facilities.

6. The applicant fails to show that the plots can be used for the purpose for which they are offered.

7. The applicant fails to provide in the contract or other writing the use or uses for which the plots are offered, together with any covenants or conditions relative to such plots.

8. The applicant fails to include in the contract the disclosure provisions required as provided by section 32-2194.04.

9. The owner, the agent, an officer, a director or partner, a trust beneficiary holding ten percent or more beneficial interest or, if a corporation, any stockholder owning ten percent or more of the stock in such corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, timeshare intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, timeshare intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against the applicant by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against the applicant involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) of this paragraph applies.

10. The applicant fails to satisfy the commissioner that sufficient land has been dedicated for the operation of the cemetery to make it financially secure with respect to the trust fund requirements of this article.

C. A cemetery owner or operator shall not sell or offer for sale any plots without first obtaining a certificate of authority as provided in this section. Any sale of plots before the issuance of the certificate of authority is voidable by the purchaser. An action by the purchaser to void such a transaction shall be brought within three years after the date of execution of the purchase agreement by the purchaser. In any such action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

D. An applicant objecting to the denial of a certificate of authority by the commissioner, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty-five days after the request unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty-five days after the request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a certificate of authority shall be issued.

E. On the commissioner's own motion or if the commissioner has received a complaint and has satisfactory evidence that the cemetery owner or agent is violating any provision of this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of cemetery plots or deviated from the conditions under which the certificate of authority was issued, the commissioner may investigate the cemetery project and examine the books and records of the cemetery owner or agent. For the purpose of examination, the cemetery owner or agent shall keep and maintain records of all sales transactions and monies the cemetery owner or agent received at the broker's main office or at an off-site storage location in this state if the owner or agent provides prior written notification of the street address of the off-site storage location to the department. The cemetery owner or agent shall make the records accessible to the commissioner on reasonable notice and demand.

F. On the commissioner's own motion or if the commissioner has received a complaint and has satisfactory evidence that any of the grounds exist as provided in subsection B of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of cemetery plots or has deviated from the conditions under which the certificate of authority was issued, before or after the commissioner issues the certificate of authority as provided in this section, the commissioner may conduct an investigation of such matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue such order or orders as the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or certificate of authority, or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing such a violation or engaging in a violation or doing any act or acts in furtherance of a violation. The court may make such orders or judgments, including the appointment of a receiver, that may be necessary to prevent the use or employment by a person of any unlawful practices or that may be necessary to restore to any person in interest any monies or property, real or personal, that may have been acquired by means of any practice declared to be unlawful in this article.

G. If it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or has made arrangements to conceal assets or is about to leave this state, the commissioner may apply to the superior court, without notice, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

H. The court on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and such other evidence that the commissioner may present to the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require that the notice be given as the court deems satisfactory.

I. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person engaged in or engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person that is on file with the state real estate department. The order shall inform the person that the person has the right to request a hearing within ten days after the date of the order, and if requested, the hearing shall be held within thirty days after the date of the order.

32-2195.01. Power of commissioner to exempt certain unsubdivided land by special order

A. In his discretion the commissioner may exempt by special order from any one or all of the provisions of this article certain unsubdivided land on written petition and on a showing by the petitioner, satisfactory to the commissioner, that compliance with this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the unsubdivided land or the limited character and duration of the offer for sale, lease or financing.

B. The special order pursuant to this section shall relate to specific land.

C. A petition filed under this section shall be accompanied by an initial fee of one hundred dollars. The fees are not returnable irrespective of the nature of the action taken on the petition.

32-2198.01. Application for membership camping public report; signature; amendment

A. An application for a membership camping public report shall contain the following documents and information:

1. The name and address of the membership camping operator.

2. A copy of the articles of incorporation, partnership agreement or joint venture agreement and the camping club association bylaws as contemplated or currently in effect.

3. A list of all officers and directors or persons occupying a similar status of the membership camping operator including their names, addresses and occupations during the last five years.

4. A list of material affiliates of the membership camping operator, including the names and addresses of partners, officers, directors and persons with a direct or indirect interest of ten per cent or more in the membership camping operator.

5. A list of all owners of over ten per cent of the voting stock of the membership camping operator, except that this list is not required if the membership camping operator is a reporting company under the securities and exchange act of 1934.

6. Copies of forms of all advertisements intended to be used in connection with the offer or sale of membership camping contracts within this state.

7. A copy of each type of membership camping contract to be sold, a description of the purchase price of each type and, if the price varies, the reason for the variance.

8. A copy of any conditional use permit or any other major use permits indicating approval of the project by this state or a political subdivision of this state for each of the membership camping operator's camping projects located in this state. If the membership camping operator has no projects in this state, the same documents shall be provided for all out of state projects for which membership contracts are to be sold or offered for sale in this state.

9. The financial statements of the membership camping operator prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

10. A statement of the total number of membership camping contracts intended to be sold in this state and the method used to determine this number including a statement of commitment that this total number will not be exceeded unless it is disclosed by an amendment to the registration.

11. If membership camping contracts are sold with different privileges or durations, a list of each type of membership camping contract and the approximate number of each type to be sold.

12. A copy of the agreement, if any, between the operator and any person owning, controlling or managing the campground.

13. The names of any other states or foreign countries in which an application for registration of the membership camping operator or the membership camping contract or any similar document has been filed.

14. Complete information concerning any adverse order, judgment or decree involving forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like conduct which has been entered by a court or administrative agency in connection with a campground or other business operated by the applicant or in which the applicant has or had an interest at the time of the acts which led to the order, judgment or decree.

15. A current title report which is signed and dated not more than thirty days before receipt by the commissioner and which provides a true statement of the condition of the title to the campground property, including all encumbrances on the property.

16. A statement on the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities, if any, in the proposed campground, including water, electricity, gas and telephone facilities.

17. A statement of the provisions, if any, limiting the use or occupancy of the campground, together with copies of any restrictive covenants affecting all or part of the campground.

18. A true statement of the approximate amount of indebtedness which is a lien on the campground or any part of the campground and which was incurred to pay for the construction of any on-site or off-site improvement or any community or recreational facility.

19. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district within the boundaries of which the campground or any part of the campground is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the campground, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax on the campground or any part of the campground.

20. A true statement as to the approximate amount, if any, of annual taxes, special assessments or fees to be paid by the membership camping contract owner for the proposed annual maintenance of common facilities in the campground.

21. A true statement of assurances for the installation of improvements, such as roads and utilities, and approval by the political subdivision having authority.

22. A true statement of provisions made for financing any community, recreational or other facilities to be included in the offering or represented as being in the offering. The statement shall include a trust agreement or other evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of the facilities.

23. A true statement of the nature of any improvements to be installed or represented to be installed, the estimated schedule for completion and the estimated costs related to these improvements which will be borne by membership camping contract owners in the campground.

24. A true statement of the membership camping operator's experience in the membership camping business, including the number of years the operator has been in the membership camping business.

25. A true statement of the nature of the purchaser's right or license to use the membership camping operator's property or facilities.

26. The location of each of the membership camping operator's parks and a brief description for each park of the significant facilities then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities that are or will be available to nonpurchasers or nonmembers. As used in this paragraph "significant facilities" includes campsites, swimming pools, tennis courts, recreation buildings, rest rooms and showers, laundry rooms and trading posts or grocery stores.

27. A true statement of the membership camping operator's ownership of or other right to use the camping properties represented to be available for use by purchasers, together with the duration of any lease, license, franchise or reciprocal agreement entitling the membership camping operator to use the property, and any material provisions of any agreements which restrict a purchaser's use of the property.

28. A copy of the rules, restrictions or covenants regulating the purchaser's use of the membership camping operator's properties, including a statement of whether and how the rules, restrictions or covenants may be changed.

29. A description of any restraints on the transfer of the membership camping contract.

30. A true statement of the policies relating to the availability of camping sites and whether reservations are required.

31. A true statement of any grounds for forfeiture of a purchaser's membership camping contract.

32. Any other information, documents and certificates as the commissioner may reasonably require to clarify or ascertain the accuracy of the information required by this section.

B. The application shall be signed by the membership camping operator, an officer or general partner of the membership camping operator or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney or the resolution authorizing the signature shall be included with the application.

C. The application must be submitted on a form prescribed by the commissioner with the application fee.

D. An application for registration to offer to sell or sell membership camping contracts shall be amended when a material change to the information previously filed occurs.

32-2195. Notice to commissioner of intention before offering for sale or lease of unsubdivided land; definition

A. Prior to the offering for sale or lease of unsubdivided land the owner or agent shall notify the commissioner in writing of the owner's or agent's intention to offer such parcels for sale or lease.

B. The notice required by this section shall contain the following information:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The name and address of the agent.

3. The legal description and area of the lands.

4. A true statement of the condition of the title to the land, including all encumbrances thereon.

5. A true statement of the terms and conditions under which such lands are to be offered to the public.

6. A statement of the use or uses for which the land will be offered or a statement that it is offered for no specific use.

7. A true statement of the provisions made for permanent access.

8. A true statement setting out the availability of water or lack thereof.

9. A true statement of the availability to the land of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities.

10. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, taxing area or assessment district within the boundaries of which the unsubdivided lands are located, and which is to pay for the construction or installation of any improvements to that land.

11. A true statement as to whether all or any portion of the unsubdivided land is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the unsubdivided land to preclude livestock from roaming within such land.

12. If the owner or agent is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries are or have been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are five acres or more in size.

13. A true statement identifying all other subdivisions, designated in paragraph 12, in which any of the following are or, within the last five years, have been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The agent.

(c) Any principal or officer in the holder.

14. A true statement as to whether all or any portion of the unsubdivided land is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 or on or after July 1 of the year in which the land becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 or before July 1 of the year in which the land becomes located in a high noise or accident potential zone.

15. Such other information and such other documents and certifications as the commissioner may reasonably require for the protection of the public.

C. Copies of original promotional and advertising material to be used with such offering shall be attached to the notice.

D. It shall be unlawful for any owner or agent to make any offerings regulated by this section without the written authorization of the commissioner. The commissioner shall issue a public report thereon and require a copy of the public report to be furnished to each offeree at the time of such offering.

E. It shall be unlawful to offer any lands regulated by this article without provisions having been made for permanent access over terrain on which roads could be established for conventional motor vehicles unless such provision is waived by the commissioner.

F. Satisfactory proof or evidence that access meets the requirements of subsection E of this section shall be furnished to the department in a report by a licensed engineer or land surveyor of this state.

G. The commissioner may terminate any authorization issued upon the grounds and in the manner set out in section 32-2183.

H. If the director of water resources has issued a water availability report, the state real estate commissioner shall require that all promotional material and contracts for the sale of such unsubdivided lands adequately display the director of water resources' report or a brief summary of the results prepared by the developer and approved by the real estate commissioner. If no report has been prepared by the director of water resources and the availability of water is unknown, the real estate commissioner shall require that all promotional material and contracts adequately display that no report has been prepared and that the availability of water is unknown.

I. Neither any real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in unsubdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether such property is located within or outside of the boundaries of the unsubdivided land. All contractual provisions which conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

32-2185.01. Sale of unimproved lots or parcels; conditions precedent; methods

A. It is unlawful for the owner, agent or subdivider of subdivided lands to sell or offer to sell unimproved lots or parcels within a subdivision unless the sale complies with one of the following:

1. Execution, delivery and recording of a deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the property subject only to such exceptions as may be agreed to in writing by the purchaser. Any balance remaining unpaid by the purchaser may be evidenced by a note and mortgage or deed of trust. The deed and mortgage or deed of trust shall be recorded by the owner, agent or subdivider within sixty days of execution thereof by the purchaser.

2. Execution, delivery, recording and depositing in escrow, not later than sixty days after execution by the purchaser, with a person or firm authorized to receive escrows under the laws of this state or the state in which the subdivision is located, of a real estate sales contract pertaining to the property, which contract sets forth the full and correct legal description of the property being sold and the precise terms and conditions under which the property is being sold together with:

(a) A copy of a preliminary title report showing the conditions of title to the property on the date of the real estate sales contract or a preliminary title report showing the condition of title on an earlier date together with a copy of any document, recorded subsequent to the date of the preliminary title report, which affects the title to the property.

(b) An executed deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser which deed, under the terms of the real estate sales contract, is to be delivered to the escrow agent provided for under the contract within sixty days of the purchaser's execution of the contract and is to be recorded within sixty days after purchaser's compliance with the obligations imposed on him under the contract together with any release or partial release of any blanket encumbrance pertaining to said lot.

(c) Any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to the real property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance.

3. Execution, delivery and recording of a deed to the real property to a trustee together with a trust agreement and any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance. The trust agreement shall provide for conveyance by the trustee to a purchaser, upon purchaser's compliance with the obligations imposed on him under his real estate sales contract, by a deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser. The real estate sales contract of the lot being sold shall be recorded by the owner, agent or subdivider within sixty days of execution of the real estate sales contract by the purchaser. The trustee shall execute, record and deliver the deed and record the release or partial release required by this subsection within sixty days of the purchaser's fulfillment of the terms of his real estate sales contract.

B. All documents required to be recorded under the provisions of this section shall be recorded in the county and state wherein the subdivision is located.

C. Any sale or assignment of a mortgage, deed of trust or real estate sales contract by an owner, agent, subdivider or trustee shall be recorded in the county and state where the subdivision is located and a notice of such sale or assignment provided to the commissioner, the recording and notice thereof to be effected not later than sixty days after the execution of such assignment.

D. Any contract or agreement entered into after January 1, 1977, to purchase or lease an unimproved lot or parcel may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of

rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The subdivider shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the right to rescind provided for in this subsection and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission within the time limit set forth in this subsection. The commissioner may adopt regulations to exempt commercial and industrial subdivisions from such requirements.

E. If a buyer of an unimproved lot or parcel has not inspected the lot or parcel prior to the execution of the purchase agreement, the buyer shall have a six-month period after the execution of the purchase agreement to inspect the lot or parcel and at the time of the inspection have the right to unilaterally rescind the purchase agreement. At the time of inspection the buyer must sign an affidavit stating that he has inspected the lot, and at the request of the commissioner, such affidavit may be required to be filed with the department.

F. Only a bank, savings and loan association, or title insurance company doing business under the laws of this state or the United States or the state in which the subdivision is located, or a title insurance company wholly owned subsidiary or underwriting agent qualified under section 20-1580, or persons or firms authorized to receive escrows under the laws of this state or the state in which the subdivision is located may act as trustee under paragraph 3 of subsection A of this section. Nothing in this subsection extends to a firm or individual authority to act as a trustee unless such authority is otherwise provided by law.

G. The provisions of this section shall not apply to the sale of improved lots as defined by section 32-2101.

H. The provisions of this section shall not apply to the sale of cemetery lots or parcels within a cemetery which has been formed and approved pursuant to the provisions of this chapter.

32-2183.04. Surety bond requirement; form; cancellation; effective date; certificate of deposit

A. In addition to any other fees assessed under this chapter, any subdivider prior to the sale or lease of any existing unimproved lots or parcels and any subdivider who is subsequently required to give notice under section 32-2181 or 32-2195 or who petitions for exemption under section 32-2181.01 may be required to post a surety bond with the commissioner if any of the following applies:

1. The subdivider has been found in violation of any subdivision laws of this state or of any other state or any of the rules of the state real estate department.

2. The subdivider has been found in violation of the interstate land sales full disclosure act or any of the rules and regulations of the office of interstate land sales registration.

3. The subdivider has been found by a court of competent jurisdiction to be guilty of fraud or misrepresentation in the sale of subdivided lands and the finding or determination has become a final adjudication.

4. The subdivider has been found by an administrative agency to be guilty of fraud or misrepresentation in the sale of subdivided lands and from the decision there is no appeal.

B. The bond required by subsection A of this section shall be in a form acceptable to the commissioner and shall be executed by the subdivider as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the commissioner in accordance with rules adopted by the commissioner. The bond shall be in favor of the state and shall be subject to claims by any person who is injured by the fraud or misrepresentation of a subdivider in the purchase or lease of a lot or parcel. One bond shall be required for each subdivision or each common plan of subdivided lands subject to the requirements of article 7 of this chapter. The principal sum of the bond shall be in an amount the commissioner deems necessary to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration.

C. The surety bond shall continue in effect until two years after all sales within the subdivision or common plan have been completed. No suit may be maintained on the bond after the expiration of two years following the subdivider's sale or lease of a lot or parcel to the person maintaining the action.

D. Upon receipt by the commissioner of notice to cancel a bond by any surety, the commissioner shall immediately notify the subdivider on the bond of the effective date of cancellation of the bond and the subdivider shall furnish a like bond within thirty days after mailing of notice by the commissioner or the subdivider's right to sell or lease lots or parcels in any subdivision shall be suspended. Notice to the subdivider shall be by certified mail in a sealed envelope with postage fully prepaid, addressed to the subdivider's latest address of record in the commissioner's office. The subdivider's right to sell or lease lots or parcels shall be suspended by operation of law on the date the bond is canceled, unless a replacement bond is filed with the commissioner.

E. In lieu of posting a bond as set forth in this section, the subdivider may post a certificate of deposit with the commissioner in accordance with the provisions of subsections A, B and C of this section.

32-2193.02. Surety bond requirement; form; cancellation; effective date; certificate of deposit

A. In addition to any other fees assessed under this chapter, the commissioner may require that a real estate or cemetery licensee or person applying for a license or renewal of a license issued to real estate or cemetery brokers or salespersons under this chapter post a surety bond if any of the following apply:

1. The licensee or applicant has been found in violation of any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

2. The licensee or applicant has been convicted in a court of competent jurisdiction of a felony or misdemeanor involving a transaction in real estate, or of which fraud is an essential element, or arising out of the conduct of any business in real estate, securities or mail fraud, or securities registration violations.

3. The licensee or applicant has had an administrative order entered against him or it by a real estate regulatory agency or security regulatory agency.

B. The bond required by subsection A of this section shall be in a form acceptable to the commissioner and shall be executed by the applicant or licensee as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the commissioner in accordance with rules adopted by the commissioner. The bond shall be in favor of this state and is subject to claims solely for actual damages including reasonable attorney's fees suffered by persons injured as described in section 32-2186. The amount and duration of the bond shall be as the commissioner deems necessary for the protection of the public, but the principal amount of the bond shall be not more than one hundred thousand dollars and its duration shall not exceed five years.

C. On receipt by the commissioner of notice to cancel a bond by any surety, the commissioner shall immediately notify the licensee on the bond of the effective date of cancellation of the bond and the licensee shall furnish a like bond within thirty days after mailing of the notice by the commissioner or his license shall be suspended. Notice to the licensee shall be by certified mail addressed to the licensee's last address on file with the commissioner.

D. In lieu of posting a bond as set forth in this section, the applicant or licensee may post a certificate of deposit with the commissioner in accordance with the provisions of subsections A and B of this section.

32-2198.08. Denial, suspension or revocation of a public report

A. The commissioner may order that a public report be denied, suspended or revoked or an application for a public report be denied if he finds that the order is necessary for the protection of purchasers or owners of membership camping contracts and that any of the following is true:

1. The membership camping operator's advertising, sales techniques or trade practices have been or are deceptive, false or misleading under section 44-1522.

2. The membership camping operator has failed to comply with any provision of this article or the rules pertaining to this article.

3. The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts or to complete proposed amenities.

4. The membership camping operator's offering of membership camping contracts has worked or would work a fraud on purchasers or owners of membership camping contracts.

5. The membership camping operator's application or any amendment to the application is incomplete in any material respect.

6. The membership camping operator has represented or is representing to purchasers in connection with the offer or sale of a membership camping contract that any property, facility, campsite or other development is planned without reasonable grounds to believe that the property, facility, campsite or other development will be completed within a reasonable time.

7. The membership camping operator has withdrawn from use all or any substantial portion of any campground, the rights of all purchasers at the affected location have not expired and no adequate provision has been made to provide a substitute campground of comparable quality and attraction in the same general area within a reasonable time after the withdrawal.

8. The membership camping operator or its agent made a representation which is false or misleading in any application, document or statement filed with the commissioner.

9. The membership camping operator has disseminated or caused to be disseminated any false or misleading promotional materials in connection with a campground.

10. The membership camping operator or any of his agents has failed to comply with any representation in the final public report or membership camping contract.

11. The owner, operator, agent, officer, director or partner, trust beneficiary holding ten per cent or more beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud, dishonesty, moral turpitude or any like offense, or involving a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

B. Within thirty days after receipt of the order of denial, an applicant objecting to the denial of a public report may file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submisssion, the order of denial shall be rescinded and a public report issued.

C. The commissioner, on his own motion or if he has received a complaint and has satisfactory evidence that grounds exist as provided in subsection A of this section or that any person has deviated from the provisions of the public report, may conduct an investigation of such matter, may issue a summary order as provided in section 32-2157 or may hold a public hearing and, after the hearing, may issue such order or orders as he deems necessary to protect the public interest and ensure compliance with the law, the rules or the public report, or the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation, engaging the violation or doing any act in furtherance of the violation. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice in this article declared to be unlawful.

D. If the commissioner has reasonable cause to believe that a person has engaged or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave this state and that the public health, safety or welfare so requires, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

E. The court, on receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and any other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. Unless the court determines that the interests of the public will be harmed by the giving of notice, the court shall set a time for a hearing and require that such notice be given as the court deems satisfactory.

F. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served on the person alleged to have engaged or to be engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person which is on file with the department. The order shall inform the person that he has the right to request a hearing within ten days of the date of the order and, if requested, that the hearing shall be held within twenty days from the date of the order.

G. If the commissioner determines that the managing camp operator is not financially responsible or has insufficient capital, the commissioner may require a surety bond or if one is unobtainable, other evidence of financial assurances in accordance with generally accepted accounting principles and generally accepted commercial standards of financial responsibility satisfactory to the commissioner to assure the financial responsibility and sufficient capitalization of the membership camping operator or to assure the completion of proposed amenities.

32-2198.14. Advertising availability of campgrounds to campground members; blanket encumbrances

A. No membership campground may be advertised or promoted in any way that guarantees the unimpeded use of or access to the campground's properties unless the membership camping operator applies for and receives approval by filing information satisfactory to the department guaranteeing that the purchasers of membership camping contracts cannot be denied access to and use of campground properties pursuant to the membership camping contracts. The department may require the applicant to pay for any costs of experts hired by the department to evaluate the application, nondisturbance clause or financial condition of the applicant. No lien or encumbrance may be construed to deny access and use.

B. The applicant shall include satisfactory evidence that purchasers of campground memberships acquire an unimpeded and irrevocable right of access to and use of campground properties by means acceptable to the department, including:

1. A duly recorded nondisturbance agreement from each holder of a lien or encumbrance on a membership campground that provides minimally for:

(a) Enforcement of the agreement by individual campground members.

(b) Effectiveness of the agreement notwithstanding insolvency, bankruptcy of the membership campground operator or sale of the campground.

(c) Binding successors in interest of both the campground membership operator and each holder of a lien or encumbrance.

(d) Alternative means to continue operation of the campground if the campground operator, holder of a lien or encumbrance or purchaser who obtains title or possession of the campground ceases to act as operator.

2. A bond or irrevocable letter of credit posted by the membership camping operator in an aggregate principal amount sufficient to cover the indebtedness remaining under any lien or encumbrance.

3. Other financial assurances reasonably acceptable to the department.

32-2197.12. Blanket encumbrance; lien; alternative assurance

Excluding any encumbrance placed against the purchaser's timeshare interest securing the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any monies placed in escrow under section 32-2197.05 with respect to each timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, until the developer has provided satisfactory evidence to the commissioner of one of the following:

1. The timeshare interest together with any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights.

2. The developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the appropriate public records of the jurisdiction in which the timeshare interest is located. The subordination document shall expressly and effectively provide that the interest holder's right or blanket encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan regardless of the date of purchase, from and after the effective date of the subordination document.

3. The developer, any owner of the underlying fee, a mortgagee, judgment creditor or other lienor or any other person having a blanket encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights to the accommodations or amenities to a nonprofit organization or owners' association to be held for the use and benefit of the owners of the timeshare plan. The organization or association shall act as a fiduciary to the purchasers, if the developer has transferred control of the organization or association to the owners or does not exercise voting rights in the organization or association with respect to the subject accommodations or amenities. Before the transfer, any blanket encumbrance against the accommodation or facility shall be made subject to a subordination and notice to creditors instrument pursuant to paragraph 2.

4. Alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and approved by the commissioner.

33-1215. Contents of declaration

A. The declaration shall contain:

1. The name of the condominium, which shall include the word "condominium" or be followed by the words "a condominium", and the name of the association.

2. The name of every county in which any portion of the condominium is located.

3. A legal description of the real estate included in the condominium.

4. A description of the boundaries of each unit created by the declaration, including each unit's identifying number.

5. A description of any limited common elements, other than those specified in section 33-1212, paragraphs 2 and 4, but the declaration shall contain a description of any porches, balconies, patios and entryways, if any, as provided in section 33-1219, subsection B, paragraph 11.

6. A description of any development rights and other special declarant rights, together with a legal description of the real estate to which each of those rights applies, any time limit within which each of those rights must be exercised and any other conditions or limitations under which the rights described in this paragraph may be exercised or will lapse.

7. An allocation to each unit of the allocated interests in the manner described in section 33-1217.

8. Any restrictions on use, occupancy and alienation of the units.

9. All matters required by sections 33-1216, 33-1217, 33-1218, 33-1219 and 33-1226 and section 33-1243, subsection E.

10. A statement that the assessment obligation of the unit owner under section 33-1255 is secured by a lien on the owner's unit in favor of the association pursuant to section 33-1256.

11. If the condominium is a conversion from multifamily rental to condominiums, a statement containing all of the following:

(a) A statement that the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

(c) The name and address of the original owner, builder, developer and general contractor as shown on the applicable city, town or county building permit.

(d) The name and address of each subsequent owner as determined by a search of the county recorder's records in the county in which the property is located.

(e) The subdivider's agreement to provide the following information on request:

(i) The name and address of any builder, developer, general contractor, subcontractor, architect and engineer who designed or made improvements to the property immediately before the first condominium was sold.

(ii) A specific description of all improvements made.

B. If a city, town or county is unable to produce a building permit as required in subsection A, paragraph 11, subdivision (c) of this section, the subdivider shall submit a letter from the applicable city, town or county

stating that the information required by subsection A, paragraph 11, subdivision (c) of this section is not available.

C. The declaration may contain any other matters the declarant deems appropriate.

33-1219. Plat

A. The plat is a part of the declaration. The plat must be clear and legible.

B. The plat shall show:

1. The name of the condominium.

2. The boundaries of the condominium and a legal description of the real estate included in the condominium.

3. The extent of any encroachments on any portion of the condominium.

4. To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.

5. The location and dimensions of the vertical boundaries of each unit, and each unit's identifying number.

6. Any horizontal unit boundaries, with reference to an established datum, and each unit's identifying number.

7. Any units with respect to which the declarant has reserved the right to create additional units or common elements, identified appropriately.

8. The location and dimensions of all real estate subject to the development right of withdrawal identified as such.

9. The location and dimensions of all real estate in which the unit owner will only own an estate for years labeled as a "leasehold condominium".

10. The distance between noncontiguous parcels of real estate comprising the condominium.

11. The location and dimensions of limited common elements, including porches, balconies, patios and entryways, other than the limited common elements described in section 33-1212, paragraphs 2 and 4.

12. Any other matters the declarant deems appropriate.

C. Unless the declaration provides otherwise, the horizontal boundaries of a part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plat.

D. On exercising any development right, the declarant shall record a new plat conforming to the requirements of subsections A and B of this section. No new plat need be recorded if the development right exercised was clearly depicted on the original plat and a document is recorded which references the declaration and original plat and declares that the development right has been exercised.

32-2185.06. Contract disclosures; contract disclaimers

All agreements and contracts for the purchase or lease of subdivided land from a subdivider, owner or agent shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the nature of the document, the purchaser's right to receive a copy of the public report and, in the case of unimproved lots or parcels not exempted by regulation pursuant to section 32-2185.01, the purchaser's right to rescind the agreement as provided in section 32-2185.01. Any contract, agreement or lease which fails to make disclosures pursuant to this section shall not be enforceable against the purchaser. If the transaction involves a lot or parcel offered for present or future residential use, the contract, agreement or lease shall not waive or disclaim liability for prior material representations relied upon by the purchaser made by the seller and such seller's agents concerning the subdivision and lot or parcel involved, and any provision attempting to waive or disclaim liability is void.

32-2194.15. Jurisdiction

The commissioner shall not be denied jurisdiction over any person subject to the provisions of this article because of similar jurisdiction over such person by any other agency or the applicability to such person of any rule prescribed pursuant to any other provision of law.

32-2195.05. Advertising material; contents; order prohibiting use; costs of investigation

A. The owner or agent shall file with the commissioner a copy of any original promotional and advertising material used in connection with sales of unsubdivided lands and copies of any material changes therein. The owner or agent shall file with the commissioner, within twenty-one days of use, a copy of any subsequent advertising of any kind, used directly or indirectly in connection with the purchase, sale or lease of any lot or parcel subject to the provisions of this article. It shall not be necessary to make repetitive filings of material which is the same as or varies only in minor details from material which has previously been filed with the commissioner for the unsubdivided lands.

B. No advertising, communication or sales literature of any kind, including oral statements by salespersons or other persons, shall contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made.

2. Any statement or representation that the land is offered without risk or that loss is impossible.

3. Any statement or representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating the improvements are proposed and the scenes do not exist.

4. Any statement or representation that the lot or parcels are suitable as homesites or building lots unless either of the following is true:

(a) Potable water is available from a certificated public utility or a municipal corporation and either an individual sewage disposal system will operate or a sewer system is available from a certified public utility or a municipal corporation.

(b) Facts to the contrary are clearly and conspicuously included in each advertisement pertaining to the property.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to section 32-2195 and the public report pursuant to section 32-2195.03.

D. If it appears to the commissioner that any person is or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as he deems necessary to protect the public interest, or the commission may bring an action in any court of competent jurisdiction against such person to enjoin such person from continuing such violation.

E. The commissioner may adopt such rules and guidelines as he deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, agent or employee of any development or other person with intent directly or indirectly to sell or lease lots or parcels subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. Nothing contained in this section shall apply to the owner or publisher of a newspaper, magazine or other publication of printed matter wherein such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

32-2197.17. Advertising and promotional requirements; telemarketing and promotional employees; presentations and tours, drawings and contests; commissioner's authority; disclosures

A. Within ten days after a request by the commissioner, the developer shall file with the commissioner a copy of any promotional and advertising material that will be used in connection with the sale, lease or use of timeshare interests. If filing is required, the commissioner shall approve or deny the use of any material within fifteen days of receiving all information and documents. If the commissioner denies the use of promotional and advertising material, specific grounds shall be set forth in writing. The commissioner may grant provisional approval for promotional and advertising material if the developer agrees to correct any deficiencies. Any proposed advertising not requested by the commissioner for review may be filed for review and approval by the commissioner.

B. Any advertising, communication or sales literature of any kind, including oral statements by salespeople or any other person, shall not contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statements misleading in light of the circumstances under which such statements were made.

2. Any statement or representation that the timeshare interests are offered without risk or that loss is impossible.

3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

C. All promotional and advertising material shall be consistent with the information contained in the notice of intention pursuant to section 32-2197.02 and the public report pursuant to section 32-2197.08 and shall clearly indicate that the material is being used to promote the sale, lease or use of an interest in a timeshare plan. An interest in a timeshare plan, vacation ownership plan, fractional ownership plan, vacation club or other term or terms may be approved by the commissioner on a case by case basis after the commissioner finds that such term or terms clearly disclose to prospective purchasers the nature of the timeshare interest being offered.

D. If it appears to the commissioner that any person is engaging or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under title 41, chapter 6, article 10 and issue such order or orders as the commissioner deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin that person from continuing such violation.

E. The commissioner may adopt such written guidelines as the commissioner deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, developer, agent or employee of any timeshare plan or other person with intent directly or indirectly to sell or lease timeshare interests subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. This section does not apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter in which such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

H. A telemarketing or any other promotional employee involved in activities whose primary duties are limited to soliciting initial interest, scheduling or confirming persons for appointments, handing out promotional literature or explaining promotional incentives and related duties is not required to hold a real estate license. To the extent that a telemarketing or any other promotional employee is engaged in soliciting interest in the actual purchase,

lease or use of timeshare interests, the employee shall be employed and supervised by a real estate broker who is licensed in this state subject to the following:

1. Supervision of unlicensed telemarketing and other promotional employees shall be performed directly by a broker or a licensed real estate salesperson under the supervision of the broker.

2. An unlicensed employee in the course of the employee's duties shall not engage in discussions about any details or benefits of the property transaction being promoted, including dimensions of the property, contract terms, discounts, exchange benefits, price and financing.

3. The amount and manner in which an unlicensed employee is individually compensated may not be based, in whole or in part, on the completion of a timeshare transaction.

4. For the purposes of the supervision required under this subsection, a developer may:

(a) Operate its own promotional program and provide supervision of its unlicensed telemarketing or other promotional employees through its designated broker.

(b) Establish a branch office that is managed by a licensed real estate salesperson under the supervision of the developer's designated broker and who provides supervision of the developer's unlicensed telemarketing or other promotional employees.

(c) Pursuant to a written promotion agreement:

(i) Contract with an unlicensed telemarketer or any other promoter if the agreement requires the developer's designated broker to provide supervision of the telemarketer's or promoter's unlicensed telemarketing or other promotional employees.

(ii) Contract with a telemarketer or any other promoter who is licensed as a broker in this state if the agreement requires the designated broker of the telemarketer or other promoter to provide supervision of unlicensed telemarketing or other promotional employees.

5. The commissioner may exempt from the supervision requirements of this section a timeshare developer that is not based in this state and that desires to conduct telemarketing solicitations of residents of this state or a developer that is based in this state but that desires to use the services of a telemarketer that is not located in this state to conduct telemarketing solicitations of residents of this state on written application containing information about the developer, the timeshare plan and the marketing procedures that will be used. The commissioner may grant such an exemption on a showing that supervision equivalent to that required under this section exists. If the developer does not adhere to the marketing procedures submitted with its application for exemption or if there is any material change in the information submitted with the application, the exemption may be denied or revoked.

I. A timeshare developer may hold a drawing or contest to solicit interest in or promote timeshare interests if all of the following requirements are met:

1. The timeshare plan has in effect a current public report.

2. The developer is not the subject of an ongoing investigation by the commissioner, unless the commissioner in the commissioner's discretion gives written permission to the developer to hold a drawing or contest.

3. The extent to which the drawing or contest is limited in time and scope and the geographic location in which eligible recipients reside are fully disclosed.

4. The estimated odds of winning and all other material terms of the drawing or contest are fully disclosed to all participants.

5. No fee is charged to any person who participates in a drawing or contest.

6. No participant in a drawing or contest, as a condition of participation, is required to attend a timeshare sales presentation or take a site tour.

7. The developer is in compliance with all applicable federal, state and local laws involving drawings or contests.

8. The developer is responsible at all times for the lawful and proper conduct of any drawing or contest.

9. The developer submits the details of the drawing or contest, including the method of awarding any prize, to the department for review and approval at least thirty days before the drawing or contest is offered.

J. A premium may be given to persons who visit timeshare properties or who attend a timeshare presentation. No person is required to attend any presentation or tour for longer than one hundred twenty minutes to receive the premium. The developer shall make complete and clear written disclosure that minimally includes detailed information about any premium offered as an incentive, including its estimated retail value and any conditions that must be met or limitations that apply to receive the premium, and about the one hundred twenty minute limit placed on a site tour or sales presentation to each timeshare prospect before any presentation or tour.

K. A developer or a representative of a developer conducting timeshare presentations or tours may offer a timeshare prospect a redemption certificate in return for participation in a presentation or tour if all of the following requirements are met:

1. If for any reason the goods or services are not provided in the time frame stated in or are not as represented in the redemption certificate and the recipient provides proof of timely satisfaction of all conditions and requirements for redemption, the developer does the following:

(a) Within fifteen days of receipt of notice from the timeshare prospect of the proven nonreceipt of the goods or services, provides the promised goods or services or a reasonable substitute of equal or greater value.

(b) If unable to provide the goods or services or a reasonable substitute within the fifteen day period, immediately pays the redemption certificate recipient an amount equal to the estimated retail value of the premium as advertised in the certificate promotional material or, if the value was not advertised, pays the estimated retail value of the premium.

2. All advertising and offers referring to redemption certificates shall clearly and conspicuously set forth any terms, conditions, restrictions or limitations governing the use of the certificates.

L. The disclosure required by subsection C of this section shall be provided as part of the initial advertising promotion contact with a prospective purchaser. Any other disclosures required pursuant to this section shall be provided before the prospective purchaser is required to pay any money or attend a sales presentation pursuant to the advertising promotion. The disclosures shall be given to each prospective purchaser on only one piece of advertising for each advertising promotion, including advertising promotions that consist of multiple related pieces. If advertising promotions are approved as multiple related pieces, the advertising promotion must be used in that form. If the advertising promotion contains terms and conditions the disclosures required in this section shall be included on any piece containing these terms and conditions. Repetitive filings of the same advertising material are not required.

32-2194.24. Trust fund to be established before certificate of authority granted

No certificate of authority shall issue to a corporation or limited liability company organized for the purpose of maintaining and operating a cemetery unless the articles of incorporation or organization certify to the establishment of an irrevocable trust fund for maintenance and operation in accordance with the provisions of this article, and there is attached to the articles of incorporation or organization the written instrument establishing the irrevocable trust fund accompanied by the receipt of the trustee designated in the written instrument for the minimum care fund hereinafter provided. Any cemetery that has been operating before January 1, 1998 and that was not previously required to establish an irrevocable trust fund shall not be required to establish an irrevocable trust fund unless a material change is made to the plan under which cemetery plots are offered for sale.

32-2194.25. Trust fund to be established before existing cemetery can advertise as endowed-care cemetery

After the effective date of this article, no owner of a cemetery in existence at the effective date of this article, who previous to such date has not sold or contracted to sell lots in such cemetery with a provision for perpetual or endowed care, shall thereafter advertise or otherwise hold out to the public that such cemetery or any individual lot therein is entitled to perpetual or endowed care unless and until the owner shall have established a trust fund for the care of the cemetery, as provided by this article.

32-2194.26. Initial deposit required in endowment-care fund

No corporation hereafter organized for the operation of a perpetual or endowed-care cemetery nor any owner of a cemetery not previously operating as a perpetual or endowed-care cemetery shall advertise or sell plots in such cemetery under the representation that the cemetery or any individual plot therein is entitled to perpetual or endowed care until there has been established an irrevocable trust fund to provide for such care in accordance with the following schedule:

1. Cemeteries located in an area having a population of less than ten thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of ten thousand dollars in cash.

2. Cemeteries located in an area having a population of ten thousand or more persons but less than fifteen thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of fifteen thousand dollars in cash.

3. Cemeteries located in an area having a population of fifteen thousand or more persons but less than twenty-five thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of twenty thousand dollars in cash.

4. Cemeteries located in an area having a population of twenty-five thousand or more persons, but less than fifty thousand persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of thirty thousand dollars in cash.

5. Cemeteries located in an area having a population of fifty thousand or more persons within a radius of fifteen miles from the center of such cemetery must deposit with the trustee the sum of fifty thousand dollars in cash.

32-2194.27. Restrictive use of income from endowed-care fund; obligation

The irrevocable trust fund established pursuant to section 32-2194.26 shall be evidenced by an instrument in writing and shall contain the following provisions:

1. There shall be designated a trustee for the endowed-care fund that is a financial institution authorized to do business in this state and authorized to act as trustee by the laws of this state for such investments. The trustee must be one in which no officer, director or owner of the cemetery is financially interested in any way.

2. The principal of the trust fund shall remain permanently intact, and only the income or the unitrust amount specified in section 14-11014 or 14-11015 shall be expended. It is the intent of this section that the income or unitrust amount of the fund shall be used solely for the care of plots or other burial spaces sold to third persons with a provision for perpetual or endowed care and the care of such other portions of the cemetery immediately surrounding such plots as may be necessary to preserve the beauty and dignity of the plots sold. The fund or its income shall never be used for the development, improvement or embellishment of unsold portions of the cemetery so as to relieve the owner of the cemetery of the ordinary cost incurred in preparing such property for sale.

3. A financial institution acting as a trustee does not have a legal obligation to operate a cemetery other than providing trust fund income to the receiver or successor of a cemetery unable to meet its perpetual care obligations. A trustee, in its sole discretion and without the approval of the court, may convert the trust to a total return unitrust and administer the endowed-care fund as provided in section 14-11014.

32-2194.28. Deposit in endowed-care fund from sales

A. In addition to establishing a trust fund as required by this article, every perpetual or endowed-care cemetery shall deposit into its trust fund according to the following schedule for each sale within thirty days after the contract for the purchase of cemetery property is paid in full:

1. Two dollars seventy-five cents per square foot for each grave.

2. Thirty-six dollars for each niche.

3. One hundred twenty dollars for each crypt.

B. In addition to the deposits required in subsection A of this section, a cemetery may deposit in its trust fund up to fifteen per cent of the gross sales price of a grave, niche or crypt.

C. This section applies to every cemetery which in any way represents that it is a perpetual or endowed-care cemetery, regardless of whether it operated as a perpetual or endowed-care cemetery before July 2, 1963.

D. In the case of a perpetual or endowed-care cemetery which was in operation as a perpetual or endowed-care cemetery before July 2, 1963, the fund created by the deposits which subsection A of this section requires is subject to the same restrictions to which the trust funds required by sections 32-2194.24 and 32-2194.25 are subject.

32-2194.29. Posting of signs by cemeteries

Each cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building, and readily accessible to the public, a legible sign in lettering of a size and style to be approved by the real estate commissioner indicating either the cemetery is an endowed or a nonendowed cemetery.

32-2194.30. Restriction on use of endowed-care funds

Endowed-care funds shall not be used for any purpose other than to provide for the care of burial spaces as prescribed in section 32-2194.27. In investing these funds, the trustee shall exercise the judgment and care of a prudent investor under the circumstances then prevailing, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income or unitrust amount as well as the probable safety of their capital. Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including corporate obligations of every kind and stocks, preferred or common, that prudent investors acquire for their own account.

32-2198.03. Exemptions

A. The following transactions are exempt from the provisions of section 32-2198:

1. An offer, sale or transfer by any one person of not more than one membership camping contract in any twelve month period any agent for the person, participating in more than one transaction in a twelve-month period is not exempt from registration as a membership camping salesperson under this chapter if he receives a commission or similar payment for the sale or transfer.

2. An offer or sale by a government or subdivision of a government agency.

3. An offer, sale or transfer by a membership camping operator of a membership camping contract previously authorized if the offer, sale or transfer constitutes a transfer to an owner other than the original owner of the contract.

B. The commissioner may by special order exempt from the provisions of section 32-2198 the offer for sale or the sale of membership camping contracts on written petition and a showing by the petitioner satisfactory to the commissioner that compliance with this chapter is not essential to the public interest or for the protection of purchasers.

32-2184. Change of subdivision plan after approval by commissioner; notice

A. It is unlawful for any subdivider, after submitting to the commissioner the plan under which a subdivision is to be offered for sale or lease, and securing his approval, to change the plan materially or to continue to offer lots or parcels within the subdivision for sale or lease after a change has occurred that materially affects the plan without first notifying the commissioner in writing of the intended change. Material changes covered by this section shall be prescribed in the rules of the commissioner. Upon receipt of any notice of a material change, the commissioner may require the amendment of the public report and, if he determines such action to be necessary for the protection of purchasers, suspend his approval of sale or lease pending amendment of the public report in accordance with section 32-2157.

B. If there has been a material change to the plan under which a subdivision is offered for sale or lease and an amendment to the public report is required, a purchaser or lessee who has executed a real estate sales contract or lease before the occurrence of the material change but has not yet completed performance under the real estate sales contract or has not taken possession under the lease may cancel the real estate sales contract or lease within ten days after receiving written notice from the subdivider of the material change if the material change adversely impacts the purchaser or lessee and was caused by the subdivider or an entity controlled by the subdivider or if the subdivider had actual knowledge of the material change at the time the real estate sales contract or lease was executed by the purchaser or lessee. Notwithstanding that the subdivider was not aware of the material change and did not cause the change to come about, the purchaser or lessee may cancel the sales contract or lease as provided by this subsection if the material change would involve an occupant's health, safety or ability to make designated use of the lot. This subsection does not create any cause of action, for rescission or otherwise, in favor of a purchaser who has not been impacted adversely by the material change.

C. A filing fee of one-half of the amount that was charged for the initial public report pursuant to section 32-2182, but no less than two hundred fifty dollars, shall accompany an application for an amended public report. If inspection of a subdivision site is necessary, the department shall assess an inspection fee pursuant to section 32-2182, subsection A.

32-2195.04. Sale of lots or parcels of unsubdivided lands; conditions precedent; methods

A. It is unlawful for the owner or agent of unsubdivided lands subject to the provisions of this article to sell or offer to sell lots or parcels of such land unless the sale complies with one of the following:

1. Execution, delivery and recording of a deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the property subject only to such exceptions as may be agreed to in writing by the purchaser. Any balance remaining unpaid by the purchaser may be evidenced by a note and mortgage or deed of trust. The deed and mortgage or deed of trust shall be recorded by the owner or agent within sixty days of execution thereof by the purchaser.

2. Execution, delivery, recording and depositing in escrow, not later than sixty days after execution by the purchaser, with a person or firm authorized to receive escrows under the laws of this state or the state in which the unsubdivided lands are located, of a real estate sales contract pertaining to the property, which contract sets forth the full and correct legal description of the property being sold and the precise terms and conditions under which the property is being sold together with:

(a) A copy of a preliminary title report showing the condition of title to the property on the date of the real estate sales contract or a preliminary title report showing the condition of title on an earlier date together with a copy of any document, recorded subsequent to the date of the preliminary title report, which affects the title to the property.

(b) An executed deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser which deed, under the terms of the real estate sales contract, is to be delivered to the escrow agent provided for under the contract within sixty days of the purchaser's execution of the contract and is to be recorded within sixty days after purchaser's compliance with the obligations imposed on him under the contract together with any release or partial release of any blanket encumbrance pertaining to said real property being sold.

(c) Any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to the real property being sold, or a partial release of the parcel being sold from the terms and provisions of such blanket encumbrance.

3. Execution, delivery and recording of a deed to the real property to a trustee together with a trust agreement and any and all documents necessary to release or extinguish any blanket encumbrance to the extent it applies to property being sold, or a partial release of the lot or parcel being sold from the terms and provisions of such blanket encumbrance. The trust agreement shall provide for conveyance by the trustee to a purchaser, upon purchaser's compliance with the obligations imposed on him under his real estate sales contract, by a deed in good and sufficient form conveying to the purchaser merchantable and marketable title, subject only to such exceptions as may be agreed to in writing by the purchaser. The real estate sales contract of the real property being sold shall be recorded by the owner or agent of unsubdivided lands within sixty days of execution of the real estate sales contract by the purchaser. The trustee shall execute, record and deliver the deed and record the release or partial release required by this subsection within sixty days of the purchaser's fulfillment of the terms of his real estate sales contract.

B. All documents required to be recorded under the provisions of this section shall be recorded in the county and state wherein the unsubdivided land is located.

C. Any sale or assignment of a mortgage, deed of trust or real estate sales contract by an owner or agent of unsubdivided lands or trustee shall be recorded in the county and state where the unsubdivided land is located and a notice of such sale or assignment provided to the commissioner, the recording and notice thereof to be effected not later than sixty days after the execution of such assignment.

D. Any contract or agreement entered into after January 1, 1977, to purchase or lease a parcel in unsubdivided lands subject to this article may be rescinded by the purchaser without cause of any kind by sending or

delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The owner or agent shall clearly and conspicuously disclose, in accordance with the regulations adopted by the commissioner, the right to rescind provided for in this section and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission within the time limit set in this section. The commissioner may adopt regulations to exempt commercial and industrial developments from such requirement.

E. If a buyer of a lot or parcel of unsubdivided land has not inspected the lot or parcel prior to the execution of the purchase agreement, the buyer shall have a six-month period after the execution of the purchase agreement to inspect the lot or parcel and at the time of the inspection have the right to unilaterally rescind the purchase agreement. At the time of inspection, the buyer must sign an affidavit stating that he has inspected the real property and at the request of the commissioner such affidavit may be required to be filed with the department.

F. Only a bank, savings and loan association or title insurance company doing business under the laws of this state or the United States or the state in which the unsubdivided land is located, or a title insurance company wholly-owned subsidiary or underwriting agent qualified under section 20-1580, or persons or firms authorized to receive escrows under the laws of this state or the state in which the unsubdivided land is located may act as trustee under paragraph 3 of subsection A of this section. Nothing in this subsection extends to a firm or individual authority to act as a trustee unless such authority is otherwise provided by law.

32-2195.10. Change of plan after approval by commissioner; notice

It is unlawful for an owner, agent or subdivider, after submitting to the commissioner a plan under which unsubdivided lands are to be offered for sale or lease and securing his approval, to change the plan materially without first notifying the commissioner in writing of the intended change. On receipt of a notice of a change of plan, the commissioner, if he determines such action to be necessary for the protection of purchasers, may suspend his approval of the sale or lease pending amendment of the public report.

32-2185.02. Permanent access to subdivided land; rescindable sales

A. No subdivided land may be sold without provision for permanent access to the land over terrain which may be traversed by conventional motor vehicle unless such provision is waived by the commissioner.

B. Any sale of subdivided land which is without permanent access is rescindable by the purchaser. An action by the purchaser to rescind such transaction shall be brought within three years of the date of execution of the real estate sales contract by the purchaser.

32-2194.10. Change of cemetery plan after approval by commissioner; notice; fee

A. It is unlawful for any owner or agent, after submitting to the commissioner the plan under which cemetery plots are to be offered for sale and securing his approval, to change the plan materially without first notifying the commissioner in writing of the intended change. Material changes covered by this section shall be prescribed in the rules of the commissioner. On receipt of any notice of a material change, the commissioner, if he determines such action to be necessary for the protection of purchasers, may suspend his approval of sale pending amendment of the notice as required by section 32-2194.01.

B. A filing fee of one-half of the fee that was charged for the initial certificate of authority pursuant to section 32-2194.02 but not less than two hundred fifty dollars shall accompany any amendment required by subsection A of this section.

32-2197.04. Notification of material change

A. The developer of a timeshare plan that is the subject of an outstanding timeshare public report shall immediately report to the department relevant details concerning any material change in the timeshare plan itself or in the program for marketing the timeshare interests.

B. On receipt of a written notice of a material change, the commissioner, if the commissioner determines such action to be necessary for the protection of purchasers, may suspend his approval of the sale or lease pending amendment of the public report. For sales made after the material change and pending amendment of the public report, the commissioner may require the developer to fully disclose the change in a prepared supplement to the public report. The supplement shall be delivered with the previously approved public report to all prospective purchasers until the new public report is issued. The commissioner shall not require the developer to deliver the amended public report to or obtain a receipt from prior purchasers unless the commissioner specifically finds that the developer's disclosure of the changes was not an adequate disclosure.

32-2185.09. Civil penalties; limitation

A. A subdivider or agent who is subject to the jurisdiction of the department, who violates this chapter or any rule adopted or order issued by the commissioner or who engages in any unlawful practices defined in section 44-1522 with respect to the sale or lease of subdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed $2,000 for each infraction. An infraction that concerns more than one lot in a subdivision is a single infraction for the purposes of this section.

B. A proceeding for imposition of a civil penalty or for suspension or revocation of a license for a violation of this article or any rule adopted or order issued by the commissioner must be commenced within five years of actual discovery by the department or discovery that should have occurred with the exercise of reasonable diligence by the department.

C. A subdivider who sells or leases in this state any lots, parcels or fractional interest in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02 for a lot or lots created from and after December 31, 2008 and on an order issued by the commissioner may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed $5,000 for each infraction. A proceeding for the imposition of a civil penalty or suspension or revocation of a license for a violation of this subsection or any rule adopted or order issued by the commissioner must be commenced within five years after actual discovery by the department or discovery that should have occurred with the exercise of reasonable diligence by the department.

32-2197.06. Declaration of dedication

The declaration or other documents described in section 32-2197.02, subsection B, paragraph 12 shall include the following general provisions as applicable to the particular timeshare property:

1. Provisions for organization of an association if applicable.

2. A description of the real and personal property for the common ownership or use of the timeshare interest owners.

3. A description of the services to be made available to timeshare interest owners under the timeshare program.

4. Provisions for transfer to the association of control over the timeshare property and services comprising the project.

5. Procedures for calculating and collecting regular and special assessments from timeshare owners to defray expenses of the timeshare plan and for related purposes.

6. Procedures for preparation and dissemination to timeshare owners of budgets, financial statements and other information related to the timeshare plan.

7. Procedures for terminating the membership and selling the interest of a timeshare owner for failure to pay regular or special assessments.

8. Policies and procedures for the disciplining of members for failure to comply with provisions of the governing timeshare instruments for the timeshare plan, including the late payment of assessments.

9. Procedures for employing and for terminating the employment of a managing entity for the timeshare plan.

10. Provisions for adoption of standards and rules of conduct for the use of accommodations by timeshare interest owners.

11. Provisions for establishment of the rights of owners to the use of accommodations according to a schedule or under a first reserved, first served priority system.

12. If applicable, procedures for compensating use periods or monetary compensation for an owner of a timeshare interest in a timeshare plan if an accommodation cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing entity.

13. Provisions for comprehensive general liability insurance for death, bodily injury and property damage resulting from the use of an accommodation within the timeshare plan by timeshare owners, their guests and other users.

14. A description of restrictions upon partition of a timeshare property.

15. Policies and procedures for the use of accommodations for transient accommodations or other income producing purposes during a period of nonuse by timeshare owners.

16. Policies and procedures for the inspection of the books and records of the timeshare plan by timeshare owners.

17. Procedures for the amendment of the timeshare instruments for the timeshare plan.

18. If applicable, procedures for annexation of additional accommodations to the timeshare plan.

19. Policies and procedures in the event of condemnation, destruction or extensive damage to accommodations including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.

20. Policies and procedures on regular termination of the timeshare plan including details on what happens to a purchaser's interest on termination.

21. Policies and procedures for collective decision making and the undertaking of action by or in the name of the association, if any, including, if applicable, representation of timeshare interests in an association for the common interest subdivision in which the interests are located.

22. If applicable, allocation of the costs of maintenance and operation between those accommodations dedicated to a timeshare plan and accommodations in the same timeshare plan being used for transient accommodations.

23. Policies and procedures for entry into accommodations of the timeshare plan under authority granted by the association for the purpose of cleaning, maid service, maintenance and repair, including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

32-2197.09. Rescindable sale or lease

A person shall not sell or lease or offer for sale or lease in this state timeshare interests in a timeshare plan without first obtaining a public report or authorization to conduct pre-sales from the commissioner. Unless exempt, any sale or lease of timeshare interests in a timeshare plan that consists of twelve or more timeshare interests before issuance of the public report or authorization to conduct pre-sales or failure to deliver the public report or evidence of pre-sale authorization renders the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction must be brought within three years of the date of the execution of the purchase or lease agreement by the purchaser. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

32-2181.03. Lot reservations; expiration

A. The notice of intent required by section 32-2181, subsection A or section 32-2195, subsection B and the issuance of a public report required by section 32-2183, subsection A or section 32-2195.03, subsection A are not required for any party to enter into a lot reservation on property located in this state.

B. Before the issuance of a public report, a deposit may be accepted from a prospective buyer as a lot reservation if all of the following requirements are met:

1. Before accepting any lot reservation, the prospective seller shall mail or deliver written notice of the seller's intention to accept lot reservations to the department. The notice shall include:

(a) The name, address and telephone number of the prospective seller.

(b) The name, address and telephone number of any real estate broker retained by the prospective seller to promote the lot reservation program.

(c) The name and location of the project for which lot reservations are to be offered.

(d) The form to be used for accepting lot reservations, subject to approval by the commissioner.

2. The reservation deposit for a single lot or parcel shall not exceed five thousand dollars.

3. Within one business day after a reservation is accepted by the prospective seller, the reservation deposit shall be delivered to an escrow agent licensed pursuant to title 6, chapter 7 and deposited by the escrow agent in a depository insured by an agency of the United States. The escrow account may be interest bearing at the direction of either the prospective seller or prospective buyer. Payment of any account fees and payment of interest monies shall be as agreed to between the prospective buyer and prospective seller. All reservation deposits shall remain in an escrow account until cancellation or termination of the lot reservation or execution of a purchase contract.

4. Within fifteen calendar days of receipt by the prospective seller of the public report issued by the commissioner relative to the reserved lot or parcel, the prospective seller shall provide the prospective buyer with a copy of the public report and a copy of the proposed purchase contract for the sale of the lot or parcel. The prospective buyer and prospective seller have seven business days after the prospective buyer's receipt of the public report and the proposed purchase contract within which to enter into a contract for the purchase of the lot or parcel. If the prospective buyer and prospective seller do not enter into a contract for the purchase of the lot or parcel within the seven business day period, the reservation automatically terminates. The prospective seller has no cancellation rights other than as provided in this paragraph.

5. A prospective buyer may cancel a lot reservation at any time before the execution of a purchase contract by delivering written notice of termination to the prospective seller.

6. Within five business days after a lot reservation has been terminated for any reason, the prospective seller shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed upon, if applicable. The escrow agent shall refund to the prospective buyer all reservation deposits made by the prospective buyer including any interest monies earned less any account fees agreed upon if the prospective seller is not available. After this refund neither the prospective buyer nor the prospective seller has any obligation to the other arising out of the lot reservation.

7. A prospective buyer may not transfer rights under a reservation without the prior written consent of the prospective seller, and any purported transfer without the consent of the prospective seller is voidable at the sole discretion of the prospective seller.

8. If the department denies an application for a public report on the development on which lot reservations were taken, within five business days of notification by the department, the prospective seller shall notify in writing each prospective buyer who entered into a lot reservation agreement. The prospective seller shall return any reservation deposits previously taken.

9. All notices required by this section to be given to the department, the prospective buyer or the prospective seller shall be in writing and either hand delivered or sent by certified mail, return receipt requested, with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the United States mail.

10. Each lot reservation form shall contain the following statement:

The state real estate department has not inspected or approved this project and no public report has yet been issued for the project. No offer to sell may be made and no offer to purchase may be accepted before issuance of a public report for the project.

C. The commissioner may deny authorization to accept lot reservations under this section to any person who has violated or is in violation of any provision of this chapter.

D. The authority to take lot reservations under this section expires two years after the date the commissioner receives notice of the intent to take lot reservations from a developer.

32-2185. Delivery of clear title by vendor on performance of contract by vendee

It is unlawful to sell to any purchaser any subdivision lot or parcel that is subject to a blanket encumbrance, unless there is a provision in the blanket encumbrance, or in a valid supplementary agreement executed by the holder of the blanket encumbrance, enabling the purchaser to acquire title to the lot or parcel free of the blanket encumbrance upon completion of all payments and performances of all the terms and provisions required to be made or performed by the purchaser under the real estate sales contract. Certified or verified copies of documents acceptable to the commissioner containing such provisions shall be filed with the commissioner prior to the sale of any subdivision lot or parcel subject to a blanket encumbrance.

32-2197.10. Timeshare interest reservations

A. The notice of intent required by section 32-2197.02 and the approval for use of a public report required by section 32-2197.08 are not required for any party to enter into a timeshare interest reservation.

B. Before the approval for use of a public report for a timeshare plan, a deposit may be accepted from a prospective buyer for a timeshare interest reservation if all of the following requirements are met:

1. Before accepting any timeshare interest reservation the prospective seller shall mail or deliver, or provide in a written, CD-ROM or other electronic format as approved by the commissioner, notice of the seller's intention to accept timeshare interest reservations to the department. The notice shall include:

(a) The name, address and telephone number of the prospective seller.

(b) The name, address and telephone number of any real estate broker retained by the prospective seller to promote the timeshare interest reservation program.

(c) The name and location of the timeshare property for which timeshare interest reservations are to be offered.

(d) The form to be used for accepting timeshare interest reservations subject to approval by the commissioner.

(e) The name and address of the independent third party escrow or trust account agent responsible for holding the reservation deposits.

2. The reservation deposit for a single timeshare interest shall not exceed twenty percent of the purchase price.

3. Within one business day after a reservation is accepted by the prospective seller, the reservation deposit shall be delivered to an independent third-party escrow or trust account in a federally insured depository. The account may be interest bearing at the direction of either the prospective seller or prospective buyer. Payment of any account fees and payment of interest monies shall be as agreed to between the prospective buyer and prospective seller. All reservation deposits shall remain in the account until cancellation or termination of the timeshare interest reservation or execution of a purchase agreement.

4. Within fifteen calendar days after the prospective seller receives the public report approved for use by the commissioner relating to the reserved timeshare interest, the prospective seller shall provide the prospective buyer with a copy of the public report and a copy of the proposed purchase agreement for the sale of the timeshare interest. The prospective buyer and prospective seller shall have ten business days after the prospective buyer's receipt of the public report and the proposed purchase agreement to enter into a contract for the purchase of the timeshare interest. If the prospective buyer and prospective seller do not enter into a contract for the purchase of the timeshare interest within the ten business day period, the reservation automatically terminates. The prospective seller has no cancellation rights concerning a timeshare interest reservation other than as provided in this subsection.

5. A prospective buyer may cancel a timeshare interest reservation at any time before the execution of a purchase agreement by delivering written notice of termination to the prospective seller as provided in paragraph 9 of this subsection.

6. Within five business days after a timeshare interest reservation has been terminated for any reason, the prospective seller shall refund to the prospective buyer all reservation deposits made by the prospective buyer, including any interest monies earned minus any account fees agreed on, if applicable. The independent third-party escrow account or trust account agent shall refund to the prospective buyer all reservation deposits made by the prospective buyer, including any interest monies earned minus any account fees agreed on if the prospective seller is not available. After the refund, neither the prospective buyer nor the prospective seller has any obligation arising out of the timeshare interest reservation.

7. A prospective buyer may not transfer rights under a reservation without the prior written consent of the prospective seller, and any purported transfer without the consent of the prospective seller is voidable at the sole discretion of the prospective seller.

8. If the department denies an application for a public report on a timeshare plan on which timeshare interest reservations were taken, within five business days after notification by the department, the prospective seller shall notify in writing each prospective buyer who entered into a timeshare interest reservation agreement. The prospective seller shall return any reservation deposits previously taken.

9. All notices required by this section to be given to the department, the prospective buyer or the prospective seller shall be in writing and either hand delivered or sent by certified mail, return receipt requested with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the United States mail.

10. Each timeshare interest reservation form shall contain the following statement in conspicuous type above the purchaser's signature line:

The Arizona department of real estate has not inspected or approved this timeshare property and no public report has been issued for the timeshare plan. No offer to sell may be made and no offer to purchase may be accepted before issuance of a public report or pre-sale authorization for the timeshare plan.

C. The commissioner may deny, suspend or revoke authorization to accept timeshare interest reservations under this section to any person who has violated any provision of this chapter.

32-2157. Written notice of charges; summary suspension; hearing; voluntary surrender of license

A. Except as provided in subsections B and C of this section, before suspending, revoking or denying the renewal or the right of renewal of any license, or issuing any order prohibiting the sale or lease of property or the sale of cemetery lots or membership camping contracts as provided by this chapter, the commissioner shall present the licensee, owner, including the current owner of the property, operator, agent or developer with written notice of the charges filed against the person, or reasons for prohibiting the sale or lease, and shall afford the person an opportunity for a hearing pursuant to title 41, chapter 6, article 10. Within twenty days after service of a notice of hearing, the respondent shall appear by filing a written answer to the complaint. A licensee against whom the department has commenced a disciplinary proceeding under this chapter may voluntarily surrender to the department the license if the surrender of the license occurs not less than ten days prior to a hearing under this section. After the acceptance of a voluntary surrender of a license under this section the department shall not thereafter issue a license under this chapter to the licensee.

B. If the commissioner finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in the commissioner's order, summary suspension of a license or sales may be ordered. Grounds for issuance of an order of summary suspension include the violation of any of the provisions of section 32-2153 and the termination of a license pursuant to section 32-2188, subsection I. A licensee, owner, including the current owner of the property, operator, agent or developer may request a hearing pursuant to title 41, chapter 6, article 10. A summary suspension shall be deemed to be final if a request for a hearing is not received within thirty days as provided by section 41-1092.03.

C. The department may issue a summary suspension when the department receives notice that a person licensed pursuant to this chapter has been convicted of a felony offense and is currently incarcerated for the conviction, paroled or under the supervision of a parole or community supervision officer or is on probation as a result of the conviction. This subsection does not limit the commissioner's authority to seek revocation of a license or other disciplinary action pursuant to this chapter.

32-2158. Hearing; witnesses; deposition; service of process

A. Any party to a hearing shall have the right to the attendance of witnesses in the party's behalf, in person or by deposition, upon making a request therefor to the commissioner and designating the person or persons requested to be subpoenaed. For the purpose of investigation or hearing the commissioner shall have the powers vested in public officers by section 12-2212.

B. Process issued by the commissioner may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the commissioner. The person serving process shall receive compensation allowed by the commissioner, not to exceed the fees prescribed by law for similar service. Any witness who appears by order of the commissioner shall receive the same fees and mileage allowed by law to a witness in civil cases, which shall be paid by the party at whose request the witness is subpoenaed. Fees for serving process and of witnesses subpoenaed by the commissioner not upon the request of any other person shall be paid as other expenses of the department are paid.

32-2159. Judicial review; costs; transcript

A. Except as provided in section 41-1092.08, subsection H, a final decision of the commissioner may be appealed to the superior court in Maricopa county pursuant to title 12, chapter 7, article 6.

B. If the superior court declares an appealing party indigent, on appeal the department shall pay the costs of the reporter's transcript of proceedings and shall produce a certified copy of all documents and evidence in the administrative record at no charge.

32-2125.03. Confidentiality of licensee's residential address, electronic mail address, residential telephone number and social security number

A. Notwithstanding any other law, a licensee's or applicant's residential address or residential telephone number maintained by the department shall not be available to the public unless the commissioner determines that disclosure of the residential address or residential telephone number, or both, serves the interests of justice and is in the public interest.

B. A licensee's or applicant's electronic mail address shall not be released or made available for inspection to any person other than a court or a governmental agency that will use the electronic mail address for a legitimate court or governmental purpose.

C. The residential address, electronic mail address and residential telephone number of a licensee whose license is placed on inactive status are confidential unless the commissioner determines that disclosure of the addresses and telephone number serves the interests of justice and is in the public interest.

D. The department may not release a licensee's social security number or make a licensee's social security number available for inspection by any person other than a court or a governmental agency that will use the information for a legitimate governmental purpose.

32-2199.01. Hearing; rights and procedures

A. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by the commissioner. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner. The department does not have jurisdiction to hear:

1. Any dispute among or between owners to which the association is not a party.

2. Any dispute between an owner and any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling a condominium as defined in section 33-1202 or any property or improvements within a planned community as defined in section 33-1802, including any person, firm, partnership, corporation, association or other organization licensed pursuant to this chapter, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.

B. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.

C. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within twenty days after mailing of the petition showing cause, if any, why the petition should be dismissed.

D. After receiving the response, the commissioner or the commissioner's designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative hearings. The commissioner may dismiss a petition for hearing if it appears to the commissioner's satisfaction that the disputed issue or issues have been resolved by the parties.

E. Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the commissioner shall issue a default decision.

F. Informal disposition may be made of any contested case.

G. Either party or the party's authorized agent may inspect any file of the department that pertains to the hearing, if the authorization is filed in writing with the department.

H. At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, employee or contractor of the corporation who is not a member of the state bar if:

1. The corporation has specifically authorized the officer, employee or contractor of the corporation to represent it.

2. The representation is not the officer's, employee's or contractor of the corporation's primary duty to the corporation but is secondary or incidental to the officer's, employee's or contractor of the corporation's, limited liability company's, limited liability partnership's, sole proprietor's or other lawfully formed and operating entity's duties relating to the management or operation of the corporation.

32-2160. Filing of complaint by commissioner; prosecution

A. The commissioner may file a complaint for a violation of this chapter before a court of competent jurisdiction and may in person or by his deputies, assistants or counsel assist in the prosecution of the complaint. The county attorney of any county in which a violation occurs shall, upon the written request of the commissioner or the attorney general, prosecute the violation.

B. In addition to all other remedies, when it appears to the commissioner either upon complaint or otherwise that any person, firm, partnership, corporation, association or other organization, or a combination of any of them, has engaged or is engaging in any act, practice or transaction which constitutes a violation of this chapter or of any rule or order of the commissioner, the commissioner may, either through the attorney general or through the county attorney of any county in which the act, practice or transaction is alleged to have been committed, apply to the superior court of that county for an injunction restraining such person, firm, partnership, corporation, association or other organization from engaging in such act, practice or transaction, or doing any act in furtherance thereof, and, upon a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond. Process in such action may be served upon the defendant in any county of this state where such defendant transacts business or is found or on the statutory agent in the case of a corporation.

C. Nothing in subsection B shall give the department jurisdiction over any landlord and tenant disputes or federal or state fair housing violations or authorize the commissioner to seek sanctions under this chapter or any rule or order of the commissioner relating to these matters.

32-2160.01. Civil penalties

A. Any licensee who is subject to the jurisdiction of the department and who has violated any provision of this chapter or any rule or order adopted or issued by the commissioner, who has deviated substantially from the provisions of a public report or who has engaged in any unlawful practices defined in section 44-1522 with respect to the sale or lease of either subdivided lands or unsubdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed one thousand dollars for each infraction.

B. Actions to recover penalties assessed pursuant to this chapter shall be brought by the attorney general in the name of the state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office. When the commissioner has revoked a license or withdrawn certification or approval of a school, educational course or real estate instructor and assessed civil penalties that remain unpaid, if judicial review has not been sought under title 12, chapter 7, article 6, a certified copy of any such commissioner's order requiring the payment of civil penalties may be filed in the office of the clerk of the superior court. The clerk shall treat the commissioner's order in the same manner as a judgment of the superior court. A commissioner's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced or satisfied in like manner. No filing fee is required under this section.

32-2191. Commissioner's standing in court

The commissioner may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action the commissioner considers appropriate on the behalf and in the name of the real estate recovery fund and take recourse through any appropriate method of review on behalf of, and in the name of, the real estate recovery fund.

32-2195.12. Recording of actions

A. Whenever the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of an unsubdivided lands public report, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the unsubdivided property is located and include the legal description of the affected land. The commissioner shall also provide notice of the order or suspension to all affected parties with an ownership interest of record in any lot, parcel or fractional interest, in the unsubdivided property within ten business days of issuing the order or suspension.

B. In the event of a revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner within ten business days.

32-2195.11. Civil penalties; limitation

A. An owner or agent who is subject to the jurisdiction of the department and who violates any provision of this chapter relating to the sale or lease of unsubdivided lands or any rule adopted or order issued by the commissioner relating to the sale or lease of unsubdivided lands or who engages in any unlawful practices defined in section 44-1522 with respect to the sale or lease of unsubdivided lands may be assessed a civil penalty by the commissioner, after a hearing, in an amount of not more than one thousand dollars per infraction. An infraction that concerns more than one lot among unsubdivided lands is a single infraction for the purposes of this section.

B. A proceeding for the imposition of a civil penalty or for suspension or revocation of a license for a violation of this article or any rule adopted or order issued by the commissioner must be commenced within the earlier of five years of either of the following:

1. Actual discovery by the department.

2. Discovery that should have occurred if the department was reasonably diligent.

32-2197.14. Investigations; orders; hearings

A. The commissioner, on the commissioner's own motion, or if the commissioner has received a complaint and has satisfactory evidence that the owner, agent or developer is violating any provision of this article or rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 concerning the sale of timeshare interests or deviated from the provisions of the public report, may investigate the timeshare property and examine the books and records of the owner, agent or developer. For the purpose of examination, the owner, agent or developer shall keep and maintain records of all sales transactions and monies received pursuant to such sales transactions and make them accessible to the commissioner upon reasonable notice and demand.

B. The commissioner may conduct an investigation, issue a summary order as provided in section 32-2157 or hold a public hearing, on the commissioner's own motion, or if the commissioner has received a complaint and has satisfactory evidence that:

1. A person has violated any of the provisions of this article or the rules of the commissioner.

2. A person has engaged in any unlawful practice as defined in section 44-1522 concerning the sale of timeshare interests.

3. A person has deviated from the provisions of the public report.

4. The owner, agent, developer, officer or partner, developer trust beneficiary or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has participated in, operated or held an interest in any land development company which is bankrupt or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report.

C. After such hearing, the commissioner may issue such order or orders as the commissioner deems necessary to protect the public interest and ensure compliance with the law, or rules or public report, or may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing such violation or engaging in such violation or doing any act or acts in furtherance of such violation. The court may make such orders or judgments, including the appointment of a receiver, as are necessary to prevent the use or employment by a person of any unlawful practices or which are necessary to restore to any person in interest any monies or property, real or personal, which has been acquired by means of any practice declared to be unlawful in this article.

D. For any timeshare investigation made under this section of an out-of-state timeshare plan, or any in-state timeshare plan to which the commissioner issues any order necessary to protect the public interest and ensure compliance with law, rules or the public report, the developer shall reimburse the department for travel and subsistence expenses incurred by the department.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 9, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 3

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to thirty-four (34) rules and three (3) tables in Title 9, Chapter 3 regarding the monitoring, certification, and regulation of Child Care Group Homes (CCGH). Specifically, these rules cover the following articles:

- Article 1 - General
- Article 2 - Certification
- Article 3 - Operating a Child Care Group Home
- Article 4 - Program and Equipment Standards
- Article 5 - Physical Environment Standards

In the prior 5YRR for these rules, which was approved by the Council in December 2019, the Department proposed to amend rules to make them clearer and increase understandability by simplifying and clarifying some requirements, updating antiquated language and outdated definition and references, and making minor technical and grammatical changes. Changes included adding and updating antiquated terms, such as "accredited," "enrolled children," "modification," and "positioning device." Other changes include clarifying fingerprint clearance cards, updating the Department of Agriculture Child and Adult Care Food Program Meal

Patterns for children and infants, and clarifying adult staff member high school education requirements. Additionally, requirements related to child passenger restraint systems would be changed to make them consistent with A.R.S. § 28-907. The Department engaged in an expedited rulemaking to implement the prior proposed course of action, which became effective on September 2, 2020.

Proposed Action

In the current report, the Department is proposing changes to several rules to improve their clarity, conciseness, understandability, consistency, and effectiveness as outlined in more detail below. The Department plans to make changes to the rules to address these items and to submit a Notice of Final Rulemaking to the Council by December 2025.

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

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

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

The Department indicates A.R.S. Title 36, Chapter 7.1, Article 4 authorizes the Department to monitor, certify, and regulate CCGH. The Department states it currently certifies approximately 290 CCGHs statewide, with 287 active licenses. In addition, between July 1, 2023, and July 1, 2024, the Department issued 71 certifications for initial, renewal, and amended CCGH licenses.

The Department indicates in the last five years, it has completed two expedited rulemakings and one exempt rulemaking in 9 A.A.C. 3. The Department states affected persons included CCGH certificate holders, consumers, enrolled children, parents of enrolled children, and the Department. The Department indicates it was not required to complete an economic, small business, and consumer impact statement (EIS) for the exempt rulemakings, and as such, the Department did not file an EIS for any of the exempt and expedited rulemakings.

Overall, the Department estimates that certificate holders, enrolled children, consumers and the Department benefit significantly from the rulemakings for providing updated rules that are easier to use, less expensive to enforce, consistent with statute, easier to understand and more effectively protect the health and safety of enrolled children.

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 the rules aim to ensure the safety, health, and proper administration of child care group homes by establishing clear guidelines and consistent standards for terminology, approval processes, representation, application requirements, staff requirements, certifications fees, notifications of changes, inspection access, disciplinary actions,

and various operational aspects. The Department believes these rules are important to public health because they ensure the safety, well-being, and promote the development of children in care, prevent the spread of illness and communicable diseases, maintain high standards of hygiene and sanitation, and safeguard against abuse and neglect, thereby promoting a healthy and secure environment for children and the broader community. Thus, the Department believes, the probable benefits of the rules outweigh the probable costs of the rules. In addition, the Department believes, since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

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

The Department indicates it received no written criticisms of the rules in the last five years.

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

The Department indicates the rules are generally clear, concise, and understandable except for the following:

- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved in subsection (3) by updating the names of the accreditation institutions.
- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved in subsection (10) by removing "certification" since that language is not consistent with a background check. In addition, the definition can be amended to also include that the state criminal history checks within this state and each state where a staff member resided during the preceding five years. Lastly, current subsections (10)(c) and (d) can be combined since the National Crime Information Center includes the National Sex Offender Registry.
- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved in subsection (96) which defines the term "public school" as the same definition as "school" in A.R.S. § 15-101. Since the statutory definition specifies the term "public school," the definition used in the rules can be simplified by removing the reference to "school."
- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved by removing an obsolete definitions that are not used in Chapter 3, or that are only used once, including "corporal punishment," "licensed applicator," "mat," "perishable food," and "regular basis." Terms only used once can be described in the Section it is used and omitted from the definitions in R9-5-101. Removing these terms and definitions would require renumbering subsequent terms and definitions.
- R9-3-101

    - The rules would be more clear if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received.
- R9-3-201
    - The rules would be more clear if language was updated and amended to reflect the online application process rather than a paper "packet." In addition, most homes do not have a landline and only a cell phone is used. Therefore, the rules can be updated to reflect this.
- R9-3-301
    - The rules would be more clear if subsection (A)(4)(i) was removed because it is duplicative to the requirement in (A)(4)(g).
- R9-3-302
    - The rule is clear, concise, and understandable, but could be improved by consolidating language to be more simple and clear.
- R9-3-303
    - The rule is clear, concise, and understandable, but could be improved by reducing the burden on child care group homes by removing the required immunization card and having the information documented and on file in a format put together by the child care group home. In addition, the language regarding the required documentation on the immunization record can be updated and simplified. For example, the "home address" is required and the rule further states that the "city, state, and zip code" are required, however this information should be included within the "home address." Also, an email address requirement should be added to the rules to align with electronic methods of submission.
- R9-3-307
    - The rule would be more clear in subsection (B)(3) was amended to specify the timeframe that documentation needs to be kept, which would only be for 12 months after the date of the notification.
- R9-3-307
    - The rule would be more clear in subsection (D) was amended to cross-reference the communicable diseases list in 9 A.A.C. 6, Article 2, and if specifying the exemption of reporting human immunodeficiency virus or a sexually transmitted disease was removed.
- R9-3-101, R9-3-404, and R9-3-407
    - The rules could be clearer by using the terms 'an enrolled child with a special health care need or a disability. This word usage is more inclusive and also aligns with the new changes the Department is making in a current rulemaking for Title 9, Chapter 5. Child Care Facilities.
- Table 4.1
    - The rule could be clearer by correcting a grammatical error by adding the word "the" when referring to the "parent or child."
- R9-3-407
    - The rule could be clearer by combining subsections (A)(16) and (17) so that the rule is less duplicative.
- Table 5.1

    - The rule is clear, concise, and understandable, but could be improved by amending the word "supper" to "dinner" for consistency throughout the Article.
- R9-3-502
    - The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (C)(3) and clarifying that there is covering over the fall zone of the climbing structure, swing, or slide.
- R9-3-503
    - The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (E) by moving the placement of the word "clearly" in the rule.
- R9-3-508
    - The rule could be improved in subsection (7) by simplifying the language related to reptiles in a child care group home.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- R9-3-101
    - The definition of "accident" in subsection (2) should align with the rules in Chapter 5 for child care facilities and be amended to include that an "accident" means an unexpected occurrence that requires attention from a staff member.
- R9-3-101
    - The definition of "age-appropriate" in subsection (7) should align with the rules in Chapter 5 for child care facilities and can be updated to use more inclusive terms within the definition.
- R9-3-101 and R9-3-310
    - The rules would align more with the Chapter 5 for child care facilities and be consistent with the Child Care and Development Block Grant requirements by defining the term "serious physical injury" and using this terminology in the rules rather than just "injury.
- R9-3-101
    - The rules would align other rules in Title 9 if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received to clarify that electronic forms of documentation is acceptable.
- R9-3-102
    - The rules would align more with the Chapter 5 as well as other licensing rules in Title 9 if subsection (A) was removed because it is an obsolete rule to allow for the Department to have additional substantive review time.
- R9-3-103, R9-3-201, and R9-3-301
    - The rules would align more with the Chapter 5 for child care facilities by removing the required Department-provided orientation and making this an optional training that is still available.
- R9-3-201

    - The rules would align more with A.R.S. § 41-1080 regarding the acceptable type of documentation of citizenship.
- R9-3-202
    - The rules would align more with the Chapter 5 for child care facilities as well as the CCDBG requirements of requiring the fingerprint clearance card is issued or renewed every five years. In addition, subsection (F)(1) should require the background check to be completed before the stating date of employment or volunteer service, in compliance with A.R.S. § 46-811 as well as CCDBG requirements. Lastly, subsection (J) is obsolete and can be removed since the date to be in compliance with A.R.S. § 46-811(A) has passed.
- R9-3-203
    - The rules would align more with the Chapter 5 as well as other licensing rules in Title 9 if the rules were amended in subsection (C)(1) to use clearer language regarding the documentation in a "Department-provided format."
- R9-3-301
    - The rules related to tuberculosis testing can be amended and simplified to be less of a burdensome requirement for stakeholders. The Department is currently amending rules in Chapter 5 for child care facilities and is simplifying the required tuberculosis testing to align with CDC standards. Rather than requiring everyone who works at a child care facility or child care group home to receive tuberculosis testing before working, the Department plans to amend the rules to require a self-screening form in a Department-provided format for tuberculosis screening purposes and follow recommendations for further tuberculosis testing, as applicable. Therefore, not everyone will require to be tested for tuberculosis.
- R9-3-302
    - The rules would align more with the Chapter 5 for child care facilities as well as the CCDBG requirements by updating the training requirements to be the same. This would include updating the language to be written the same, and adding several new training requirements to the current rules including the use of safe sleeping practices, prevention of shaken baby syndrome, child abuse detection, indoor/outdoor activity safety, sun safety, water safety, etc.
- R9-3-302
    - The cross-reference in subsection (B) should be updated from A.R.S. § 36-309 to A.R.S. § 36-3009.
- R9-3-304
    - The rules would align more with Chapter 5 for child care facilities as well as the CCDBG requirements by requiring a 30-calendar day grace period for an enrolled child who has not had immunizations and is homeless.
- R9-3-305
    - The rules would align more with Chapter 5 for child care facilities if subsection (B) was removed regarding an enrolled child who is allowed to self-admit or self-release because they would be exempt from the requirement.
- R9-3-403
    - The rules would align more with Chapter 5 for child care facilities if the rules were amended to remove the required a top sheet or blanket for each infant.

According to the American Academy of Pediatrics, loose blankets and other soft items in an infant's sleep space can contribute to an increased risk of sleep-related infant death.

- R9-3-405
    - The Department is currently amending rules in Chapter 5 for child care facilities, based on stakeholder input, the Department is amending the term from "discipline" to "positive discipline" so that there is less negative cogitation. In addition, language within each subsection of this Section can be amended or rewritten to be clearer, align with the Chapter 5 rules, and coincide with what is wanted in the industry.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- R9-3-201
    - Subsection (2)(k)(ci) would be more effective and less burdensome to licensees by removing that the documentation of good standing issued by the Arizona Corporation Commission has to be dated within the last three months. General documentation would be acceptable and LLC holders can obtain that for free, the current rules require the LLC holder to pay for additional documentation.
- R9-3-205
    - The rule is effective but could be improved and updated by removing a required fax number for the point of contact of the child care group home.
- R9-3-301 and R9-3-302
    - The rule is effective but could be improved by specifying that CPR and first aid training specific to adult and pediatric is required, since some training classes do not include the pediatric portion of the training.
- R9-3-501
    - Subsection (A)(2) can be removed because the Department does not license child care group homes to facilitate more than 10 enrolled children, therefore the rule is not effective.
- R9-3-507
    - Reference to soiled plastic pants in subsection (B)(3) can be removed since these are no longer commonly used, therefore the rule is not effective.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the rules are currently enforced as written.

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

The Department indicates the rules are not related to 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?

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 it certifies child care group homes in compliance with A.R.S. § 36-897.01. The Department states a CCGH is specific to the certificate holder and is valid only for the location occupied at the time the certificate was issued. As such, the Department indicates a general permit is not applicable and is not used. Pursuant to A.R.S. § 41-1037(A)(3), an agency may use a permit other than a general permit if "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements."

11. Conclusion

This 5YRR from the Department relates to thirty-four (34) rules and three (3) tables in Title 9, Chapter 3 regarding the monitoring, certification, and regulation of Child Care Group Homes. Specifically, these rules cover the following articles: Article 1 - General, Article 2 - Certification, Article 3 - Operating a Child Care Group Home, Article 4 - Program and Equipment Standards, and Article 5 - Physical Environment Standards. The Department is proposing changes to several rules to improve their clarity, conciseness, understandability, consistency, and effectiveness and plans to submit a Notice of Final Rulemaking to the Council by December 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

August 9, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 3, Five-Year-Review Report for Child Care Group Homes

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 3, Child Care Group Homes, which is due on September 30, 2024.

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

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

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

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 3. Department of Health Services – Child Care Group Homes

Due: September 30, 2024

Submitted: August 9, 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-897.01 through 36-897.13

2. The objective of each rule:

Rule	Objective
R9-3-101	The objective of the rule is to define the terms used in Chapter 3 so requirements are clear and terms are interpreted consistently.
R9-3-102	The objective of the rule is to specify the process for Department approval of an application for a certificate and a change affecting a certificate.
Table 1.1	The objective of the table is to specify time-frame duration required for Department's approval of an application for a certificate and a change affecting a certificate.
R9-3-103	The objective of the rule is to establish which individuals may act on behalf of an applicant or certificate holder based on whether the applicant or certificate holder is an individual or business organization.
R9-3-201	The objective of the rule is to specify the requirements for submitting an application packet for licensure as a child care group home.
R9-3-202	The objective of the rule is to establish requirements for a licensee to ensure that each staff member has a current-valid fingerprint clearance card before the staff member's staring date of employment or volunteer service and maintains a current-valid fingerprint clearance card during employment or time providing volunteer service.
R9-3-203	The objective of the rule is to establish the certification fees for a certificate holder and inform a certificate holder when fees are due.

R9-3-204	The objective of the rule is to inform a certificate holder that a certificate to operate a child care group home is not valid if the certificate holder fails to submit the certification fee specified in R9-3-203.
R9-3-205	The objective of the rule is to inform a licensee of specific changes made to a child care group home that requires a licensee to notify the Department prior to making the change. Changes affecting a license include space utilization or capacity, name, ownership, and location.
R9-3-206	The objective of the rule is to inform an applicant, certificate holder, or provider that the Department, during an inspection or investigation, shall have access to the physical premises of a child care group home and permitted to interview staff members or enrolled children outside the presence of others.
R9-3-207	The objective of the rule is to specify the types of and the criteria to consider when determining a disciplinary action the Department may take.
R9-3-301	The objective of the rule is to establish the responsibilities of a certificate holder; the responsibilities and qualification criteria for a group home provider and staff members; and requirements to ensure residents are safe and receive continuously quality of care.
R9-3-302	The objective of the rule is to require a certificate holder to provide basic child care trainings to new staff members, ensure that staff members complete additional child care trainings annually, and maintain document of staff members completed training.
R9-3-303	The objective of the rule is to establish who may enroll a child into a child care group home and what information related to the child is required at the time of enrollment and disenrollment.
R9-3-304	The objective of the rule is to provide immunization requirements for enrolled children, including requirements for ensuring enrolled children maintain current age-appropriate immunizations required by 9 A.A.C. 6, Article 7.
R9-3-305	The objective of the rule is to ensure the safety of enrolled children by requiring a certificate holder to establish methods for documenting the arrival and departure of an enrolled child; for verifying an enrolled child who has written permission to self-admit or self-release; and verifying an unknown individual asked to sign out an enrolled child.
R9-3-306	The objective of the rule is to require certificate holders to make certain pesticide information available to enrolled children parents before a pesticide application occurs in a child care group home.

R9-3-307	The objective of the rule is to provide requirements to prevent the spread of illness or infestation in a child care group home and for reporting to parents and local health agencies exposure or potential exposure of a communicable disease or infestation.
R9-3-308	The objective of the rule is to provide requirements to protect enrolled children from abuse or neglect by requiring certificate holders and staff members to report and document suspected abuse or neglect of an enrolled child to Child Protective Services or local law enforcement.
R9-3-309	The objective of the rule is to ensure proper administration of medications, prescription and non-prescription, to enrolled children. The requirements include who may and how a medication is administered; verification of a parent or medical professional written authorized; and how to store enrolled children's medication to prevent unauthorized access.
R9-3-310	The objective of the rule is to provide requirements for a certificate holder to maintain and make available a first-aid kit to staff members for providing first-aid treatment to an enrolled child, when needed, and for a certificate holder and staff members attending to an enrolled child who has an injury, medical emergency, or death.
R9-3-401	The objective of the rule is to establish requirements that ensure areas and equipment for enrolled children are free of hazards and in good repair. The rule also includes requirements for toys and playground equipment be age-appropriate, sufficient in number, and accessible and staff members are to monitor enrolled children's health and safety by changing soiled clothing, making drinking water available, observing for overexposure to the sun, and applying sunscreen.
R9-3-402	The objective of the rule is to establish standards for the sleeping/napping needs of enrolled children and for when an attending staff member may sleep.
R9-3-403	The objective of the rule is to establish standards for the unique needs of infants and 1- and 2-year-old enrolled children. The standards require a group home to utilize safe sleeping positions and bedding; limit awake time spent in a crib, swing, and other confining device; prepare and store formula, milk, and foods; use age-specific utensils, toys, and feeding chairs; change soiled diapers; and develop a toilet training program.
R9-3-404	The objective of the rule is to establish standards for the unique needs of enrolled children with special needs and staff members who assist an enrolled child using a feeding tube or transporting an enrolled child in a wheelchair.
R9-3-405	The objective of the rule is to clarify requirements and limits a certificate holders shall ensure staff members apply when disciplining or providing guidance to enrolled children.

R9-3-406	The objective of the rule is to establish nutrition and meal standards to ensure that enrolled children receive the right balance of fruits, vegetable, milk, whole grains, and lean protein with each meal to maintain good health, growth, and development.
Table 4.1	The objective of the rule is to provide requirements for the times each type of meal is to be served to an enrolled child.
Table 4.2	The objective of the rule is to provide food components, quantities, and permitted and non-permitted combination of a meal required to be served to an enrolled child.
R9-3-407	The objective of the rule is to establish requirements to ensure that food is stored, served, and consumed in a safe and sanitary manner.
R9-3-408	The objective of the rule is to ensure that enrolled children are safe when transported by a group home during hours of operation. The requirements include obtaining parent's permission prior to transport an enrolled child and maintaining a motor vehicle used for transport according to state laws.
R9-3-501	The objective of the rule is to ensure that the child care group home has sufficient square footage, toileting facilities, climate control, and lighting.
R9-3-502	The objective of the rule is to ensure that a child care group home has sufficient outdoor activity area, shading, play equipment, landscaping, and fencing.
R9-3-503	The objective of the rule is to establish standards for maintaining a swimming pool and a safe swim environment used by enrolled children and staff members.
R9-3-504	The objective of the rule is to establish fire and emergency standards, including fire and emergency evacuation drills, for child care group homes to ensure the health and safety of enrolled children and staff members.
R9-3-505	The objective of the rule is to establish general safety standards for a child care group home to ensure the health and safety of enrolled children on the premises. The standards protect enrolled children against toxic substances, flammable liquids, window blind or curtain cords, fans; stairways; glass and mirrors, firearms, and having access to areas that contain mowers, irrigation, heating and air conditioning units, and other types of hazards conditions.
R9-3-506	The objective of the rule is to ensure a child care group home and its furnishings, equipment, supplies, materials, utensils, and toys are kept clean and free of insects and vermin.

R9-3-507	The objective of the rule is to establish requirements for maintaining clean and sanitary conditions when changing and disposing of diapers of enrolled children at a child care group home.
R9-3-508	The objective of the rule is to establish requirements for maintaining clean and sanitary conditions when animals are kept on the premises of a child care group home.

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

Rule	Explanation
R9-3-201	Subsection (2)(k)(ci) would be more effective and less burdensome to licensees by removing that the documentation of good standing issued by the Arizona Corporation Commission has to be dated within the last three months. General documentation would be acceptable and LLC holders can obtain that for free, the current rules require the LLC holder to pay for additional documentation.
R9-3-205	The rule is effective but could be improved and updated by removing a required fax number for the point of contact of the child care group home.
R9-3-301 and R9-3-302	The rule is effective but could be improved by specifying that CPR and first aid training specific to adult and pediatric is required, since some training classes do not include the pediatric portion of the training.
R9-3-501	Subsection (A)(2) can be removed because the Department does not license child care group homes to facilitate more than 10 enrolled children, therefore the rule is not affective.
R9-3-507	Reference to soiled plastic pants in subsection (B)(3) can be removed since these are no longer commonly used, therefore the rule is not affective.

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

Rule	Explanation
R9-3-101	The definition of "accident" in subsection (2) should align with the rules in Chapter 5 for child care facilities and be amended to include that an "accident" means an unexpected occurrence that requires attention from a staff member.
R9-3-101	The definition of "age-appropriate" in subsection (7) should align with the rules in Chapter 5 for child care facilities and can be updated to use more inclusive terms within the definition.

R9-3-101 and R9-3-310	The rules would align more with the Chapter 5 for child care facilities and be consistent with the Child Care and Development Block Grant requirements by defining the term "serious physical injury" and using this terminology in the rules rather than just "injury.
R9-3-101	The rules would align other rules in Title 9 if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received to clarify that electronic forms of documentation is acceptable.
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	updating the language to be written the same, and adding several new training requirements to the current rules including the use of safe sleeping practices, prevention of shaken baby syndrome, child abuse detection, indoor/outdoor activity safety, sun safety, water safety, etc.
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5. Are the rules enforced as written? **Yes _X_ No __**

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

Rule	Explanation

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

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

Rule	Explanation

R9-3-101	The rule is clear, concise, and understandable, but could be improved in subsection (3) by updating the names of the accreditation institutions.
R9-3-101	The rule is clear, concise, and understandable, but could be improved in subsection (10) by removing "certification" since that language is not consistent with a background check. In addition, the definition can be amended to also include that the state criminal history checks within this state and each state where a staff member resided during the preceding five years. Lastly, current subsections (10)(c) and (d) can be combined since the National Crime Information Center includes the National Sex Offender Registry.
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R9-3-301	The rules would be more clear if subsection (A)(4)(i) was removed because it is duplicative to the requirement in (A)(4)(g).
R9-3-302	The rule is clear, concise, and understandable, but could be improved by consolidating language to be more simple and clear.
R9-3-303	The rule is clear, concise, and understandable, but could be improved by reducing the burden on child care group homes by removing the required immunization card and having the information documented and on file in a format put together by the child care group home. In addition, the language regarding the required documentation on the immunization record can be updated and simplified. For example, the "home address" is required and the rule further states that the "city, state, and zip code" are required, however this information should be

	included within the "home address." Also, an email address requirement should be added to the rules to align with electronic methods of submission.
R9-3-307	The rule would be more clear in subsection (B)(3) was amended to specify the timeframe that documentation needs to be kept, which would only be for 12 months after the date of the notification.
R9-3-307	The rule would be more clear in subsection (D) was amended to cross-reference the communicable diseases list in 9 A.A.C. 6, Article 2, and if specifying the exemption of reporting human immunodeficiency virus or a sexually transmitted disease was removed.
R9-3-101, R9-3-404, and R9-3-407	The rule could be clearer by using the terms 'an enrolled child with a special health care need or a disability. This word usage is more inclusive and also aligns with the new changes the Department is making in a current rulemaking for Title 9, Chapter 5. Child Care Facilities.
Table 4.1	The rule could be clearer by correcting a grammatical error by adding the word "the" when referring to the "parent or child."
R9-3-407	The rule could be clearer by combining subsections (A)(16) and (17) so that the rule is less duplicative.
Table 5.1	The rule is clear, concise, and understandable, but could be improved by amending the word "supper" to "dinner" for consistency throughout the Article.
R9-3-502	The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (C)(3) and clarifying that there is covering over the fall zone of the climbing structure, swing, or slide.
R9-3-503	The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (E) by moving the placement of the word "clearly" in the rule.
R9-3-508	The rule could be improved in subsection (7) by simplifying the language related to reptiles in a child care group home.

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

If yes, please fill out the table below:

Rule	Explanation

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

Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 4 authorizes the Arizona Department of Health Services (Department) to monitor, certify, and regulate child care group homes (CCGHs). "Child care group home" is defined in A.R.S. § 36-897(1) to mean “a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.” The Department licenses CCGHs and has adopted rules for CCGHs in Arizona Administrative Code (A.A.C.) Title 9, Chapter 3. A.R.S. § 36-897.01 requires the Department to “issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies” and pursuant to A.R.S. § 36-897.02, “by rule shall establish standards of care for child care group home.” A CCGH certificate is valid for one year, and A.R.S. § 36-897.02(F) requires the Department to monitor each CCGH at least two times per year to ensure that the CCGH is meeting Department standards of care. The rules in Title 9, Chapter 3 provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility.

The Department currently certifies approximately 290 CCGHs statewide, with 287 active licenses. Between July 1, 2023, and July 1, 2024, the Department issued 71 certifications for initial, renewal, and amended CCGH licenses. As of August 2024, there are 25 pending applications for initial certification. During Fiscal Year 2023 (FY23), the Department did not deny or withdraw any applications, though 45 group homes closed. In the same period, the Department conducted 329 routine compliance inspections and 92 complaint-based inspections. Additionally, 20 enforcement actions were taken against licensed CCGHs, with some actions addressing multiple complaints.

In the last five years, the Department has completed two expedited rulemakings and one exempt rulemaking in 9 A.A.C. 3. Affected persons include certificate holders (CCGHs), consumers, enrolled children, parents of enrolled children, and the Department. The analysis of the estimated economic impact designated annual costs and benefits as minimal or when less than $1,000; moderate when $1,000 to 10,000; and substantial when greater than $10,000. Costs and benefits were designated as significant when meaningful or important but not readily subject to quantification. The Department was not required to complete an economic, small business, and consumer impact statement (EIS) for the exempt rulemakings, and as such, the Department did not file an EIS for any of the exempt and expedited rulemakings.

The rules in 9 A.A.C. 3 were last amended by final expedited rulemaking at 28 A.A.R. 1835, with an immediate effective date of July 7, 2022. This rulemaking implemented Laws 2020, Ch. 86 to clarify requirements for child care personnel, volunteers, and others who provide services for enrolled children to obtain and provide a valid fingerprint clearance card within seven working days of employment or volunteer work. Additionally, the rulemaking clarified requirements for background checks pursuant to the Child Care and Development Block Grant Act of 2014 as indicated in Laws 2020, Ch. 86. With over 2,500 child care group

homes currently licensed in Arizona, the Department expected that the rulemaking would benefit thousands of children enrolled in licensed child care group homes by providing rules that ensure child care personnel, volunteers, and others have a fingerprint clearance card, or as applicable, are approved by a background check before starting employment or volunteer work. This rulemaking amended R9-3-101, R9-3-201, R9-3-202, R9-3-205, and R9-3-301. As expected, the rulemaking provided a significant benefit to child care group homes by ensuring health and safety needs were met, therefore, any associated costs outweigh the benefits of the rule.

The Department also amended the rules in 2022 by exempt rulemaking at 28 A.A.R. 1767, with an immediate effective date of July 1, 2022. In this rulemaking, the Department lowered the certification fee for CCGHs in R9-3-203. The Department clarified in the rules that the fee for a license is due on an annual basis, as specified in A.R.S. § 36-897.01(D). The certificate for licensing fees for CCGHs decreased from $1,000 to $330. This reduction in certification fees significantly alleviated financial burdens on CCGHs, enabling them to allocate more resources toward enhancing the quality of care and accessibility for families.

The rules in 9 A.A.C. 3 were also mended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). The Department amended the rules to achieve the purpose prescribed in A.R.S. § 41-1027(A)(1) to amend a rule that is outdated and in (A)(7) to implement a course of action proposed in a five-year review report (Report). Through expedited rulemaking, under A.R.S. § 41-1027, the Department amended 23 Sections and two Tables. The Report identified that the rules are effective, however could be improved to make clearer and increase understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated definition and references, and making minor technical and grammatical changes. Changes include adding and updating antiquated terms, such as “accredited” “enrolled children,” “modification” and “positioning device.” Other changes include clarifying fingerprint clearance cards, updating the Department of Agriculture Child and Adult Care Food Program Meal Patterns for children and infants, and clarifying adult staff member high school education requirement. Additionally, requirements related to child passenger restraint system will be changed to make consistent with A.R.S. § 28-907 and 28-909. Also, the rules were amended to be consistent with A.R.S. § 37-897.13, which allows for and enrolled school-age child to possess and use a topical sunscreen product if the parent of the enrolled school-age child provides notice to the child care group home without having to have a note or prescription from a licensed health care professional. As expected, the new changes have not increased the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. The Department believes the amended rules have eliminated confusion, reduced regulatory burden, and has improved health and safety of children at CCGHs.

Overall, the Department estimates that certificate holders, enrolled children, consumers and the Department benefit significantly from the rulemakings for providing updated rules that are easier to use, less expensive to enforce, consistent with statute, easier to understand and more effectively protect the health and safety of enrolled children. The Department has determined that the benefit of the rules outweigh any potential costs and impose the least burden and costs to persons and governmental agencies regulated by the rules and

achieve the regulatory objective of protecting the health, safety, and well-being of children in licensed child care facilities.

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

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

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

In the 2019 Five-Year-Review-Report, the Department stated a plan to revise the rules to address identified issues. Through expedited rulemaking found in 26 A.A.R. 1969, the Department completed this course of action.

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

The rules aim to ensure the safety, health, and proper administration of child care group homes by establishing clear guidelines and consistent standards for terminology, approval processes, representation, application requirements, staff requirements, certification fees, notifications of changes, inspection access, disciplinary actions, and various operational aspects. These rules are important to public health because they ensure the safety, well-being, and promote the development of children in care, prevent the spread of illness and communicable diseases, maintain high standards of hygiene and sanitation, and safeguard against abuse and neglect, thereby promoting a healthy and secure environment for children and the broader community. Thus, the probable benefits of the rules outweigh the probable costs of the rules. Since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

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

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

The rules are not related to federal laws. However, some CCGHs receive funding from the Child Care and Development Block Grant (CCDBG). The CCDBG is a federal program in the United States that provides funding to states to help low-income families access affordable and high-quality child care. This block grant supports working parents and those attending job training or educational programs by subsidizing child care costs. Additionally, it aims to improve the overall quality of child care, ensure health and safety standards in child care settings, and enhance the development and well-being of children. CCDBG regulates entities who receive funding with requirements set forth according to 45 CFR Part 98. The Department of Economic Security is the lead agency to enforce CCDBG requirements. Some of the rules in 9 A.A.C. 3 that are the least burdensome and promote health and safety are consistent with the CCDBG requirements.

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

The Department, in compliance with A.R.S. § 36-897.01, certifies CCGHs. A CCGH is specific to the certificate holder and is valid only for the location occupied at the time the certificate was issued. A general permit is not applicable and is not used.

14. Proposed course of action

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

Changes as described in this 5YRR, could improve the effectiveness and enforcement of the rules. The Department plans to make changes to the rules to address these items and to submit a Notice of Final Rulemaking to the Council by December 2025.

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Authority: A.R.S. §§ 36-132(A)(1) and (C), 36-136(G) and 36-897.01

ARTICLE 1. GENERAL

ARTICLE 2. CERTIFICATION

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

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CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

ARTICLE 1. GENERAL

R9-3-101. Definitions

In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this Chapter:

1. "Abuse" has the meaning in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
   a. Causes physical injury to an enrolled child, and
   b. May or may not be an emergency.
3. "Accredited" means approved by the:
   a. New England, Commission of Institution of Higher Education,
   b. Middle States, Commission of Higher Education,
   c. North Central, the Higher Learning Commission,
   d. Northwest Association of Schools and Colleges,
   e. Commission on Colleges, or
   f. Western Association of Colleges and Schools.
4. "Activity" means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
6. "Adult" means an individual 18 years of age or older.
7. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
8. "Applicant" means an individual or business organization requesting one of the following:
   a. A certificate under R9-3-201, or
   b. Approval of a change affecting a certificate under R9-3-205.
9. "Application" means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. "Background check certification" means results identified in searches according to A.R.S.§ 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
    a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
    b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
    c. The National Crime Information Center; and
    d. The National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
11. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
12. "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.
13. "Capacity" means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.
14. "Certificate holder" means a person to whom the Department has issued a certificate.
15. "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.
16. "Child" means any individual younger than 13 years of age.
17. "Child care experience" means an individual's documented work with children in:
    a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
    b. A public school, a charter school, a private school, or an accommodation school; or
    c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.
18. "Child care services" means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.
19. "Child with special needs" means:
    a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
    b. A child with a "developmental disability" as defined in A.R.S. § 36-551; or
    c. A "child with a disability" as defined in A.R.S. § 15-761.

20. "Clean" means:
    a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or
    b. Free of dirt and debris.
21. "Communicable disease" has the meaning in A.A.C. R9-6-101.
22. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
23. "Controlling person" has the meaning in A.R.S. § 36-881.
24. "Corporal punishment" means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
25. "CPR" means cardiopulmonary resuscitation.
26. "Credit hour" means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.
27. "Designated agent" means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.
28. "Developmentally appropriate" means consistent with a child's physical, emotional, social, cultural, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.
29. "Discipline" means the on-going process of helping a child develop self-control and assume responsibility for the child's own actions.
30. "Documentation" means information in written, photographic, electronic, or other permanent form.
31. "Emergency" means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
32. "Endanger" means to expose an individual to a situation where physical or mental injury to the individual may occur.
33. "Enrolled child" means a child:
    a. Who is not a resident; and
    b. Who has been placed by a parent or guardian to receive child care services regardless of payment.
34. "Fall zone" means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
35. "Field trip" means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.
35. "Food" means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.
36. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
37. "Hazard" means a source of endangerment.
38. "High school equivalency diploma" means:
    a. A document issued by the Arizona State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
    b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
    c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
40. "Hours of operation" means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.
41. "Illness" means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.
42. "Immediate" or "Immediately" means without restriction, delay, or hesitation.
43. "Inaccessible" means:
    a. Out of an enrolled child's reach, or
    b. Locked.
44. "Individual plan" means a written description of the daily activities required for an enrolled child with special needs.
45. "Infant" means a child 12 months of age or younger.
46. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
47. "Licensed applicator" means an individual who complies with A.A.C. R3-8-201(C).
48. "Mat" means a foam pad that has a waterproof cover.
49. "Mechanical restraint" means a device, article, or garment attached or adjacent to a child's body that the child cannot easily remove and that restricts the child's freedom of movement or normal access to the child's body, but does not include a device, article, or garment:
    a. Used for orthopedic purposes, or

b. Necessary to allow a child to heal from a medical condition.

50. "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.
51. "Menu" means a written description of food that a child care group home provides and serves as a meal or snack.
52. "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care group home.
53. "Motor vehicle" has the meaning in A.R.S. § 28-101.
54. "Neglect" has the meaning in A.R.S. § 8-201.
55. "Outbreak" has the meaning in A.A.C. R9-6-101.
56. "Parent" means:
    a. A natural or adoptive mother or father,
    b. A legal guardian appointed by a court of competent jurisdiction, or
    c. A "custodian" as defined in A.R.S. § 8-201.
57. "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.
58. "Person" has the meaning in A.R.S. § 1-215.
59. "Personal items" means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child's exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.
60. "Physician" means an individual licensed as a doctor of:
    a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
    b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
    c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
    d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
    e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.
61. "Physician assistant" means:
    a. The same as in A.R.S. § 32-2501, or
    b. An individual licensed as a physician assistant under the laws of another state.
62. "Positioning device" means a belt or harness that prevents an enrolled infant's movement.
63. "Premises" means a child care group home's residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.
64. "Registered nurse practitioner" means:
    a. The same as in A.R.S. § 32-1601, or
    b. An individual licensed as a registered nurse practitioner under the laws of another state.
65. "Regular basis" means at recurring, fixed, or uniform intervals.
66. "Residence" means a dwelling, such as a house, used for human habitation.
67. "Resident" means an individual who receives child care services and uses a child care group home as the individual's principal place of habitation for 30 calendar days or more during the calendar year.
68. "Sanitize" means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
69. "School-age child" means a child who attends:
    a. A public school, as defined for "school" in A.R.S. § 15-101; or
    b. A private school, as defined in A.R.S. § 15-101.
70. "Separate" means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.
71. "Signed" means affixed with an individual's signature or, if the individual is unable to write the individual's name, with a symbol representing the individual's signature.
72. "Sippy cup" means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.
73. "Space utilization" means the designated use of specific areas on the premises for providing child care services.
74. "Staff member" means an individual who works at a child care group home providing child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.
75. "Supervision" means:
    a. For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;
    b. For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;
    c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the staff member and the ability to interact with and provide guidance to the staff member; or

d. For an individual other than a child or staff member, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

76. "Swimming pool" has the meaning in A.A.C. R18-5-201.
77. "Training" means instruction received through:
    a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or
    b. Watching a video presentation.
78. "Week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
79. "Working day" means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

Historical Note

Emergency rule adopted effective June 16, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Adopted effective October 22, 1992 (Supp. 92-4). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3). New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-102. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application.

1. The Department shall send a 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 or items needed to complete the application.
    b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant.
    c. If an applicant fails to submit to the Department all of the information or items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
2. If the Department issues a certificate or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for an application for a certificate, the Department shall conduct an inspection that may require more than one visit to the child care group home or premises.
2. As part of the substantive review for a request for approval of a change affecting a certificate that requires a change in the use of physical space at a child care group home, the Department shall conduct an inspection that may require more than one visit to the child care group home.
3. The Department shall send a certificate or a written notice of approval or denial of a certificate or other request for approval to an applicant within the substantive review time-frame.
4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
    a. If the Department determines that an applicant, a child care group home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
    b. An applicant shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information.
    c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the

Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.

d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.

5. The Department shall issue a certificate or approval if the Department determines that the applicant and the child care group home or premises are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, and the applicant submits documentation of corrections, which is acceptable to the Department, for any deficiencies.
6. If the Department denies a certificate or approval, the Department shall send to the applicant a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

Table 1.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
Certificate under R9-3-201	A.R.S. § 36-897.01	150	30	120
Approval of Change Affecting Certificate under R9-3-205(B)	A.R.S. §§ 36-897.01 and 36-897.02	75	30	45

Historical Note

New Table 1.1 renumbered from Table 1 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-103. Individuals to Act for Applicant or Certificate Holder

When an applicant or certificate holder is required by this Chapter to provide information on or sign an application form or other document, hold a fingerprint clearance card, or complete Department-provided orientation, the following shall satisfy the requirement on behalf of the applicant or certificate holder:

1. If the applicant or certificate holder is an individual, the individual; and
2. If the applicant or certificate holder is a business organization, the designated agent who:
   a. Is a controlling person of the business organization,
   b. Is a U.S. citizen or legal resident, and
   c. Has an Arizona address.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 2. CERTIFICATION

R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and
2. Submit to the Department an application packet containing:
   a. An application on a form provided by the Department that contains:
      i. The applicant's name and date of birth;
      ii. The name to be used for the child care group home, if any;
      iii. The address and telephone number of the residence;
      iv. The mailing address of the applicant, if different from the address of the residence;
      v. The applicant's contact telephone number, if different from the telephone number of the residence;
      vi. The applicant's e-mail address, if applicable;
      vii. The name of the provider, if different from the applicant;

viii. The requested capacity for the child care group home;
ix. The anticipated hours of operation for the child care group home;
x. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
xi. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
(1) The name of the individual who had the certificate or license denied or revoked,
(2) The reason for the denial or revocation,
(3) The date of the denial or revocation, and
(4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;
xii. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
xiii. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
xiv. A statement that the information provided in the application packet is accurate and complete; and
xv. The applicant's signature and date the applicant signed the application;

b. A copy of the applicant's:
i. U.S. passport,
ii. Birth certificate,
iii. Naturalization documents, or
iv. Documentation of legal resident alien status;

c. A copy of the applicant's valid fingerprint clearance card issued, both front and back, according to A.R.S. Title 41, Chapter 12, Article 3.1;

d. A copy of the applicant's valid background check document according to A.R.S. § 46-811(A);

e. A copy of the form required in A.R.S. § 36-897.03(B) for the applicant;

f. A document issued by the Department showing that the applicant has completed Department-provided orientation training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4, and this Chapter;

g. A floor plan of the residence where child care services will be provided, showing:
i. The location and dimensions of each room in the residence, with designation of the rooms to be used for providing child care services;
ii. The location of each exit from the residence;
iii. The location of each sink and toilet available for use by enrolled children;
iv. The location of each smoke detector in the residence; and
v. The location of each fire extinguisher in the residence;

h. A site plan of the premises showing:
i. The location and dimensions of the outdoor activity area;
ii. The height of the fence around the outdoor activity area;
iii. The location of each exit from the outdoor activity area;
iv. The location of the residence;
v. The location of each swimming pool, if applicable;
vi. The location and height of the fence around each swimming pool, if applicable; and
vii. The location and dimensions of any other building or structure on the premises, if applicable;

i. If the child care group home is located within one-fourth of a mile of agricultural land:
i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the child care group home, and
ii. A copy of an agreement complying with A.R.S. § 36-897.01(B) for each parcel of agricultural land;

j. The applicable fee in R9-3-203; and

k. If the applicant is a business organization, a form provided by the Department that contains:
i. The name, street address, city, state, and zip code of the business organization;
ii. The type of business organization;
iii. The name, date of birth, title, street address, city, state, and zip code of the designated agent;
iv. The name, date of birth, title, street address, city, state, and zip code of each other controlling person;
v. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable; and
vi. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application, if applicable.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 15 A.A.R. 2091, effective January 1, 2010 (Supp. 09-4). Amended by exempt rulemaking at 17 A.A.R. 1530, effective Sep-

tember 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-202. Fingerprinting and Background Checks

A. A certificate holder shall ensure that:
1. A staff member completes, signs, dates, and submits to the certificate holder before the staff member's starting date of employment or volunteer service:
   a. The form required in A.R.S. § 36-897.03(B); and
   b. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I); and
2. An adult resident completes, signs, dates, and submits to the certificate holder before the resident's starting date of residency or the date of certification of the child care group home the form required in A.R.S. § 36-897.03(B).

B. A certificate holder shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and documentation of a valid background check document issued under A.R.S. § 46-811.

C. Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member before starting date of employment or volunteer service and an adult resident before starting date of residency or the date of certification of the child care group homes, submits a copy of a valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

D. A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.

E. If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:
1. Contact the Department of Public Safety before the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. A certificate holder shall ensure each staff member and each adult resident submits to the certificate holder documentation of the staff member's or adult resident's valid:
1. Background check issued under A.R.S. § 46-811(A) within 10 calendar days after stating date of employment or volunteer service; and
2. Background check each time the background check document is issued or renewed every five years.

G. If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

H. A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:
1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
2. Has been denied a background check document that indicates the adult individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
3. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
4. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
5. Has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
6. Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;
7. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
8. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

I. Within 30 calendar days after the day of a staff member's or adult resident's 18th birthday, the staff member or adult resident shall provide to the certificate holder copies of a valid fingerprint clearance card and a valid background check document specified in subsection (C).

J. Beginning November 1, 2021, certificate holders, staff members, and adult residents shall comply with A.R.S. § 46-811(A) and subsection (C)(2) by November 1, 2022.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by exempt rulemaking at 19 A.A.R. 2607, effective August 1, 2013 (Supp.13-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-203. Certification Fees

A. Except as provided in subsection (B), the certification fee for a certificate holder is $330.

B. The Department may discount the certification fee in subsection (A), based on available funding or if the applicant or certificate holder participates in a Department-approved program.

C. A certificate holder shall submit to the Department annually and no more than 60 calendar days before the anniversary date of the child care group home's certificate:

1. A form provided by the Department that contains:
   a. The certificate holder's name;
   b. The child care group home's name, if applicable, and certificate number; and
   c. Whether the certificate holder intends to submit the applicable fee:
      i. With the form, or
      ii. According to the payment plan in subsection (C)(2)(b); and
2. Either:
   a. The applicable fee in subsection (A) or (B), or
   b. One-half of the applicable fee in subsection (A) or (B) with the form and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the child care group home's certificate.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 15 A.A.R. 2091, effective January 1, 2010 (Supp. 09-4). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1561, effective July 29, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by exempt rulemaking at 28 A.A.R. 1767 (July 22, 2022), with an immediate effective date of July 1, 2022 (Supp. 22-3).

R9-3-204. Invalid Certificate

If a certificate holder does not submit the certification fee as required in R9-3-203(C)(2), the certificate to operate a child care group home is no longer valid, and the child care group home is operating without a certificate.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-204 renumbered to R9-3-205; new R9-3-204 renumbered from R9-3-207 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-205. Changes Affecting a Certificate

A. For an intended change in a certificate holder's name or the name of a child care group home:

1. The certificate holder shall send the Department written notice of the name change at least 30 calendar days before the intended date of the name change; and
2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.

B. At least 30 calendar days before the date of an intended change in a child care group home's space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:

1. The certificate holder's name;
2. The child care group home's name, if applicable;
3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
4. The child care group home's certificate number;
5. The type of change intended:
   a. Space utilization, or
   b. Capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
   a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
   b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
   c. If requesting a change in space utilization that affects individual rooms:
      i. A floor plan of the residence that complies with R9-3-201(2)(g) and shows the intended changes, and
      ii. The square footage of each affected room; and
   d. If requesting a change in space utilization that affects the outdoor activity area:

i. A site plan of the premises that complies with R9-3-201(2)(h) and shows the intended changes, and
ii. The square footage of the intended outdoor activity area.

C. The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send the certificate holder an approval of the request and, if necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.

D. A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.

E. At least 30 calendar days before the date of a change in ownership:
1. A certificate holder shall send the Department written notice of the change in ownership; and
2. A person planning to assume operation of a child care group home shall obtain a new certificate as specified in R9-3-201 before beginning operation of the child care group home.

F. A certificate holder changing a child care group home's location shall:
1. Apply for a new certificate as prescribed in R9-3-201, and
2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.

G. Within 30 calendar days after the date of a change in the business organization information provided under R9-3-201(2)(k), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-205 renumbered to R9-3-206; new R9-3-205 renumbered from R9-3-204 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-206. Inspections; Investigations

A. An applicant, certificate holder, or provider shall allow immediate access to all areas of the premises that may affect the health, safety, or welfare of an enrolled child or to which an enrolled child may have access during hours of operation to representatives from:
1. The Department,
2. The local health department,
3. Arizona Department of Child Safety, or
4. The local fire department or State Fire Marshal.

B. A certificate holder or provider shall permit the Department to interview each staff member or enrolled child outside of the presence of others as part of an investigation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-206 renumbered to R9-3-207; new R9-3-206 renumbered from R9-3-205 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-207. Denial, Revocation, or Suspension of a Certificate

A. The Department may deny, revoke, or suspend a certificate to operate a child care group home if an applicant or certificate holder:
1. Provides false or misleading information to the Department;
2. Is the parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
3. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the individual's failure to complete the certification or licensing process according to a required time-frame;
4. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state for reasons that relate to endangerment of the health and safety of children;
5. Has been denied a fingerprint clearance card or has had a fingerprint clearance card suspended or revoked under A.R.S. Title 41, Chapter 12, Article 3.1; or
6. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 4 or this Chapter.

B. In determining whether to deny, suspend, or revoke a certificate, the Department shall consider the threat to the health and safety of enrolled children at a child care group home based on the factors listed in A.R.S. § 36-897.06.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1561, effective July 29, 2010 (Supp. 10-3). Former R9-3-207 renumbered to R9-3-204; new R9-3-207 renumbered from R9-3-206 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

Article 3, consisting of R9-3-301 through R9-3-315, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-301. Certificate Holder and Provider Responsibilities

A. A certificate holder shall:

1. Designate a provider who:
   a. Lives in the residence;
   b. Is 21 years of age or older;
   c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
   d. Meets one of the following:
      i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;
      ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or
      iii. Has at least 12 months of child care experience; and
   e. Has completed Department-provided orientation training that includes the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
2. Ensure that each staff member is 16 years of age or older;
3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
   a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or
   b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and
4. Ensure that the provider:
   a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;
   b. Maintains on the premises a file for each staff member, for 12 months after the date the staff member last worked at the child care group home, containing:
      i. The staff member's name, date of birth, home address, and telephone number;
      ii. The staff member's starting date of employment or volunteer service;
      iii. The staff member's ending date of employment or volunteer service, if applicable;
      iv. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
      v. The form required in A.R.S. § 36-897.03(B);
      vi. For an adult staff member, a copy of the staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
      vii. Documents required by subsection (A)(3);
      viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
      ix. If applicable:
         (1) The form required in A.R.S. § 8-804(I);
         (2) Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
         (3) Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable;
      x. Documentation of the training required in R9-3-302; and
      xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;
   c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
      i. The resident's name and date of birth;
      ii. The resident's relationship to the provider;
      iii. The date the resident began residing at the child care group home;
      iv. The date the resident last resided at the child care group home, if applicable;
      v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident's current immunity against measles, rubella, diphtheria, mumps, and pertussis;

vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);

d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member's start time and end time of providing child care services for the child care group home;
e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;
f. Except as specified in R9-3-408, provides child care services only in areas:
i. Designated as provided in R9-3-201(2)(g)(i), or
ii. Approved under R9-3-205(C);
g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;
h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member's assigned work hours at the child care group home;
i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and
j. Does not allow the cultivation of medical marijuana on the premises.

B. A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.

C. A certificate holder shall:
1. Secure and maintain general liability insurance of at least $100,000 for the child care group home; and
2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).

D. A certificate holder shall ensure that:
1. While acting on behalf of the certificate holder when the provider is not present at the child care group home, an adult staff member with a high school diploma or high school equivalency certificate and one of the following is on the premises:
a. At least six months of child care experience;
b. Two or more credit hours in child growth and development, nutrition, psychology, or early childhood education; or
c. At least 30 hours of training in child growth and development, nutrition, psychology, or early childhood education; and
2. At least one adult staff member, in addition to the provider or the staff member specified in subsection (D)(1), is on the premises when six or more enrolled children are at the child care group home.

E. A certificate holder shall ensure that a parent, an individual designated in writing by the parent, or legal guardian of an enrolled child is allowed immediate access during hours of operation to the areas of the premises where the enrolled child is receiving child care services.

F. A certificate holder shall:
1. Prepare a document that includes the following information:
a. The name and contact telephone number of the provider;
b. The hours of operation of the child care group home;
c. Charges, fees, and payment requirements for child care services;
d. Whether medications are administered at the child care group home and, if so, a description of what the parent is required to give to the child care group home;
e. Whether enrolled children go on field trips under the supervision of a staff member;
f. Whether the child care group home provides transportation for enrolled children to or from school, a school bus stop, or other locations;
g. The mechanism by which a staff member will verify that an individual contacting the child care group home by telephone claiming to be the parent of an enrolled child is the enrolled child's parent;
h. A statement that a parent has access to the areas on the premises where the parent's enrolled child is receiving child care services;
i. A statement that inspection reports for the child care group home are available for review at the child care group home; and
j. The local address and contact telephone number for the Department; and
2. Ensure that a staff member provides the document required in subsection (F)(1) to a parent of an enrolled child.

G. A certificate holder shall ensure that a staff member posts in a place that can be conspicuously viewed by individuals entering or leaving the child care group home:
1. The child care group home certificate;
2. The name of the provider;
3. The name of the staff member designated to act on behalf of the certificate holder when the provider is not present at the child care group home;
4. The hours of operation for the child care group home;
5. The weekly activity schedule required in R9-3-401(B)(4)(b);

6. The amount of time in minutes enrolled children may watch television, videos, or DVDs at the child care group home; and
7. The weekly menu, required in R9-3-406(F), before the first meal or snack of the week.

H. A certificate holder shall ensure that a staff member supervises any individual who is not a staff member and is on the premises where enrolled children are present.

I. A certificate holder shall ensure that a staff member who has current training in first aid and CPR is present during hours of operation when an enrolled child is on the premises or on a trip away from the premises under the supervision of a staff member.

J. A certificate holder shall ensure that if a staff member or resident lacks documentation of immunization or evidence of immunity that complies with A.A.C. R9-6-704 for a communicable disease listed in A.A.C. R9-6-702:
1. The staff member or resident is excluded from the child care group home between the start and end of an outbreak of the communicable disease at the child care group home, or
2. The child care group home is closed until the end of an outbreak at the child care group home.

K. Within 72 hours after changing a provider, a certificate holder shall send the Department written notice of the change, including the name of the new provider.

L. Except as provided in subsections (M) and (N), a certificate holder shall notify the Department in writing of a planned change in a child care group home's hours of operation at least three calendar days before the date of the planned change, including:
1. The certificate holder's name;
2. The child care group home's certificate number; and
3. The current and intended hours of operation.

M. A certificate holder is not required to notify the Department of a change in a child care group home's hours of operation when the change in the child care group home's hours of operation is due to the occurrence of a state or federal holiday on a day of the week the child care group home regularly provides child care services.

N. When the premises of a child care group home are left unoccupied during hours of operation or the child care group home is temporarily closed due to an unexpected event, a certificate holder shall ensure that a staff member notifies the Department before leaving the child care group home unoccupied or closing the child care group home, stating the period of time during which the child care group home will be unoccupied or closed.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by exempt rulemaking at 19 A.A.R. 2607, effective August 1, 2013 (Supp.13-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-302. Staff Training

A. Within 10 calendar days after the starting date of employment or volunteer service, a certificate holder shall provide, and each staff member shall complete, training for new staff members that includes all of the following:
1. Names, ages, and developmental stages of enrolled children;
2. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children;
3. Guiding and disciplining children;
4. Hand washing techniques;
5. Diapering techniques and toileting, if any enrolled children are in diapers or require assistance in using the toilet;
6. Sudden infant death syndrome awareness, if child care services are provided to an infant or a one-year-old child;
7. Preparing, serving, and storing food;
8. Preparing, handling, and storing infant formula and breast milk, if any enrolled children are fed infant formula or breast milk;
9. Recognizing signs of illness and infestation;
10. Detecting, preventing, and reporting child abuse or neglect;
11. Responding to accidents and emergencies;
12. Sun safety;
13. Procedures for trips away from the child care group home, if applicable; and
14. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter.

B. A certificate holder shall ensure that a staff member's completion of the training required by subsection (A) is documented and signed by the provider, including the date of completion of the training.

C. A certificate holder shall ensure that each staff member completes a total of 12 or more actual hours of training every 12 months after becoming a staff member in two or more of the following:
1. Child growth and development, which may include sudden infant death prevention;
2. Developmentally appropriate activities;
3. Nutrition and developmentally appropriate eating habits;
4. Responding to accidents and emergencies, including CPR and first aid for infants and children;
5. Recognizing signs of illness and infestation;
6. Detecting, preventing, and reporting child abuse or neglect;

7. Guiding and disciplining children; and
8. Availability of community services and resources, including those available to children with special needs.

D. A certificate holder shall ensure that a staff member submits to the certificate holder documentation of training received as required by subsection (C) as the training is completed.

E. A certificate holder shall ensure that a staff member required by R9-3-301(I) meets all of the following:
1. The staff member obtains first aid training specific to infants and children;
2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR;
3. The staff member maintains current training in first aid and CPR; and
4. The staff member provides the certificate holder with a copy of the front and back of the current card issued to the staff member upon completing first aid and CPR training as proof of completion of the requirements in this subsection.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new Section made by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-303. Enrollment of Children

A. A certificate holder shall require that a child be enrolled by the child's parent or by an individual authorized in writing by the child's parent.

B. Except as required in A.R.S. § 36-309, before a child is enrolled at a child care group home, a certificate holder shall require the individual enrolling the child to complete a Department-provided Emergency, Information, and Immunization Record card containing:
1. The child's name, home address, city, state, zip code, sex, and date of birth;
2. The date of the child's enrollment;
3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the child care group home or to be contacted if the child's parent cannot be contacted;
5. The name and contact telephone number of the child's physician, physician assistant, or registered nurse practitioner;
6. Written authorization for emergency medical care of the child;
7. The name of the individual to be contacted in case of injury or sudden illness of the child;
8. A written description provided by a child's parent of the nutritional and dietary needs of the child;
9. A written description provided by the child's parent noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance; and
10. The dated signature of the individual completing the Emergency, Information, and Immunization Record card.

C. A certificate holder shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on the premises in a place that provides a staff member ready access to the card in the event of an emergency at, or evacuation of, the child care group home.

D. When a child is disenrolled from a child care group home, the certificate holder shall ensure that a staff member:
1. Enters the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
2. Maintains the records in subsection (D)(1) for 12 months after the date of disenrollment on the premises in a place separate from the current Emergency, Information, and Immunization Record cards.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-303 renumbered from R9-3-307 and amended by exempt rulemaking at 17 A.A.R. 1530, September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-304. Enrolled Child Immunization Requirements

A. A certificate holder shall not permit an enrolled child to receive child care services at a child care group home until the child care group home receives:
1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, stating that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7, that is:
   a. Provided by a physician, physician assistant, registered nurse practitioner, or another individual authorized by state law to administer immunizations; or
   b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
   a. A statement, signed by the enrolled child's physician, physician assistant, or registered nurse practitioner, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or

b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.

B. A certificate holder shall ensure that a staff member attaches an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-3-303(B).

C. A certificate holder shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the child care group home with a written statement from the enrolled child's physician, physician assistant, or registered nurse practitioner that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.

D. If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a certificate holder shall ensure that a staff member:

1. Notifies the enrolled child's parent in writing that the enrolled child may attend the child care group home for not more than 15 calendar days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and
2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.

E. For an outbreak of a disease listed in A.A.C. R9-6-702 at a child care group home, a certificate holder shall:

1. Not allow an enrolled child to attend the child care group home between the start and end of the outbreak if the enrolled child lacks documentation of immunization or evidence of immunity to the disease that complies with A.A.C. R9-6-704, and
2. Permit the enrolled child to attend the child care group home if a parent of the enrolled child provides any of the documents in A.A.C. R9-6-704 for the enrolled child.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-304 renumbered from R9-3-308 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-305. Admission and Release of Enrolled Children

A. A certificate holder shall ensure that:

1. An enrolled child is signed into and signed out from the child care group home by:
   a. The enrolled child's parent;
   b. An individual authorized in writing or by telephone by the enrolled child's parent; or
   c. The enrolled child, if the enrolled child is a school-age child and the enrolled child's parent has given written permission for the enrolled child to self-admit or self-release;
2. The individual signing the enrolled child into or out from the child care group home:
   a. Records the time of the enrolled child's arrival or departure, and
   b. Signs the attendance record with at least the first initial of the individual's first name and the individual's last name; and
3. The attendance record is maintained on the premises for 12 months from the date of the attendance record.

B. If an enrolled child gives a staff member written permission for the enrolled child to self-admit or self-release, the certificate holder shall ensure that the staff member verifies permission with the enrolled child's parent before the enrolled child is allowed to self-admit or self-release.

C. If an individual who is unknown to a staff member present comes to sign out an enrolled child, the certificate holder shall ensure that before releasing the child to the individual the staff member reviews:

1. The enrolled child's Emergency, Information, and Immunization Record card to verify that the enrolled child's parent has authorized the individual to sign out the child; and
2. A driver's license or other picture identification to verify the individual's identity.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-305 renumbered from R9-3-310 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-306.

Pesticides

Except as prescribed by A.R.S. § 36-898(C), a certificate holder shall ensure that a staff member makes the following pesticide information available in writing to the parent of an enrolled child, upon the parent's request, at least 48 hours before a pesticide application occurs on the premises:

1. The name and telephone number of the pesticide business licensee and the name of the licensed applicator providing pesticide services;
2. The date and time of the pesticide application;
3. The pesticide label, including a warning label stating that the pesticide should not be applied when children are present, and the material safety data sheet; and

4. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new Section made by exempt rulemaking at 17 A.A.R. 1530, September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-307. Illness and Infestation

A. A certificate holder shall ensure that an enrolled child is excluded from the child care group home when:
1. A staff member determines that the enrolled child's illness:
   a. Prevents the enrolled child from participating in activities without experiencing discomfort or aggravation of symptoms, or
   b. Results in a greater need for care than staff members can provide without compromising the health or safety of other enrolled children, or
2. The child's exclusion is required under 9 A.A.C. 6, Article 3
.

B. If an enrolled child exhibits signs of illness or infestation that require exclusion from the child care group home under subsection (A), a certificate holder shall ensure that a staff member:
1. Immediately separates the enrolled child from other enrolled children;
2. Notifies the individual designated by the parent on the enrolled child's Emergency, Information, and Immunization Record card to be contacted in case of the enrolled child's injury or illness that the enrolled child needs to be picked up from the child care group home; and
3. Makes a written record of the notification and places it in the enrolled child's file.

C. A certificate holder shall ensure that a staff member or resident who has signs or symptoms of illness or infestation is excluded from the child care group home when required under 9 A.A.C. 6, Article 3.

D. If a certificate holder is notified that an enrolled child, staff member, or resident has an infestation or a communicable disease, other than human immunodeficiency virus or a sexually transmitted disease, the certificate holder shall:
1. Provide written notice of potential exposure to each staff member and to a parent of each enrolled child within 24 hours after the certificate holder receives notice of the communicable disease or infestation;
2. Maintain the written notice required in subsection (D)(1) on the premises for 12 months after the written notice is provided; and
3. Provide notice to the local health agency if required under 9 A.A.C. 6, Article 2.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-307 renumbered to R9-3-303; new R9-3-307 renumbered from R9-3-311 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-308. Suspected Abuse or Neglect of an Enrolled Child

A certificate holder shall ensure that:
1. The certificate holder or a staff member immediately reports suspected abuse or neglect of an enrolled child under A.R.S. Title 8, Chapter 4, Article 8, or to a local law enforcement agency, as required by A.R.S. § 13-3620;
2. If a staff member or resident is suspected of abuse or neglect of an enrolled child, the certificate holder also reports the suspected abuse or neglect to the Department; and
3. Documentation of a report required in subsection (1) or (2) is maintained on the premises for 12 months after the date of the report.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-308 renumbered to R9-3-304; new R9-3-308 renumbered from R9-3-312 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-309. Medications

A. A certificate holder shall ensure that a document is prepared and maintained on the premises that specifies:
1. Whether prescription or nonprescription medications are administered to enrolled children; and
2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.

B. If prescription or nonprescription medications are administered at a child care group home, a certificate holder shall ensure that:
1. The provider or another staff member designated in writing by the provider is responsible for:

a. Administering medications at the child care group home,
b. Storing medications at the child care group home,
c. Supervising the ingestion of medications, and
d. Documenting the administration of medications;

2. At any given time, only one designated staff member at the child care group home is responsible for the duties described in subsection (B)(1);
3. The designated staff member does not administer a medication to an enrolled child unless the child care group home receives written authorization on a completed Department-provided authorization form that includes:
   a. The child's first and last name;
   b. The name of the medication;
   c. The prescription number, if any;
   d. Instructions for administration specifying:
      i. The dosage,
      ii. The route of administration,
      iii. The first and last dates that the medication is to be administered, and
      iv. The times and frequency of administration;
   e. The reason for the medication;
   f. The signature of the child's parent; and
   g. The date of signature; and
4. The designated staff member:
   a. Measures liquid medications for oral administration using a measuring cup, spoon, or dropper specifically made for measuring liquid medication;
   b. Administers prescription medications provided by an enrolled child's parent to the enrolled child only from a container dispensed by a pharmacy and accompanied by a pharmacy-generated prescription label that includes the child's first and last name and administration instructions;
   c. Administers nonprescription medications provided by an enrolled child's parent to the enrolled child only from an original manufacturer's container labeled with the enrolled child's first and last name;
   d. Does not administer a medication that has been transferred from one container to another;
   e. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the child care group home receives written administration instructions from the enrolled child's physician, physician assistant, or registered nurse practitioner;
   f. Documents each administration of medication to an enrolled child on the Department-provided form required in subsection (B)(3) including:
      i. The name of the enrolled child;
      ii. The name and amount of medication administered and the prescription number, if any;
      iii. The date and time the medication was administered; and
      iv. The signature of the staff member who administered the medication to the enrolled child; and
   g. Maintains the record on the premises for 12 months after the date the medication is administered.

C. A certificate holder shall allow an enrolled child to receive an injection at the child care group home only after obtaining written authorization from a physician, physician assistant, or registered nurse practitioner. The certificate holder shall maintain the written authorization on the premises for 12 months after the date of the last injection.

D. An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).

E. A certificate holder shall return unused prescription or nonprescription medication to a parent when the medication is no longer being administered to the enrolled child or has expired, whichever comes first, or dispose of the medication according to state and federal laws, if the child is no longer enrolled at the child care group home and the certificate holder is unable to locate the child's parent.

F. Except as provided in subsection (G), a certificate holder shall ensure that:
1. Medication belonging to an enrolled child is:
   a. Stored in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medication.
   b. Stored in a secured refrigeration unit that is used only for storing enrolled children's medications that requires refrigeration.
2. Medication belonging to a staff member or resident is stored in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications.

G. A certificate holder shall ensure that a staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms is kept in a location inaccessible to enrolled children except when the prescription medication is administered to treat the life-threatening symptoms.

H. A certificate holder shall ensure that a child care group home does not stock a supply of prescription or nonprescription medications for administration to enrolled children.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-309 renumbered from R9-3-313 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-310. Accident and Emergency Procedures

A. A certificate holder shall ensure that a child care group home has a first-aid kit on the premises that contains at least the following items, in a quantity sufficient to meet the needs of the enrolled children at the child care group home:
1. Sterile bandages including:
   a. Adhesive bandages of assorted sizes,
   b. Sterile gauze pads, and
   c. Sterile gauze rolls,
2. Antiseptic solution or sealed antiseptic wipes,
3. Single-use non-porous gloves,
4. Reclosable plastic bags of at least one-gallon size,
5. Scissors, and
6. Adhesive or self-adhering tape.

B. A certificate holder shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.

C. If, while receiving child care services at a child care group home, an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, does not require medical treatment by a physician, physician assistant, or registered nurse practitioner, the certificate holder shall ensure that first aid treatment as needed is provided to the enrolled child by an individual with current training in first aid.

D. If, while receiving child care services at a child care group home, an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a physician, physician assistant, or registered nurse practitioner, a certificate holder shall ensure that a staff member:
1. Within 30 minutes after the accident, injury, or emergency, notifies the individual designated by the parent on the enrolled child's Emergency, Information, and Immunization Record card to be contacted in case of the enrolled child's injury or illness;
2. Documents:
   a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
   b. The method used to notify the designated individual; and
   c. The time the designated individual was notified; and
3. Maintains documentation required in subsection (D)(2) on the premises for 12 months after the date of the child's disenrollment.

E. A certificate holder shall notify the Department orally or in writing within 24 hours after an enrolled child's death at the child care group home during hours of operation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-310 renumbered to R9-3-305; new R9-3-310 renumbered from R9-3-314 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-311. Renumbered

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-311 renumbered to R9-32-307 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 2. Repealed

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Table repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-312. Renumbered

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-312 renumbered to R9-3-308 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-313. Renumbered

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-313 renumbered to R9-3-309 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-314. Renumbered

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-314 renumbered to R9-3-310 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-315. Repealed

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

Article 4, consisting of R9-3-401 through R9-3-413, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-401. General Program, Equipment, and Health and Safety Standards

A. In addition to complying with the requirements in this Chapter, a certificate holder shall ensure that the health, safety, or welfare of an enrolled child is not placed at risk of harm.

B. A certificate holder shall ensure that:
1. A staff member:
   a. Supervises each enrolled child at all times,
   b. Plays and communicates with an enrolled child throughout the day, and
   c. Responds immediately to signs of distress from an enrolled child;
2. The areas of the child care group home approved for providing child care services are maintained free from hazards;
3. The toys, materials, and equipment for use by enrolled children:
   a. Include, as appropriate to the ages of the enrolled children at the child care group home:
      i. Arts supplies,
      ii. Manipulatives to enhance small motor development,
      iii. Indoor and outdoor equipment to enhance large motor development,
      iv. Creative play materials,
      v. Books, and
      vi. Musical instruments;
   b. Are sufficient in number and type to meet the needs of the enrolled children in attendance at the child care group home;
   c. Are accessible to enrolled children; and
   d. Are maintained free from hazards and in a condition that allows the toys, materials, and equipment to be used for their original purpose;
4. The activities at the child care group home are:
   a. Structured to meet the age and developmental level of each enrolled child; and
   b. Based upon a written weekly schedule that includes:
      i. Routines, such as meals, snacks, and rest periods, that follow a familiar and consistent pattern;
      ii. If weather and air quality permit, outdoor activities to enhance large muscle development;
      iii. Stories, music, dancing, singing, and reading;
      iv. Listening and talking opportunities; and
      v. Creative activities such as water play, cutting and pasting, painting, coloring, dramatic play, and playing with blocks;
5. Clean clothing is available to an enrolled child; and
6. Drinking water is available to enrolled infants and one- or two-year-old children and is accessible to older enrolled children at all times.

C. A certificate holder shall ensure that a staff member:
1. Monitors an enrolled child for overheating or overexposure to the sun and, if an enrolled child exhibits signs of overheating or overexposure to the sun, notifies a staff member who has current training in first aid to evaluate the enrolled child;

2. When an enrolled child's clothing is wet or soiled:
   a. Except for an enrolled child who can change the enrolled child's own clothing, changes the enrolled child's wet or soiled clothing;
   b. If the clothing is soiled with feces, empties the feces into a flush toilet without rinsing the clothing;
   c. Stores the enrolled child's wet or soiled clothing in a sealed plastic bag labeled with an identifier that is specific to the enrolled child; and
   d. Sends the enrolled child's wet or soiled clothing home with the enrolled child or the enrolled child's parent;
3. Bathes an enrolled child at the child care group home only if the child care group home has received written permission from the enrolled child's parent;
4. Except as specified in subsection (C)(5), labels the personal items of an enrolled child with an identifier that is specific to the enrolled child and stores the personal items separately from the personal items of other enrolled children and residents;
5. Stores diapering products in a location that is inaccessible to enrolled children but accessible for diaper changing;
6. If a parent of an enrolled child permits or asks a staff member to apply sunscreen, diapering products, or other substances to the skin of an enrolled child, obtains:
   a. The sunscreen, diapering products, or other substances from the enrolled child's parent; or
   b. If the child care group home supplies the sunscreen, diapering products, or other substances, written permission from the enrolled child's parent for the application of the specific sunscreen, diapering products, or other substances; and
   7. Allows an enrolled school-age child to possess and use a topical sunscreen product if the parent of the enrolled school-age child provides notice to the child care group home without having to have a note or prescription from a licensed health care professional.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-402. Supplemental Standards for Napping or Sleeping

A. A certificate holder shall ensure that:
1. Each enrolled child who naps or sleeps at the child care group home is furnished with a bed, cot, mat, or crib that accommodates the enrolled child's height and weight;
2. The bed, cot, mat, or crib is not used by another individual while in use by the enrolled child;
3. The cot, mat, or bed's mattress is covered with a clean sheet that is laundered when soiled, at least once every seven calendar days, and before use by a different enrolled child;
4. The crib mattress is covered with a clean fitted-sheet designed for the crib mattress size that is laundered when soiled, at least once every 24 hours, and before use by a different enrolled child; and
5. A clean blanket or sheet is provided to each enrolled child.

B. A certificate holder shall not allow an enrolled child to use:
1. A waterbed,
2. The upper bed of a bunk bed, or
3. A stacked crib.

C. A certificate holder shall ensure that a crib used by an enrolled child:
1. Has bars or openings spaced no more than 2 3/8 inches apart;
2. Has a crib mattress that is:
   a. Measured to fit not more than 1/2 inch from the crib side, and
   b. Commercially waterproofed or covered with a waterproof crib mattress cover;
3. Is cleaned and sanitized when soiled; and
4. Does not contain bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products when an enrolled child is in the crib.

D. When enrolled children are present at a child care group home during hours of operation, a certificate holder shall ensure that a staff member:
1. Remains awake until all enrolled children are asleep, and
2. Is allowed to sleep only:
   a. During the hours of 8:00 p.m. to 5:00 a.m., and
   b. If the staff member can hear and respond to an enrolled child waking from sleep.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child

A. A certificate holder shall ensure that:

1. A staff member:
   a. Does not allow an enrolled infant or one- or two-year-old child to spend more than 30 consecutive minutes of time while awake in a crib, playpen, swing, feeding chair, infant seat, or other confining piece of equipment;
   b. Allows each enrolled infant to maintain an individual pattern of sleeping, waking, and eating, unless the enrolled infant's parent has instructed otherwise;
   c. If providing a bottle or sippy cup to an enrolled infant or one- or two-year-old child before the enrolled infant or one- or two-year-old child naps or sleeps:
      i. Ensures that only water is in the bottle or sippy cup unless the written instructions required by subsection (A)(3)(b) state otherwise;
      ii. Removes the used bottle or sippy cup from the enrolled infant or one- or two-year-old child's crib, bed, cot, or mat as soon as the enrolled infant or one- or two-year-old child finishes drinking or falls asleep; and
      iii. Cleans the used bottle or sippy cup before the bottle or sippy cup is reused;
   d. Checks the diaper of each enrolled infant or one- or two-year-old child throughout the day and changes a diaper as soon as it is wet or soiled;
   e. Ensures that toys provided for an enrolled infant or one- or two-year-old child are too large to swallow; and
   f. Does not permit an enrolled infant to use a walker;
2. When putting an enrolled infant to sleep, a staff member:
   a. Places the enrolled infant on the enrolled infant's back to sleep, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing;
   b. Provides a clean blanket or sheet to the enrolled infant;
   c. Does not use a positioning device that restricts movement, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing; and
   d. Does not use a mechanical restraint on the enrolled infant in a crib;
3. When feeding an enrolled infant, a staff member:
   a. Prepares and stores the enrolled infant's formula, breast milk, or other food according to written instructions from the enrolled infant's parent;
   b. Feeds formula, breast milk, or other food to the enrolled infant according to current written instructions from the enrolled infant's parent; and
   c. If the enrolled infant is younger than six months of age or cannot hold a bottle for feeding, holds the enrolled infant for feeding; and
4. When feeding an enrolled infant who is no longer being held for feeding or an enrolled one- or two-year-old child, a staff member:
   a. Seats the enrolled infant or one- or two-year-old child in a feeding chair or at a table with a chair that allows the enrolled infant or one- or two-year-old child to reach food while sitting; and
   b. If the feeding chair is manufactured with a safety strap, fastens the safety strap around the enrolled infant or one- or two-year-old child while the enrolled infant or one- or two-year-old child is seated in the feeding chair.

B. A certificate holder shall ensure that a staff member:

1. Consults with an enrolled child's parent to establish a written plan for toilet training for the enrolled child,
2. Implements the toilet training plan,
3. Provides the parent with information about the enrolled child's progress in toilet training, and
4. Ensures that toilet training is not forced on the enrolled child.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs

A. Before an enrolled child with special needs receives child care services at a child care group home, the certificate holder shall ensure that the provider obtains from the enrolled child's parent an individual plan for the enrolled child that includes, as applicable, the following:

1. A medication schedule,
2. Nutrition and feeding instructions,
3. Instructions for medical equipment or adaptive devices used by the enrolled child,
4. Emergency instructions,
5. Toileting and personal hygiene instructions,
6. Identification of specific child care services to be provided at the child care group home, and
7. Instructions for fire and emergency evacuation drills.

B. A certificate holder shall ensure that:
1. At least one staff member receives instructions from the parent of an enrolled child with special needs that enables the staff member to interact with, feed, and care for the enrolled child with special needs;
2. Documentation of the instructions required in subsection (B)(1) is maintained on the premises for 12 months after the child is disenrolled;
3. When tube feeding an enrolled child, a staff member only uses:
   a. Commercially prepackaged formula in a ready-to-use state, stored according to directions on the package;
   b. Formula prepared by the enrolled child's parent and brought to the child care group home in an unbreakable container; or
   c. Breast milk brought to the child care group home in an unbreakable container;
4. Only a staff member who received the instructions required in subsection (B)(1):
   a. Feeds an enrolled child who requires tube feeding using the enrolled child's tube-feeding apparatus, and
   b. Cleans the enrolled child's tube-feeding apparatus; and
5. A staff member:
   a. Assists an enrolled child with special needs to enable the enrolled child to participate in activities at the child care group home; and
   b. Ensures that the enrolled child is provided with developmentally appropriate toys, materials, and equipment.

C. In addition to complying with the requirements in R9-3-408, a certificate holder shall ensure that a staff member transporting an enrolled child with special needs in a wheelchair in a motor vehicle operated by the child care group home ensures that:
1. The enrolled child's wheelchair is manufactured to be secured in a motor vehicle;
2. The enrolled child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
4. The enrolled child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear of the motor vehicle.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-404 renumbered from R9-3-406 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Subsection (B)(3)(a) corrected at request of Department, Office File No. M11-379, filed October 20, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-405. Discipline and Guidance

A. A certificate holder shall ensure that a staff member:
1. Establishes and maintains reasonable guidelines and limits for enrolled children's behavior and applies them consistently;
2. Teaches, models, and encourages orderly conduct, self-control, and age-appropriate behavior;
3. When disciplining an enrolled child:
   a. Explains to the enrolled child why the particular behavior is not allowed,
   b. Suggests an alternate behavior to the enrolled child, and
   c. Assists the enrolled child to become engaged in an alternate activity; and
4. If an enrolled child's behavior may result in harm to self or others, holds the enrolled child without undue force until the enrolled child regains self-control or composure.

B. A certificate holder shall ensure that a staff member does not use or allow:
1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;
2. Corporal punishment;
3. Discipline associated with:
   a. Eating, napping, sleeping, or toileting;
   b. Medication;
   c. Mechanical restraint;
   d. Humiliation; or
   e. Fear; or
4. Discipline administered to an enrolled child by an individual who is not a staff member.

C. A certificate holder may allow a staff member to separate an enrolled child older than two years of age from other children for unacceptable behavior according to the following:
1. A separation period may not last longer than three minutes after the enrolled child has regained control or composure, and
2. A staff member may not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.

D. A staff member may not discipline the staff member's own child in a manner inconsistent with subsections (A) through (C) during hours of operation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-405 renumbered from R9-3-409 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-406.

General Nutrition and Menu Standards

A. This Section does not apply to infants.

B. A certificate holder shall ensure that meals and snacks are served to enrolled children in compliance with Table 4.1.

C. When a child care group home provides food for enrolled children, the certificate holder shall ensure that:

1. Each meal or snack is prepared and served according to the meal pattern requirements in Table 4.2;
2. Second servings of food are served to each enrolled child at meal time and snack time, if requested by the enrolled child;
3. The same food item, other than milk, is not served more than once in a single day;
4. During each week, meals include a variety of foods from each food category in the meal pattern requirements in Table 4.2;
5. Unless an enrolled child's parent requests otherwise, milk served to the enrolled child is:
   a. Fat-free or 1% low-fat milk for an enrolled child older than two years of age; and
   b. Whole milk for an enrolled child two years of age or younger;
6. Only pasteurized milk is served;
7. Reconstituted dry milk is not served to meet the fluid milk requirement;
8. Juice served to enrolled children for a meal or snack is pasteurized full-strength 100% vegetable juice, fruit juice, or fruit and vegetable juice combination from an original, commercially filled container or reconstituted from a concentrate according to manufacturer directions;
9. A beverage sweetened with any kind of sugar product is not provided by the child care group home; and
10. High fat or high sugar food items such as muffins, brownies, donuts, pastries, croissants, cakes, or cookies are served to satisfy a meal or snack category no more than twice each week.

D. If a parent who provides food for the parent's enrolled child does not provide milk or juice for the enrolled child, the certificate holder shall provide milk or juice to the enrolled child unless doing so would be inconsistent with a modified diet prescribed for the enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner.

E. A certificate holder shall ensure that a staff member maintains a supply of food sufficient to serve the meals and snacks required by this Section to be served to each enrolled child attending the child care group home in a single day.

F. A certificate holder shall ensure that a staff member:

1. Prepares a weekly menu specifying the foods to be served at each meal and snack on each day,
2. Dates each menu, and
3. Writes food substitutions on a posted menu no later than the morning of the day of the meal or snack to which the substitution applies.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-406 renumbered from R9-3-410 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 4.1. Meals and Snacks Required to Be Served to Enrolled Children

Times Enrolled Child Is at Child Care Group Home	Child Required to Be Served
Before 8:00 a.m.	Breakfast, if requested by parent or child
Between 8:00 a.m. and 11:00 a.m.	At least one snack
Between 11:00 a.m. and 1:00 p.m.	Lunch
Between 1:00 p.m. and 5:00 p.m.	At least one snack
Between 5:00 p.m. and 7:00 p.m., if staying beyond 7:00 p.m.	Dinner
Between 7:00 p.m. and 9:00 p.m., if staying beyond 9:00 p.m.	At least one snack

Historical Note
New Table made by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 4.2. Meal Pattern Requirements for Children

Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or both	1/4 cup	1/2 cup	1/2 cup
3. Grains	1/2 oz eq[1]	1/2 oz eq[1]	1 oz eq[1]
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetables Fruits	1/8 cup cup	1/4 cup cup	1/2 cup cup
3. Grains	1/8 cup	1/4 cup	1/4 cup
4. Meat or meat alternates	1/2 oz eq[1] 1 oz.	1/2 oz eq[1] 1 1/2 oz.	1 oz eq[1] 2 oz.
Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetables Fruits	1/2 cup 1/2 cup	1/2 cup 1/2 cup	3/4 cup 3/4 cup
3. Bread Grains	1/2 oz.	1/2 oz.	1 oz.
4. Meat or meat alternates	1/2 oz.	1/2 oz.	1 oz.

[1] Meat and meat alternates may be used to substitute the entire grains component a maximum of three times per week. Oz eq = ounce equivalents
* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.
** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.
*** Juice may not be served when milk is served as the only other component.

Historical Note
New Table made by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-407. General Food Service and Food Handling Standards

A. A certificate holder shall ensure that:
1. Except as provided in subsection (B), each staff member washes the staff member's hands with soap and running water before handling food, after handling potentially hazardous food, and before serving food;
2. Except as provided in subsection (B), enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
3. A staff member:

a. Washes with a washcloth, paper towel, disposable wipe, or soap and running water the hands of an enrolled infant or child with special needs who cannot wash the child's own hands before and after the enrolled infant or child with special needs handles or eats food; and
b. If using a washcloth, paper towel, or disposable wipes, uses each washcloth, paper towel, or disposable wipe only once before it is laundered or discarded;

4. A staff member:
   a. Encourages, but never forces, an enrolled child to eat;
   b. Assists each enrolled child who needs assistance with eating; and
   c. Teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
5. Food served to an enrolled child younger than five years of age is prepared so as not to present a choking hazard;
6. Each enrolled child is supplied with drinking and eating utensils for the child's own use;
7. Each enrolled child's bottle or sippy cup is marked with an identifier that is specific to the enrolled child;
8. An enrolled child is not allowed to drink from the bottle, sippy cup, cup, or glass of another individual;
9. An enrolled child is not allowed to eat food directly off the floor, carpet, or ground;
10. An enrolled child's parent is notified when the child consistently refuses to eat or exhibits unusual eating behavior;
11. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner, as specified in R9-3-303(B)(8), and is written and posted in the kitchen;
12. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent, physician, physician assistant, or registered nurse, as specified in R9-3-303(B)(8), and is written and posted in the kitchen;
13. After each use, non-single-use utensils and equipment used in preparing, eating, or drinking food are:
    a. Washed in an automatic dishwasher and air dried or heat dried; or
    b. Washed in hot soapy water, rinsed in clean water, and air dried or heat dried;
14. Single-use utensils and equipment are disposed of after being used;
15. Perishable foods are covered and stored in a refrigerator;
16. A refrigerator at the child care group home maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;
17. A freezer at the child care group home maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times;
18. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
    a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
    b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served;
19. When fresh milk is poured from the original-commercial milk container into a serving container used at a meal or a cup, the unused milk is not returned to the original-commercial milk container;
20. Food leftover from a meal where enrolled children pass a serving container from individual to individual or from the provider's family meal is not served to an enrolled child; and
21. A food is not served past its expiration date or after it has begun to spoil.

B. If soap and running water are not available at the location where food is served, such as on a field trip, a staff member may use disposable wipes or hand sanitizer as a substitute for washing hands with soap and running water.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-407 renumbered from R9-3-411 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home

A. A certificate holder shall only allow a staff member to take an enrolled child away from an area of the child care group home approved for providing child care services during hours of operation with written permission from the enrolled child's parent as follows:

1. For a trip to drop off the enrolled child at or pick up the enrolled child from the enrolled child's school, bus stop, or another location, the written permission shall include:
   a. The enrolled child's name;
   b. The location where the enrolled child will be dropped off or picked up;
   c. The time at which the enrolled child will be dropped off or picked up;
   d. The time period, not to exceed 12 months, during which the permission is given; and
   e. The dated signature of the enrolled child's parent; and
2. For a field trip, the written permission shall include:
   a. The enrolled child's name;
   b. A description of the field trip;
   c. The name of the field trip destination, if applicable;
   d. The street address and, if available, the telephone number of the field trip destination, if applicable;
   e. Either:

i. The date or dates of the field trip; or
ii. The time period, not to exceed 12 months, during which the permission is given;
f. The projected time of departure from the child care group home;
g. The projected time of arrival back at the child care group home; and
h. The dated signature of the enrolled child's parent.

B. A certificate holder shall ensure that a staff member maintains a copy of the written permission required in subsection (A) for 12 months after:
1. For a trip under subsection (A)(1), the date of the last trip; and
2. For a trip under subsection (A)(2), the last date for which permission was given.

C. A certificate holder shall ensure that:
1. Each motor vehicle used by an individual to transport an enrolled child:
   a. Is maintained in a mechanically safe condition;
   b. Is free from hazards;
   c. Is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
   d. Has documentation of current motor vehicle insurance coverage maintained inside the motor vehicle that includes the legal name of the child care group home or certificate holder and, if transporting enrolled children and infants, liability information;
   e. Has an operational heating system;
   f. Has an operational air-conditioning system; and
   g. Is equipped with:
      i. A first-aid kit that meets the requirements in R9-3-310; and
      ii. Two large, clean towels or blankets;
2. An enrolled child is not transported in a truck bed, camper, or trailer attached to a motor vehicle; and
3. The Department is notified by telephone or other equally expeditious means within 24 hours after a motor vehicle accident that involves a motor vehicle transporting an enrolled child, including a description of the accident.

D. A certificate holder shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older, and
2. Holds a valid driver's license.

E. A certificate holder shall ensure that an individual transporting an enrolled child in a motor vehicle:
1. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
2. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
3. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
4. Uses a child passenger restraint system, as required under A.R.S. § 28-907, for each enrolled child who is:
   a. Under eight years of age, and
   b. Not more than four feet nine inches tall;
5. Requires that each enrolled child in subsection (E)(4) be secured before the motor vehicle is set in motion and while the motor vehicle is in motion;
6. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
7. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
8. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
9. Does not use audio headphones or a telephone while the motor vehicle is in motion.

F. A certificate holder shall ensure that a staff member taking enrolled children off the premises:
1. Carries the following:
   a. A copy of the Emergency, Information, and Immunization Record card, including the attached immunization record, for each enrolled child accompanying the staff member; and
   b. Drinking water in an amount sufficient to meet the needs of each individual going off the premises and sufficient cups or other drinking receptacles so that each individual can drink from a different cup or receptacle; and
2. Accounts for each enrolled child while the enrolled child is off the premises.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-408 renumbered from R9-3-412 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-409. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-409 renumbered to R9-3-405 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-410. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-410 renumbered to R9-3-406 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Subsection (C)(1)(g)(i) corrected at request of Department, Office File No. M11-425, filed November 22, 2011 (Supp. 11-3).

Table 3. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Table repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 4. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Table repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-411. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-411 renumbered to R9-3-407 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-412. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-412 renumbered to R9-3-408 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-413. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

Article 5, consisting of R9-3-501 through R9-3-508, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-501. General Physical Environment Standards

A. A certificate holder shall ensure that a child care group home has:

1. At least 30 square feet of floor space in indoor areas of the child care group home approved for providing child care services for each enrolled child, not including the following:
   a. A kitchen,
   b. A bathroom,
   c. A laundry room,
   d. A workshop room,
   e. A hallway, or
   f. A garage that has not been converted into living space;
2. If there are up to 10 enrolled children at the child care group home, excluding enrolled children who are in diapers, indoor bathroom facilities with at least one working toilet and one working sink available for use by enrolled children;
3. If there are more than 10 enrolled children at the child care group home, excluding enrolled children who are in diapers, indoor bathroom facilities with at least two working toilets and two working sinks available for use by enrolled children;
4. At least two unobstructed, usable exits to the outside available for use by enrolled children; and
5. An outdoor activity area.

B. A certificate holder shall ensure that each indoor area of the child care group home approved for providing child care services is maintained at a temperature between 68° F and 82° F during hours of operation.

C. A certificate holder shall ensure that the lighting in each indoor area of the child care group home approved for providing child care services is sufficient to enable a staff member to see each enrolled child in the indoor area.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-502. Outdoor Activity Area Standards

A. Except as provided in subsection (B), a certificate holder shall ensure that the child care group home has an outdoor activity area that:
1. Is on the premises;
2. Is at least 500 square feet in size;
3. Is adjacent to the residence;
4. Includes shaded areas large enough to accommodate all enrolled children occupying the outdoor activity area at any time; and
5. Except as provided in subsection (D), is enclosed by a fence that:
   a. Is at least 4 feet high;
   b. Is secured to the ground;
   c. Does not have any vertical or horizontal open space that exceeds 4 inches at any point, including any space on a gate; and
   d. Has a gate from which an individual may exit the outdoor activity area.

B. The outdoor activity area of a child care group home may be less than 500 square feet if:
1. The outdoor activity area is at least 375 square feet in size; and
2. The certificate for the child care group home was issued:
   a. Before September 30, 2011, and the size of the outdoor activity area is not less than the size of the outdoor activity area on September 29, 2011; and
   b. On or after September 30, 2011, and the capacity of the child care group home is limited so that the outdoor activity area provides at least 50 square feet per each enrolled child.

C. A certificate holder shall ensure that:
1. A staff member:
   a. Keeps the gate in the fence surrounding an outdoor activity area closed while enrolled children are in the outdoor activity area, and
   b. Arranges play equipment in an outdoor activity area to eliminate hazards and to minimize conflict between children using the play equipment;
2. If a child can fall more than 48 inches from a climbing structure, swing, or slide in an outdoor activity area to the ground below, the climbing structure, swing, or slide:
   a. Has one of the following covering the fall zone of the climbing structure, swing, or slide:
      i. At least 6 inches of fine loose sand, pea gravel, wood fiber product, or other resilient material; or
      ii. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; and
   b. Unless manufactured to be tip-resistant, as stated in the manufacturer's description of the climbing structure, swing, or slide, is anchored securely to the ground with anchors that are installed below the ground and are covered by the resilient material required in subsection (C)(2)(a)(i) or (ii); and
3. If a child can fall between 24 and 48 inches from a climbing structure, swing, or slide in an outdoor activity area to the ground below, the climbing structure, swing, or slide has covering the fall zone of the climbing structure, swing, or slide non-dormant, growing grass or the resilient material required in subsection (C)(2)(a)(i) or (ii).

D. If the property adjoining an outdoor activity area has a swimming pool that is not enclosed by a fence that complies with the requirements of R9-3-503(B), the certificate holder shall ensure that the fence around the outdoor activity area complies with the requirements of R9-3-503(B).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-503. Swimming Pool Standards

A. A certificate holder shall ensure that a swimming pool used by an enrolled child at a child care group home:
1. Contains water that meets one of the following chemical disinfection standards:
   a. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
   b. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
   c. An oxidation-reduction potential equal to or greater than 650 millivolts; and
2. Is equipped with the following:

a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
   i. A removable strainer,
   ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
   iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools;
b. An operational vacuum cleaning system; and
c. The following items, which shall be accessible whenever the swimming pool is in use:
   i. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length, and
   ii. A shepherd's crook.

B. A certificate holder shall ensure that a swimming pool at the child care group home is totally enclosed by a fence that:
1. Separates the swimming pool from all other outdoor activity areas;
2. Is secured to the ground;
3. Is at least 5 feet high;
4. Has a self-closing, self-latching, lockable gate; and
5. Does not have any vertical or horizontal open space that exceeds 4 inches at any point, including any space on a gate

C. A certificate holder shall ensure that:
1. On each day an enrolled child uses a swimming pool at the child care group home, a staff member tests the swimming pool's water quality at least once for compliance with subsection (A)(1), and records the results of the water quality tests in a log that includes each testing date and test result;
2. A swimming pool is not used by an enrolled child if a water quality test shows that the swimming pool water does not comply with subsection (A)(1);
3. Each gate on a fence around a swimming pool on the premises is locked whenever the swimming pool is not in use;
4. Swimming pool chemicals are kept in a locked storage area; and
5. Swimming pool machinery, including a vacuum cleaning system, is inaccessible to enrolled children.

D. A certificate holder shall ensure that a staff member does not allow an enrolled child to use or have access to a wading pool.

E. Before an enrolled child is allowed to swim at the child care group home, a certificate holder shall ensure that:
1. The enrolled child's parent has given written permission for swimming; and
2. An individual who has current lifeguard certification that includes a demonstration of the individual's ability to perform CPR is stationed at the swimming pool in a location that enables the individual to see clearly all parts of the swimming pool, including the bottom, at all times while enrolled children are using the swimming pool.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-504. Fire Safety, Gas Safety, and Emergency Standards

A. A certificate holder shall ensure that:
1. The house number of the child care group home's residence is painted or posted on the premises so that it is visible from the street;
2. A smoke detector is installed in each indoor area of the child care group home approved for providing child care services and in each hallway of the child care group home's residence;
3. Each smoke detector required under subsection (A)(2):
   a. Is maintained in an operable condition; and
   b. Is either battery operated or, if hard-wired into the electrical system of the child care group home's residence, has a back-up battery;
4. The child care group home's residence has at least two portable fire extinguishers:
   a. One of which is labeled as rated at least 1A-10-BC by the Underwriters Laboratories is mounted on the kitchen wall and is easily accessible, and
   b. One of which is labeled as rated at least 2A-10-BC by the Underwriters Laboratories and is maintained in a location accessible to staff members in an area of the child care group home approved for providing child care services;
5. Each electrical outlet in an area of the child care group home approved for providing child care services is covered with a safety plug cover or insert when not in use;
6. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the child care group home;
7. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the child care group home;
8. Each electrical, cable, or telephone outlet at the child care group home is covered with a face plate;
9. A wood-burning stove, the interior of a fireplace, or a chiminea is inaccessible to enrolled children when in use;
10. An unvented space heater or open-flame space heater is not used in the child care group home's residence during hours of operation;

11. An electric portable heater is not used in the child care group home's residence during hours of operation unless the electric portable heater:
    a. Has:
        i. Either a non-porous casing or a grill with a mesh small enough to prevent cloth or a child's finger from entering the casing,
        ii. A tilt switch that shuts off power to the electric portable heater if the electric portable heater tips over,
        iii. An automatic shutoff control to prevent overheating, and
        iv. A thermostat control; and
    b. Is plugged directly into a wall outlet;
12. A candle or incense is not burned in the child care group home's residence during hours of operation; and
13. Smoking is not permitted in the residence during hours of operation or in the presence or sight of enrolled children.

B. A certificate holder shall ensure that a staff member:
1. Tests the battery for each smoke detector required under subsection (A)(2) each month,
2. Makes a record of each test performed,
3. Replaces a smoke detector battery that is no longer charged, and
4. Maintains the record of the test on the premises for 12 months after the date of the test.

C. A certificate holder shall:
1. Replace a disposable fire extinguisher when its indicator reaches the red zone; and
2. Ensure that each rechargeable fire extinguisher in the child care group home's residence:
    a. Is serviced at least once every 12 months, and
    b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher.

D. If there are gas pipes that run from a gas meter to an appliance or location on the premises:
1. Before an applicant for a child care group home is issued a certificate by the Department, the applicant shall obtain a gas inspection report by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises; and
2. A certificate holder shall ensure that:
    a. Each unused natural gas outlet at the child care group home has its valves removed by and is capped at the wall or floor by a licensed plumber or individual authorized by the local jurisdiction;
    b. A licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises at least once every 12 months after the date of the certificate; and
    c. A copy of a current gas inspection report, including documentation of any repairs or corrections required by the gas inspection report, is maintained on the premises.

E. A certificate holder shall:
1. Prepare a fire and emergency plan, consisting of:
    a. The child care group home's address and telephone number;
    b. A list of emergency telephone numbers, including 9-1-1 and a poison control center;
    c. A document or documents that include the contact telephone number for a parent of each enrolled child; and
    d. An evacuation plan for the child care group home, including a floor plan of the child care group home's residence on which lines have been drawn showing the evacuation path from each area of the child care group home approved for providing child care services;
2. Maintain the fire and emergency plan in a location accessible to staff members; and
3. Post a copy of the floor plan showing the evacuation paths from the residence in each indoor area of the child care group home approved for providing child care services.

F. A certificate holder shall ensure that:
1. An unannounced fire and emergency evacuation drill are:
    a. At least once each month; and
    b. Each fire drill and emergency evacuation drill is conducted at a different time of day than the fire and emergency evacuation drill conducted in the previous month;
2. During the fire and emergency evacuation drill, each staff member and enrolled child at the child care group home is evacuated from the child care group home according to the evacuation plan;
3. A record is made of each fire and emergency evacuation drill, including:
    a. The date of the fire and emergency evacuation drill, and
    b. The time of the fire and emergency evacuation drill; and
4. The record of the fire and emergency evacuation drill is maintained on the premises for 12 months after the date of the fire and emergency evacuation drill.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-505. General Safety Standards

A. A certificate holder shall ensure that the following are cared for only on the ground floor of the child care group home's residence:
1. An enrolled infant,
2. An enrolled child younger than five years of age, and
3. An enrolled child who uses a wheelchair or is not able to walk.

B. Except as provided in subsection (A)(3), a certificate holder may allow a staff member to care for an enrolled child five years of age or older on a floor above or below the ground floor of the child care group home's residence if one of the two unobstructed, usable exits to the outside required in R9-3-501(A)(4) from the floor on which child care services are provided leads to the ground level outside without passing through the ground floor.

C. If the residence of a child care group home is a mobile home, a manufactured home, or a factory-built building, as defined in A.R.S. § 41-2142, the certificate holder shall ensure that:
1. The skirting around the mobile home, manufactured home, or factory-built building is permanently attached and surrounds the entire perimeter of the residence; and
2. Each stairway or ramp to the mobile home, manufactured home, or factory-built building has railings.

D. A certificate holder shall ensure that:
1. A stairway that leads to a floor or room outside of the areas of the child care group home approved for providing child care services is separated from the areas of the child care group home approved for providing child care services by either a door or gate that is kept closed during hours of operation;
2. A glass window, mirror, or other glass surface that is located lower than 36 inches above the floor, a sliding glass door, or another type of glass partition that is located lower than 36 inches above the floor:
   a. Is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken;
   b. Is shielded by a barrier to prevent impact by or physical injury to an enrolled child; or
   c. Has conspicuous markings located at a child's eye level;
3. Firearms kept at the child care group home are unloaded, out of the view of enrolled children, and stored in separate locked areas, locked cabinets, or locked containers away from the locked areas, locked cabinets, or locked containers in which ammunition is stored;
4. The child care group home has at least one operable telephone available for use by a staff member;
5. Except as provided in R9-3-503(C)(4) and subsection (D)(6)(d), the following are stored in a labeled container separate from food storage areas and are inaccessible to an enrolled child:
   a. Materials and chemicals labeled as a toxic substance, and
   b. Substances that have a child warning label and may be a hazard to a child;
6. Flammable liquids are stored:
   a. In an original container;
   b. Separate from food storage areas;
   c. Away from any heat-producing appliance or equipment, such as a water heater or furnace; and
   d. Except for hand sanitizers being provided for use, in a location inaccessible to enrolled children;
7. Each window blind cord or curtain cord at the child care group home is anchored to a wall or inaccessible to an enrolled child;
8. Each fan in an area of the child care group home approved for providing child care services is inaccessible to an enrolled child; and
9. An enrolled child does not have access to the following on the premises:
   a. Lawn mowers, ladders, toilet brushes, plungers, and other equipment that may be a hazard to a child;
   b. An air conditioner, evaporative cooler, heat pump, or furnace;
   c. A hot tub or spa;
   d. A pond or fountain;
   e. An irrigation ditch, abandoned mine, or well; or
   f. A trampoline.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-506. General Cleaning and Sanitation Standards

A certificate holder shall ensure that:

1. All areas of the child care group home approved for providing child care services and the furnishings, equipment, supplies, materials, utensils, and toys in those areas are kept clean and free of insects and vermin;
2. All equipment, materials, and toys used by or accessible to enrolled children are cleaned and disinfected as often as necessary to maintain them in a clean and disinfected condition and, for items used by infants or one- or two-year-old children, at least once every 24 hours;
3. All plumbing fixtures at the child care group home are maintained in operating condition;
4. The plumbing at the child care group home supplies sufficient water pressure to meet the child care group home's toileting and cleaning needs;
5. Each bathroom used by an enrolled child at the child care group home has the following within the reach of enrolled children:

a. Mounted toilet tissue,
b. Soap contained in a dispenser, and
c. Singly dispensed paper towels;

6. A staff member washes the staff member's hands with soap and running water after toileting;
7. An enrolled child, other than an enrolled child with special needs who cannot wash the enrolled child's own hands, washes the enrolled child's hands with soap and running water after toileting;
8. After an enrolled child with special needs who cannot wash the enrolled child's own hands uses the toilet, a staff member washes the enrolled child's hands with a washcloth, cloth, or paper towel, or disposable wipes, using each washcloth, cloth, or paper towel, or disposable wipe on only one enrolled child and only one time before it is laundered or discarded;
9. Each toilet bowl and sink in a child care group home available for use by enrolled children is cleaned and disinfected daily or, if necessary, more often;
10. A bathtub is cleaned and disinfected before being used to bathe an enrolled child and, if used to bathe more than one enrolled child in one day, between each use;
11. Food waste at the child care group home is stored in a covered waterproof container that is clean and lined with a plastic bag; and
12. Food waste and other refuse is removed from the residence daily or, if necessary, more often.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-507. Diaper-Changing Standards

A. A certificate holder shall ensure that a staff member changes diapers only on a nonabsorbent, sanitizable diaper changing surface that:
1. Is kept clear of items not required for diaper changing;
2. Is in an area of the child care group home approved for providing child care services, but not in a kitchen or eating area; and
3. Provides access to running water that is not a kitchen sink and dispensed soap within 15 feet.

B. A certificate holder shall ensure that:
1. A staff member:
   a. Cleans, sanitizes, and dries a diaper-changing surface using a single-use paper towel before and after each diaper change;
   b. Washes the staff member's hands with soap and running water before and after each diaper change;
   c. Wears single-use non-porous gloves during each diaper change;
   d. Washes an enrolled child's hands with soap and running water or with a washcloth or disposable wipe after the enrolled child's diaper is changed and uses each washcloth or disposable wipe on only one child and only one time before it is laundered or discarded; and
   e. Documents the daily diaper changes for each enrolled child in a dated diaper-changing log after changing the enrolled child's diaper;
2. The diaper-changing log is maintained on the premises for 12 months after the date of the last diaper change recorded in the diaper-changing log;
3. Soiled cloth diapers or plastic pants from an enrolled child are:
   a. If soiled with feces, emptied into a flush toilet without rinsing the cloth diapers or plastic pants;
   b. Placed in a plastic bag labeled with an identifier that is specific to the enrolled child;
   c. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
   d. Sent home with the enrolled child's parent; and
4. Soiled disposable diapers and disposable training pants are:
   a. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
   b. Removed from the diaper-changing area and discarded in an outside waste receptacle once daily or, if necessary, more often.

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-508. Pet and Animal Standards

A certificate holder shall ensure that:

1. Each dog, cat, or ferret at the child care group home has a current vaccination against rabies;
2. Documentation of current vaccination against rabies, required in subsection (1), is maintained on the premises;
3. All pet and animal habitats at the child care group home are kept clean;
4. When kept in an area of the child care group home approved for providing child care services, a bird is:
   a. Kept in a cage during hours of operation, and
   b. Not kept in the kitchen or an eating area of the child care group home;
5. Pets and animals are controlled so that the cleanliness of the child care group home is maintained and no enrolled child, staff member, or other individual at the child care group home is endangered;
6. All animals, except cats and dogs, are kept in enclosures that are inaccessible to enrolled children, except as an activity, during hours of operation;
7. A reptile in a child care group home is:
   a. Kept in a tank, container, or other enclosure that is:
      i. Inaccessible to enrolled children,
      ii. Not located in an area of the child care group home approved for providing child care services, and
      iii. Not brought into or through areas of the child care group home approved for providing child care services;
   b. Not taken out of the tank, container or other enclosure at any time during hours of operation;
   c. Not brought into areas of the child care group home approved for providing child care services at any time; and
   d. Not used as part of an activity;
8. Each pet dish is inaccessible to enrolled children during hours of operation;
9. Receptacles for pet feces and urine, such as litter boxes, are inaccessible to enrolled children;
10. Pet feces in an outdoor activity area are cleaned up before enrolled children are permitted in the outdoor activity area; and
11. Enrolled children and staff members wash their hands with soap and running water after an activity involving animals.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

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

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

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

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop,

tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of

performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking

receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

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

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

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of

all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

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

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

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

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

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This

procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

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

R. For the purposes of this section:

1. "Cottage food product":

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

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

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

36-897.01. Certification; application; fees; rules; fingerprinting; renewal; exemption from rule making

A. A child care group home shall be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.

B. If a child care group home is within one-fourth mile of agriculture land, the application shall include the names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days after receipt of an application for a certificate, the department shall notify the owners and lessees of agricultural land as listed on the application. The department shall deny a certificate that affects agricultural land regulated pursuant to section 3-365,

except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care group home, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection applies to the renewal of a certificate for a child care group home located in the same location if the child care group home certificate was not previously issued under this subsection.

C. The director, by rule, may establish and collect fees for child care group homes and a late filing fee. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Pursuant to available funding the department shall collect annual fees.

E. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for certification fees paid by child care group homes, including a public health discount program.

F. The department shall issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies.

G. A certificate is valid unless it is revoked or suspended or the licensee does not pay the licensure fee and may be renewed by submitting the certification fee as prescribed by the department pursuant to subsection C of this section.

H. In order to ensure that the equipment and services of a child care group home and the good character of an applicant are conducive to the welfare of children, the department by rule shall establish the criteria for granting, denying, suspending and revoking a certificate.

I. The director shall adopt rules and prescribe forms as may be necessary for the proper administration and enforcement of this article.

J. The certificate shall be conspicuously posted in the child care group home for viewing by parents and the public.

K. Current department inspection reports shall be kept at the child care group home and shall be made available to parents on request.

L. A certificate is not transferable and is valid only for the location occupied at the time it is issued.

M. An application for an initial certificate shall include:

1. The form that is required pursuant to section 36-897.03, subsection B and that is completed by the applicant.

2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.

N. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on any form required by section 36-897.03.

O. Certificate holders may pay fees by installment payments based on procedures established by the department.

P. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

Q. If the department lowers fees, the department may refund or credit fees to licensees.

R. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

36-897.02. Standards of care; monitoring

A. The department by rule shall establish standards of care for child care group homes. These rules shall include minimum programmatic, personnel, supervision of children, training, physical environment and financial stability standards.

B. At least two adults shall be present in the child care group home when six to ten children are cared for in the home.

C. For purposes of certification of the child care group home, the provider's own children shall not be counted.

D. The total number of children present in a child care group home at any given time for whom compensation is received shall not exceed ten.

E. The total number of children present in a child care group home at any given time, including children related to the provider, shall not exceed fifteen.

F. The department shall monitor the operation of a child care group home at least two times each year to ensure that the child care group home is meeting department standards of care.

36-897.03. Child care group homes; child care personnel; fingerprints; definition

A. Child care personnel, including volunteers, shall submit the form prescribed in subsection B of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 before starting employment or volunteer work.

B. Applicants, certificate holders and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B or C in this state or similar offenses in another state or jurisdiction.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The provider shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness to work in a certified child care group home.

D. The director may adopt rules prescribing the exclusion from child care group homes of individuals whose presence may be detrimental to the welfare of children.

E. The forms required by subsection B of this section are confidential.

F. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection B or subsection B, paragraph 2 or 3 of this section is prohibited from being employed in any capacity in a child care group home.

G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection C shall not work in a child care group home without direct visual supervision unless the person has applied for and received the required fingerprint clearance card pursuant to section 41-1758 and is registered as child care personnel. A person who is subject to this subsection shall not be employed in any capacity in a child care group home if that person is denied the required fingerprint clearance card.

H. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on the form required by subsection B of this section.

I. For the purposes of this section, "child care personnel" means all employees of and persons who are eighteen years of age or older and who reside in a child care group home that is certified by the department.

36-897.04. Exemptions

A. This article does not apply to the care given to children by or in:

1. The homes of their own parents.

2. A religious institution conducting a nursery in conjunction with its religious services.

3. A unit of the public school system.

4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.

6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.

B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

36-897.05. Inspection of child care group homes

A. The department or designated local health departments or its agents may at any time visit, during hours of operation, and inspect a child care group home in order to determine whether it is certified and is being conducted in compliance with applicable law, this article and rules adopted pursuant to this article.

B. The department shall visit each child care group home as often as necessary to assure continued compliance with this article and the rules adopted pursuant to this article. At least one unannounced visit shall be made annually.

36-897.06. Civil penalty; collection

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. 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 by requesting an administrative 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.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

1. Repeated violations of statutes or rules.

2. Patterns of noncompliance.

3. Types of violations.

4. Severity of violations.

5. Potential for and occurrences of actual harm.

6. Threats to health and safety.

7. Number of children affected by the violations.

8. Number of violations.

9. Size of the facility.

10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A of 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.

D. Civil penalties collected pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. The department shall develop an instrument that documents compliance and noncompliance of child care group homes according to the criteria prescribed in its rules governing child care group home certification. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

36-897.07. Training program

The director shall establish a training program to provide training for child care group homes and users of child care group home services, technical assistance materials for child care group homes and information to enhance consumer awareness.

36-897.08. Intermediate sanctions; notification of compliance; hearing

A. If the director has reasonable cause to believe that a child care group home is in violation of this article or a rule adopted pursuant to this article and that the health or safety of the children is endangered, on written notice to the child care group home the director may impose one or more of the following intermediate sanctions until the child care group home is in substantial compliance:

1. Immediately restrict admissions to the child care group home.

2. Terminate specific services that the child care group home may offer.

3. Reduce the child care group home's capacity.

B. A child care group home sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an

inspection. If the department determines that the child care group home is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the child care group home is not in substantial compliance the sanctions remain in effect. The child care group home may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the child care group home is still not in substantial compliance the sanctions remain in effect. Thereafter, a child care group home may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A child care group home shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. On written request by a person who has been sanctioned pursuant to this section the director or the director's designee shall conduct a hearing to review the sanctions. A request for a hearing shall be made by certified mail within ten days after receipt of notice of the sanctions. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

36-897.09. Operating without a certificate; notice; hearing; violation; classification

A. If the department has reasonable cause to believe that a person is operating a child care group home without a certificate, it shall notify that person to cease operation within ten days of receiving the notice. The department shall give notice either by certified mail or by personal service. The notice shall state that the person may make a written request for a hearing before the director or the director's designee pursuant to title 41, chapter 6, article 10.

B. If a person fails to cease operation, the department may request that the county attorney of the county in which the home is located enforce this article. The department may also notify the attorney general who shall immediately seek a restraining order and an injunction against the home.

C. A person who continues to operate a child care group home without certification ten days after receiving notice pursuant to this section is guilty of a class 1 misdemeanor.

36-897.10. Pending action or sale; effect on licensure

A. The department shall not act on an application for certification of a currently certified child care group home while any enforcement or court action related to child care group home certification is pending against that group home's current certificate holder.

B. The director may continue to pursue any court, administrative or enforcement action against the certificate holder even if the group home is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in group home ownership unless it determines that there has been a transfer of legal and equitable interests, control and authority in the group home so that persons other than the transferring certificate holder, that certificate holder's agent or other

parties exercising authority or supervision over the group home's daily operations or staff are responsible for and have control over the group home.

36-897.11. Injunctions; definition

A. If the department believes that a child care group home is operating under conditions that may cause serious harm to children, the department shall notify the attorney general or the county attorney of the county in which the child care group home is located who shall immediately seek a restraining order and injunction against the home.

B. For the purposes of this section, "serious harm" means a substantial physical injury.

36-897.12. Inspection of records

A. Records maintained by the department for child care group homes are available to the public for review and copying.

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.

2. Pursuant to a written consent signed by the parent or guardian.

3. To a law enforcement officer who requires it for official purposes.

4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care group home's case file, contiguous to the form containing the reported violations, those documents that verify correction of reported violations.

36-897.13. Use of sunscreen in child care group homes

A school-age child who attends a child care group home in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

Title 45 —Public Welfare
Subtitle A —Department of Health and Human Services
Subchapter A —General Administration

PART 98—CHILD CARE AND DEVELOPMENT FUND

Authority: 42 U.S.C. 618, 9858.

Source: 63 FR 39981, July 24, 1998, unless otherwise noted.

Subpart A—Goals, Purposes and Definitions

§ 98.1 Purposes.

(a) The purposes of the CCDF are:

(1) To allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within that State;

(2) To promote parental choice to empower working parents to make their own decisions regarding the child care services that best suits their family's needs;

(3) To encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings;

(4) To assist States in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance;

(5) To assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations);

(6) To improve child care and development of participating children; and

(7) To increase the number and percentage of low-income children in high-quality child care settings.

(b) The purpose of this part is to provide the basis for administration of the Fund. These regulations provide that State, Territorial, and Tribal Lead Agencies:

(1) Maximize parental choice of safe, healthy and nurturing child care settings through the use of certificates and through grants and contracts, and by providing parents with information about child care programs;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in home care, care provided by relatives and sectarian child care providers;

(3) Improve the quality and supply of child care and before- and after-school care services that meet applicable requirements and promote healthy child development and learning and family economic stability;

(4) Coordinate planning and delivery of services at all levels, including Federal, State, Tribal, and local;

(5) Design flexible programs that provide for the changing needs of recipient families and engage families in their children's development and learning;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Design programs that provide uninterrupted service to families and providers, to the extent allowed under the statute, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development;

(8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen and retain (including through financial incentives and compensation improvements) the child care workforce.

[81 FR 67573, Sept. 30, 2016]

§ 98.2 Definitions.

For the purpose of this part and part 99:

The Act refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, as amended and codified at 42 U.S.C. 9858 *et seq.*

ACF means the Administration for Children and Families;

Application is a request for funding that includes the information required at § 98.13;

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services;

Caregiver means an individual who provides child care services directly to an eligible child on a person-to-person basis;

Categories of care means center-based child care, family child care, and in home care;

Center-based child care provider means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Child care certificate means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

Child Care and Development Fund (CCDF) means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

Child care provider that receives assistance means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

Child care services, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

Child experiencing homelessness means a child who is homeless as defined in section 725 of SubtitleVII-B of the McKinney-Vento Act (42 U.S.C. 11434a);

Child with a disability means:

(1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*);

(3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(4) A child with a disability, as defined by the State, Territory or Tribe involved;

Construction means the erection of a facility that does not currently exist;

The Department means the Department of Health and Human Services;

Director means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider, and which may serve children from birth to kindergarten entry and children in school-age child care;

Discretionary funds means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

Eligible child means an individual who meets the requirements of § 98.20;

Eligible child care provider means:

(1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

English learner means an individual who is an English learner, as defined in section 8101 of the Elementary and Secondary Education Act of 1965 or who is limited English proficient, as defined in section 637 of the Head Start Act (42 U.S.C. 9832);

Facility means real property or modular unit appropriate for use by a grantee to carry out a child care program;

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

In-home child care provider means an individual who provides child care services in the child's own home;

Lead Agency means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

Licensing or regulatory requirements means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

Liquidation period means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60.;

Major renovation means any renovation that has a cost equal to or exceeding $350,000 in CCDF funds for child care centers and $50,000 in CCDF funds for family child care homes, which amount shall be adjusted annually for inflation and published on the Office of Child Care website. If renovation costs exceed these thresholds and do not include:

(1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or

(2) Extensive alteration of a facility such as to significantly change its function and purpose for direct child care services, even if such renovation does not include any structural change; and improve the health, safety, and/or quality of child care, then it shall not be considered major renovation;

Mandatory funds means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

Matching funds means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

Modular unit means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

Obligation period means the applicable time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

Parent means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*;

The Plan means the Plan for the implementation of programs under the CCDF;

Program period means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality activities pursuant to § 98.53;

Provider means the entity providing child care services;

The regulation refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

Secretary means the Secretary of the Department of Health and Human Services;

Sectarian organization or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

Sectarian purposes and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

Services for which assistance is provided means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

Sliding fee scale means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(l);

State means any of the States and the District of Columbia, and includes Territories and Tribes unless otherwise specified;

Teacher means a lead teacher, teacher, teacher assistant, or teacher aide who is employed by a child care provider for compensation on a regular basis, or a family child care provider, and whose responsibilities and activities are to organize, guide, and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care;

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands;

Territory mandatory funds means the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories;

Tribal mandatory funds means the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations;

Tribal organization means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its

activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

Types of providers means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67573, Sept. 30, 2016; 89 FR 15411, Mar. 1, 2024; 89 FR 52396, June 24, 2024]

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead Agency responsibilities.

The Lead Agency (which may be an appropriate collaborative agency), or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c);

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Consult, collaborate, and coordinate in the development of the State Plan in a timely manner with Indian Tribes or tribal organizations in the State (at the option of the Tribe or tribal organization).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.11 Administration under contracts and agreements.

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part. The contents of the written agreement may vary based on the role the agency is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

(1) Determine the basic usage and priorities for the expenditure of CCDF funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subrecipients and contractors, in accordance with 75 CFR parts 351 to 353;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of any subgrantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.12 Coordination and consultation.

The Lead Agency shall:

(a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, per § 98.10(f) with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.13 Applying for Funds.

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

(a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.

(b) The following assurances or certifications:

(1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;

(2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF-LLL) that discloses lobbying payments;

(3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;

(4) A certification that no principals have been debarred pursuant to 2 CFR 180.300;

(5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103-277, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 89 FR 15412, Mar. 1, 2024]

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a)

(1) Coordinate the provision of child care services funded under this part with other Federal, State, and local child care and early childhood development programs (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services. The Lead Agency shall also coordinate the provision of services with the State, and if applicable, tribal agencies responsible for:

(i) Public health, including the agency responsible for immunizations;

(ii) Employment services/workforce development;

(iii) Public education (including agencies responsible for prekindergarten services, if applicable, and early intervention and preschool services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

(iv) Providing Temporary Assistance for Needy Families;

(v) Child care licensing;

(vi) Head Start collaboration, as authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*);

(vii) State Advisory Council on Early Childhood Education and Care (designated or established pursuant to the Head Start Act (42 U.S.C. 9831 *et seq.*)) or similar coordinating body;

(viii) Statewide after-school network or other coordinating entity for out-of-school time care (if applicable);

(ix) Emergency management and response;

(x) Child and Adult Care Food Program (CACFP) authorized by the National School Lunch Act (42 U.S.C. 1766) and other relevant nutrition programs;

(xi) Services for children experiencing homelessness, including State Coordinators of Education for Homeless Children and Youth (EHCY State Coordinators) and, to the extent practicable, local liaisons designated by Local Educational Agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and Continuum of Care grantees;

(xii) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(xiii) Mental health services; and

(xiv) Child care resources and referral agencies, child care consumer education organizations, and providers of early childhood education training and professional development.

(2) Provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(3) If the Lead Agency elects to combine funding for CCDF services with any other early childhood program, provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding.

(4) Demonstrate in the CCDF Plan how the State, Territory, or Tribe encourages partnerships among its agencies, other public agencies, Indian Tribes and Tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared service alliance models.

(b) Consult with appropriate representatives of local governments;

(c)

(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in § 98.16 that it proposes to submit to the Secretary, which shall include posting the Plan content on a Web site.

(d) Make the submitted and final Plan, any Plan amendments, and any approved requests for temporary relief (in accordance with § 98.19) publicly available on a Web site.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.15 Assurances and certifications.

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(f).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.55(h)(1).

(7) Training and professional development requirements comply with § 98.44 and are applicable to caregivers, teaching staff, and directors working for child care providers of services for which assistance is provided under the CCDF.

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m);

(9) The State will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Such guidelines shall—

(i) Be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;

(ii) Be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(l)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and

(iii) Be updated as determined by the State.

(10) Funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(i) Will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(ii) Will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(iii) Will be used as the primary or sole method for assessing program effectiveness; or

(iv) Will be used to deny children eligibility to participate in the program carried out under this subchapter.

(11) To the extent practicable and appropriate, any code or software for child care information systems or information technology that a Lead Agency or other agency expends CCDF funds to develop must be made available upon request to other public agencies, including public agencies in other States, for their use in administering child care or related programs.

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) The State has developed the CCDF Plan in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(l)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, pursuant to § 98.14(a)(1)(vii);

(2) In accordance with § 98.31, the Lead Agency has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(3) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(4) It will collect and disseminate to parents of eligible children, the general public and, where applicable, child care providers, consumer education information that will promote informed child care choices, information on access to other programs for which families may be eligible, and information on developmental screenings, as required by § 98.33;

(5) In accordance with § 98.33(a), that the State makes public, through a consumer-friendly and easily accessible Web site, the results of monitoring and inspection reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings;

(6) There are in effect licensing requirements applicable to child care services provided within the State, pursuant to § 98.40;

(7) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(8) In accordance with § 98.42(a), procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements;

(9) Caregivers, teachers, and directors of child care providers comply with the State's, Territory's, or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)), if applicable, or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);

(10) There are in effect monitoring policies and practices pursuant to § 98.42;

(11) Payment rates for the provision of child care services, in accordance with § 98.45, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs;

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

(13) There are in effect policies to govern the use and disclosure of confidential and personally identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67575, Sept. 30, 2016; 89 FR 15412, Mar. 1, 2024]

§ 98.16 Plan provisions.

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

(c) The assurances and certifications listed under § 98.15;

(d)

(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.55(f);

(e) A description of the coordination and consultation processes involved in the development of the Plan and the provision of services, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14;

(f) A description of the public hearing process, pursuant to § 98.14(c);

(g) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.46:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) In loco parentis;

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phase-out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Processes to incorporate additional eligible children in the family size in accordance with § 98.21(d);

(5) Procedures and policies for presumptive eligibility in accordance with § 98.21(e), including procedures for tracking the number of presumptively eligible children;

(6) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete initial eligibility determination or re-determination, pursuant to § 98.21(f);

(7) Processes for using eligibility for other programs to verify eligibility for CCDF in accordance with § 98.21(g);

(8) Limiting any requirements to report changes in circumstances in accordance with § 98.21(h);

(9) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(i); and,

(10) Other policies and practices such as timely eligibility determination and processing of applications;

(i) For child care services pursuant to § 98.50:

(1) A description of such services and activities;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to § 98.30(e)(1)(iii);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(5) Any eligibility criteria, priority rules, and definitions established pursuant to §§ 98.20 and 98.46;

(j) A description of the activities to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, to increase parental choice, and to improve the quality of child care, pursuant to § 98.53;

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(l). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

(l) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);

(m) A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors;

(n) A description of monitoring and other enforcement procedures in effect to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42;

(o) A description of criminal background check requirements, policies, and procedures in accordance with § 98.43, including a description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe;

(p) A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with § 98.44;

(q) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(r) Payment rates and a summary of the facts, including a local market rate survey or alternative methodology relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.45;

(s) A detailed description of the State's hotline for complaints, its process for substantiating and responding to complaints, whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers, how the State maintains a record of substantiated parental complaints, and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(t) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(u) A detailed description of the licensing requirements applicable to child care services provided, any exemption to licensing requirements that is applicable to child care providers of services for which assistance is provided under the CCDF and a demonstration of why such exemption does not endanger the health, safety, or development of children, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(v) Pursuant to § 98.33(f), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act (42 U.S.C. 607(e)(2)), to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(w)

(1) When any Matching funds under § 98.55(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.55(c)(1), or for more than 10% of the funds available at § 98.55(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(x) A description of the supply of child care available regardless of subsidy participation relative to the population of children requiring child care, including care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and children in underserved geographic areas, including the data sources used to identify shortages in the supply of child care providers;

(y) A description of the Lead Agency's strategies and the actions it will take to address the supply shortages identified in paragraph (x) of this section and improve parent choice specifically for families eligible to participate in CCDF, including:

(1) For families needing care during nontraditional hours, which may include strategies such as higher payment rates, engaging with home-based child care networks, partnering with employers that have employees working nontraditional hours, and grants or contracts for direct services;

(2) For families needing infant and toddler care, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(3) For families needing care for children with disabilities, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(4) For families in underserved geographic areas, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations; and,

(5) A method of tracking progress toward goals to increase supply and support equal access and parental choice;

(z) A description of how the Lead Agency will use grants or contracts for direct services to achieve supply building goals for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and, at Lead Agency option, children who receive care during nontraditional hours. This must include a description of the proportion of the shortages for these groups would be filled by contracted or grant funded slots. Lead Agencies must continue to provide CCDF families the option to choose a certificate for the purposes of acquiring care;

(aa) A description of how the Lead Agency will improve the quality of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours;

(bb) A description of how the Lead Agency prioritizes increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46;

(cc) A description of how the Lead Agency develops and implements strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services;

(dd) A demonstration of how the State, Territory or Tribe will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Disaster Plan (or Disaster Plan for a Tribe's service area) that:

(1) For a State, is developed in collaboration with the State human services agency, the State emergency management agency, the State licensing agency, the State health department or public health department, local and State child care resource and referral agencies, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body; and

(2) Includes the following components:

(i) Guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services during a disaster, and temporary operating standards for child care after a disaster;

(ii) Coordination of post-disaster recovery of child care services; and

(iii) Requirements that child care providers of services for which assistance is provided under the CCDF, as well as other child care providers as determined appropriate by the State, Territory or Tribe, have in place:

(A) Procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and

(B) Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for child care providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii);

(ee) A description of generally-accepted payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, cover mandatory fees, and pay based on a full or part-time basis;

(ff) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verify eligibility, pursuant to § 98.68;

(gg) A description of how the Lead Agency will provide outreach and services to eligible families with limited English proficiency and persons with disabilities and facilitate participation of child care providers with limited English proficiency and disabilities in the subsidy system;

(hh) A description of policies to prevent suspension, expulsion, and denial of services due to behavior of children birth to age five in child care and other early childhood programs receiving assistance under this part, which must be disseminated as part of consumer and provider education efforts in accordance with § 98.33(b)(1)(v);

(ii) Designation of a State, territorial, or tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, in accordance with § 98.42(b)(4);

(jj) A description of how the Lead Agency will support child care providers in the successful engagement of families in children's learning and development;

(kk) A description of how the Lead Agency will respond to complaints submitted through the national hotline and website, required in section 658L(b) of the CCDBG Act of 2014 (42 U.S.C.9858j(b)), including the designee responsible for receiving and responding to such complaints regarding both licensed and license-exempt child care providers; and

(ll) Such other information as specified by the Secretary.

[81 FR 67576, Sept. 30, 2016, as amended at 89 FR 15412, Mar. 1, 2024; 89 FR 52396, June 24, 2024]

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of three years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67578, Sept. 30, 2016]

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) ***Plan approval.*** The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) ***Plan amendments.***

(1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved or denied not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must ensure advanced written notice is provided to affected parties (*i.e.,* parents and child care providers) of substantial changes in the program that adversely affect eligibility, payment rates, and/or sliding fee scales.

(c) ***Appeal of disapproval of a Plan or Plan amendment.***

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67578, Sept. 30, 2016]

§ 98.19 Requests for temporary waivers.

(a) ***Requests for relief.*** The Secretary may temporarily waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements for a State, consistent with the conditions described in section 658I(c)(1) of the Act (42 U.S.C. 9858g(c)(1)), provided that the waiver request:

(1) Describes circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part;

(2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;

(3) Will not contribute to inconsistency with the purposes of the Act or this part, and;

(4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) ***Types.*** Types of waivers include:

(1) ***Transitional and legislative waivers.*** Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a two-year period;

(ii) May not be extended, notwithstanding paragraph (f) of this section;

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) Are conditional, dependent on progress towards implementation, and may be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) ***Waivers for extraordinary circumstances.*** States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

(i) Limited to an initial period of no more than 2 years from the date of approval;

(ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension, and;

(iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) ***Contents.*** Waiver requests must be submitted to the Secretary in writing and:

(1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;

(2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;

(3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children; and

(4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) ***Notification.*** Within 90 days after receipt of the waiver request or, if additional follow up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) ***Termination.*** The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing based on the rules of procedure in part 99 of this chapter, that the performance of a State, Territory or Tribe granted relief under this section has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) ***Renewal.*** Where permitted, the Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) ***Restrictions.*** The Secretary may not:

(1) Permit Lead Agencies to alter the federal eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this part;

(2) Waive anything related to the Secretary's authority under this part; or

(3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

[81 FR 67578, Sept. 30, 2016, as amended at 89 FR 15413, Mar. 1, 2024]

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) To be eligible for services under § 98.50, a child shall, at the time of eligibility determination or redetermination:

(1)

(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2)

(i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and

(ii) Whose family assets do not exceed $1,000,000 (as certified by such family member); and

(3)

(i) Reside with a parent or parents who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

(B) At grantee option, the waiver provisions in paragraph (a)(3)(ii)(A) of this section apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

(b) A grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.46, which shall be described in the Plan pursuant to § 98.16(i)(5), so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under subpart D of this part;

(3) Violate the provisions of this section, § 98.46, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate; or

(4) Impact eligibility other than at the time of eligibility determination or redetermination.

(c) For purposes of implementing the citizenship eligibility verification requirements mandated by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. 1601 *et seq.,* only the citizenship and immigration status of the child, who is the primary beneficiary of the CCDF benefit, is relevant. Therefore, a Lead Agency or other administering agency may not condition a child's eligibility for services under § 98.50 based upon the citizenship or immigration status of their parent or the provision of any information about the citizenship or immigration status of their parent.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67579, Sept. 30, 2016]

§ 98.21 Eligibility determination processes.

(a) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination, subject to the following:

(1) During the period of time between determinations or redeterminations, if the child met all of the requirements in § 98.20(a) on the date of the most recent eligibility determination or redetermination, the child shall be considered eligible and will receive services at least at the same level, regardless of:

(i) A change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(ii) A temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum:

(A) Any time-limited absence from work for an employed parent due to reasons such as need to care for a family member or an illness;;

(B) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) Any student holiday or break for a parent participating in training or education;

(D) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education;

(E) Any other cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency;

(F) Any change in age, including turning 13 years old during the eligibility period; and

(G) Any change in residency within the State, Territory, or Tribal service area.

(2)

(i) Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at least at the same level for a period of not less than three months after each such loss or cessation in order for the parent to engage in job search and resume work, or resume attendance at a job training or educational activity.

(ii) At the end of the minimum three-month period of continued assistance, if the parent is engaged in a qualifying work, education, or training activity with income below 85% of SMI, assistance cannot be terminated and the child must continue receiving assistance until the next scheduled re-determination, or at Lead Agency option, for an additional minimum 12—month eligibility period.

(iii) If a Lead Agency chooses to initially qualify a family for CCDF assistance based on a parent's status of seeking employment or engaging in job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still not found employment, although assistance must continue if the parent becomes employed during the job search period.

(3) Lead Agencies cannot increase family co-payment amounts, established in accordance with § 98.45(k), within the minimum 12-month eligibility period except as described in paragraph (b)(3) of this section.

(4) Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1) of this section, any payment for such a child shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances.

(5) Notwithstanding paragraph (a)(1), the Lead Agency may discontinue assistance prior to the next re-determination in limited circumstances where there have been:

(i) Excessive unexplained absences despite multiple attempts by the Lead Agency or designated entity to contact the family and provider, including prior notification of possible discontinuation of assistance;

(A) If the Lead Agency chooses this option, it shall define the number of unexplained absences that shall be considered excessive;

(B) [Reserved]

(ii) A change in residency outside of the State, Territory, or Tribal service area; or

(iii) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

(b)

(1) Lead Agencies that establish family income eligibility at a level less than 85 percent of SMI for a family of the same size (in order for a child to initially qualify for assistance) must provide a graduated phase-out by implementing two-tiered eligibility thresholds, with the second tier of eligibility (used at the time of eligibility re-determination) set at:

(i) 85 percent of SMI for a family of the same size; or

(ii) An amount lower than 85 percent of SMI for a family of the same size, but above the Lead Agency's initial eligibility threshold, that:

(A) Takes into account the typical household budget of a low income family; and

(B) Provides justification that the second eligibility threshold is:

(*1*) Sufficient to accommodate increases in family income over time that are typical for low-income workers and that promote and support family economic stability; and

(*2*) Reasonably allows a family to continue accessing child care services without unnecessary disruption.

(2) At re-determination, a child shall be considered eligible (pursuant to paragraph (a) of this section) if their parents, at the time of redetermination, are working or attending a job training or educational program even if their income exceeds the Lead Agency's income limit to initially quality for assistance, as long as their income does not exceed the second tier of the eligibility described in (b)(1);

(3) A family meeting the conditions described in paragraph (b)(2) of this section shall be eligible for services pursuant to the conditions described in § 98.20 and all other paragraphs of this section, with the exception of the co-payment restrictions at paragraph (a)(3) of this section. To help families transition off of child care assistance, Lead Agencies may gradually adjust co-pay amounts for families whose children are determined eligible under the graduated phase-out conditions described in paragraph (b)(2) and may require additional reporting on changes in family income as described in paragraph (h)(3) of this section, provided such requirements do not constitute an undue burden, pursuant to conditions described in paragraphs (h)(2)(ii) and (iii) of this section.

(c) The Lead Agency shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.

(d) The Lead Agency shall establish policies and processes to incorporate additional eligible children in the family size (*e.g.,* siblings or foster siblings), including ensuring a minimum of 12 months of eligibility between eligibility determination and redetermination as described in paragraph (a) of this section for children previously determined eligible and for new children who are determined eligible, without placing undue reporting burden on families.

(e) At a Lead Agency's option, a child may be considered presumptively eligible for up to three months and begin to receive child care subsidy prior to full documentation and eligibility determination:

(1) The Lead Agency may issue presumptive eligibility prior to full documentation of a child's eligibility if the Lead Agency first obtains a less burdensome minimum verification requirement from the family.

(2) If, after full documentation is provided, a child is determined to be ineligible, the Lead Agency shall ensure that a child care provider is paid and shall not recover funds paid or owed to a child care provider for services provided as a result of the presumptive eligibility determination except in cases of fraud or intentional program violation by the provider.

(3) Any CCDF payment made on behalf of a presumptively eligible child prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part and will not be subject to disallowance so long as the payment was not for a service period longer than the period of presumptive eligibility.

(4) If a child is determined to be eligible, the period of presumptive eligibility will apply to the minimum of 12 months of eligibility prior to re-determination described in paragraph (a) of this section.

(5) The Secretary may deny the use of federal funds for direct services under presumptive eligibility for Lead Agencies under a corrective action plan for error rate reporting pursuant to § 98.102(c).

(f) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or re-determination process, including the use of online applications and other measures, to the extent practicable.

(g) At the Lead Agency's option, enrollment in other benefit programs or documents or verification used for other benefit programs may be used to verify eligibility as appropriate according to § 98.68(c) for CCDF, such as:

(1) Benefit programs with income eligibility requirements aligned with the income eligibility at § 98.20(a)(2)(i) may be used to verify a family's income eligibility; and

(2) Benefit programs with other eligibility requirements aligned with § 98.20(a)(3) may verify:

(i) A family's work or attendance at a job training or educational program;

(ii) A family's status as receiving, or need to receive, protective services; or

(iii) Other information needed for eligibility.

(h) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process.

(i) The Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month eligibility period, and describe efforts to ensure such requirements do not place an undue burden on eligible families that could impact continued eligibility between redeterminations.

(1) The Lead Agency must require families to report a change at any point during the minimum 12-month period, limited to:

(i) If the family's income exceeds 85% of SMI, taking into account irregular income fluctuations; or

(ii) At the option of the Lead Agency, the family has experienced a non-temporary cessation of work, training, or education.

(2) Any additional requirements the Lead Agency chooses, at its option, to impose on parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

(i) Limit notification requirements to items that impact a family's eligibility (*e.g.,* only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;

(ii) Not require an office visit in order to fulfill notification requirements; and

(iii) Offer a range of notification options (*e.g.,* phone, email, online forms, extended submission hours) to accommodate the needs of parents;

(3) During a period of graduated phase-out, the Lead Agency may require additional reporting on changes in family income in order to gradually adjust family co-payments, if desired, as described in paragraph (b)(3) of this section.

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

(i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

(ii) Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, the family has experienced a non-temporary change in the work, training, or educational status.

(j) Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.

(k) Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.

[81 FR 67579, Sept. 30, 2016, as amended at 89 FR 15413, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in § 98.2. Such choice shall be offered any time that child care services are made available to a parent.

(b)

(1) Lead Agencies shall increase parent choice by providing some portion of the delivery of direct services via grants or contracts, including at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities.

(2) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)

(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Family child care; and

(iii) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(i)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Lead Agencies shall provide information regarding the range of provider options under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.45, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2, with the exception of in-home care; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality, such as those identified in a quality rating and improvement system or other transparent system of quality indicators.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high-quality child care.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67580, Sept. 30, 2016; 89 FR 15413, Mar. 1, 2024]

§ 98.31 Parental access.

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description in the Plan of such procedures.

[81 FR 67581, Sept. 30, 2016]

§ 98.32 Parental complaints.

The State shall:

(a) Establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers;

(b) Maintain a record of substantiated parent complains;

(c) Make information regarding such parental complaints available to the public on request; and

(d) The Lead Agency shall provide a detailed description in the Plan of how:

(1) Complaints are substantiated and responded to, including whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers; and,

(2) A record of substantiated complaints is maintained and is made available.

[81 FR 67581, Sept. 30, 2016]

§ 98.33 Consumer and provider education.

The Lead Agency shall:

(a) Certify that it will collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities, including:

(1) Lead Agency processes, including:

(i) The process for licensing child care providers pursuant to § 98.40;

(ii) The process for conducting monitoring and inspections of child care providers pursuant to § 98.42;

(iii) Policies and procedures related to criminal background checks for child care providers pursuant to § 98.43; and

(iv) The offenses that prevent individuals from serving as child care providers.

(2) A localized list of all licensed child care providers, and, at the discretion of the Lead Agency, all eligible child care providers (other than an individual who is related to all children for whom child care services are provided), differentiating between licensed and license-exempt providers, searchable by zip code;

(3) The quality of a provider as determined by the Lead Agency through a quality rating and improvement system or other transparent system of quality indicators, if such information is available for the provider;

(4) Results of monitoring and inspection reports for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall post in a timely manner full monitoring and inspection reports, either in plain language or with a plain language summary, for parents and child care providers to understand, and shall establish a process for correcting inaccuracies in the reports. Such results shall include:

(i) Information on the date of such inspection;

(ii) Areas of compliance and non-compliance;

(iii) Information on corrective action taken by the State and child care provider, where applicable;

(iv) Any health and safety violations, including any fatalities and serious injuries occurring at the provider, prominently displayed on the report or summary; and

(v) A minimum of 3 years of results where available.

(5) Aggregate data for each year for eligible providers including:

(i) Number of deaths (for each provider category and licensing status);

(ii) Number of serious injuries (for each provider category and licensing status);

(iii) Instances of substantiated child abuse that occurred in child care settings; and,

(iv) Total number of children in care (for each provider category and licensing status).

(6) Referrals to local child care resource and referral organizations.

(7) Directions on how parents can contact the Lead Agency or its designee and other programs to help them understand information included on the Web site.

(8) The sliding fee scale for parent co-payments pursuant to § 98.45(l), including the co-payment amount a family may expect to pay and policies for waiving co-payments.

(b) Certify that it will collect and disseminate, through resource and referral organizations or other means as determined by the State, including, but not limited to, through the Web site described in paragraph (a) of this section, to parents of eligible children and the general public, and where applicable providers, information about:

(1) The availability of the full diversity of child care services to promote informed parental choice, including information about:

(i) The availability of child care services under this part and other programs for which families may be eligible, as well as the availability of financial assistance to obtain child care services;

(ii) Other programs for which families that receive assistance under this part may be eligible, including:

(A) Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*);

(B) Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*);

(C) Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*);

(D) Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*);

(E) Special supplemental nutrition program for women, infants, and children (42 U.S.C. 1786);

(F) Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766);

(G) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(iii) Programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*);

(iv) Research and best practices concerning children's development, meaningful parent and family engagement, and physical health and development, particularly healthy eating and physical activity; and

(v) State policies regarding social emotional behavioral health of children which may include positive behavioral health intervention and support models for birth to school-age or age-appropriate, and policies to prevent suspension and expulsion of children birth to age five in child care and other early childhood programs, as described in the Plan pursuant to § 98.16(ee), receiving assistance under this part.

(c) Provide information on developmental screenings to parents as part of the intake process for families receiving assistance under this part, and to providers through training and education, including:

(1) Information on existing resources and services the State can make available in conducting developmental screenings and providing referrals to services when appropriate for children who receive assistance under this part, including the coordinated use of the Early and Periodic Screening,

Diagnosis, and Treatment program (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 *et seq.*); and

(2) A description of how a family or eligible child care provider may utilize the resources and services described in paragraph (c)(1) of this section to obtain developmental screenings for children who receive assistance under this part who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(d) For families that receive assistance under this part, provide specific information about the child care provider selected by the parent, including health and safety requirements met by the provider pursuant to § 98.41, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any voluntary quality standards met by the provider. Information must also describe how CCDF subsidies are designed to promote equal access in accordance with § 98.45, how to submit a complaint through the hotline at § 98.32(a), and how to contact local resource and referral agencies or other community-based supports that assist parents in finding and enrolling in quality child care.

(e) Provide linkages to databases related to paragraph (a) to HHS for implementing a national Web site and other uses as determined by the Secretary.

(f) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act (42 U.S.C. 607(e)(2)) that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to § 98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

(i) “Appropriate child care”;

(ii) “Reasonable distance”;

(iii) “Unsuitability of informal child care”;

(iv) “Affordable child care arrangements”;

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (f) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act (42 U.S.C. 608(a)(7)).

(g) Include in the triennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (f) of this section.

[81 FR 67581, Sept. 30, 2016, as amended at 89 FR 15414, Mar. 1, 2024]

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b)

(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67582, Sept. 30, 2016]

§ 98.41 Health and safety requirements.

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of, at a minimum:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

(B) Notwithstanding this paragraph (a)(1)(i), Lead Agencies may exempt:

(*1*) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles), provided there are no other unrelated children who are cared for in the same setting.

(*2*) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(*3*) Children whose parents object to immunization on religious grounds.

(*4*) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(*1*) The length of such grace period shall be established in consultation with the State, Territorial or Tribal health agency.

(*2*) Any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part.

(*3*) The Lead Agency may also, at its option, establish grace periods for other children who are not experiencing homelessness or in foster care.

(*4*) Lead Agencies must coordinate with licensing agencies and other relevant State, Territorial, Tribal, and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(vi) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and

practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(ix) Appropriate precautions in transporting children, if applicable;

(x) Pediatric first aid and cardiopulmonary resuscitation;

(xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and

(xii) May include requirements relating to:

(A) Nutrition (including age-appropriate feeding);

(B) Access to physical activity;

(C) Caring for children with special needs; or

(D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

(b) Lead Agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to strengthening the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

(1) Group size limits for specific age populations;

(2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and

(3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

[81 FR 67582, Sept. 30, 2016]

§ 98.42 Enforcement of licensing and health and safety requirements.

(a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in § 98.41.

(b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care providers and facilities eligible to deliver services for which assistance is provided under this part. The Lead Agency shall:

(1) Ensure individuals who are hired as licensing inspectors are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Training shall include, but is not limited to, those requirements described in § 98.41, and all aspects of the State, Territory, or Tribe's licensure requirements;

(2) Require inspections of child care providers and facilities, performed by licensing inspectors (or qualified inspectors designated by the Lead Agency), as specified below:

(i) For licensed child care providers and facilities,

(A) Not less than one pre-licensure inspection for compliance with health, safety, and fire standards, and

(B) Not less than annually, an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety, (including, but not limited to, those requirements described in § 98.41) and fire standards (inspectors may inspect for compliance with all three standards at the same time); and

(ii) For license-exempt child care providers and facilities that are eligible to provide services for which assistance is made available in accordance with this part, an annual inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41), and fire standards;

(iii) Coordinate, to the extent practicable, monitoring efforts with other Federal, State, and local agencies that conduct similar inspections.

(iv) The Lead Agency may, at its option:

(A) Use differential monitoring or a risk-based approach to design annual inspections, provided that the contents covered during each monitoring visit is representative of the full complement of health and safety requirements;

(B) Develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting; and

(3) Ensure the ratio of licensing inspectors to such child care providers and facilities is maintained at a level sufficient to enable the State, Territory, or Tribe to conduct effective inspections on a timely basis in accordance with the applicable Federal, State, Territory, Tribal, and local law;

(4) Require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.

(c) For the purposes of this section and § 98.41, Lead Agencies may exclude grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, from the term "child care providers." If the Lead Agency chooses to exclude these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

[81 FR 67583, Sept. 30, 2016]

§ 98.43 Criminal background checks.

(a)

(1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:

(i) Requirements, policies, and procedures to require and conduct background checks, and make a determination of eligibility for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

(ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and

(iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.

(2) In this section:

(i) Child care provider means a center based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

(A) Is not an individual who is related to all children for whom child care services are provided; and

(B) Is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter; and

(ii) Child care staff member means an individual (other than an individual who is related to all children for whom child care services are provided):

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 and older.

(b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:

(i) State criminal registry or repository, with the use of fingerprints being:

(A) Required in the State where the staff member resides;

(B) Optional in other States;

(ii) State sex offender registry or repository; and

(iii) State-based child abuse and neglect registry and database.

(c)

(1) The State, Territory, or Tribe in coordination with the Lead Agency shall find a child care staff member ineligible for employment for services for which assistance is made available in accordance with this part, if such individual:

(i) Refuses to consent to the criminal background check described in paragraph (b) of this section;

(ii) Knowingly makes a materially false statement in connection with such criminal background check;

(iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a felony consisting of:

(A) Murder, as described in section 1111 of title 18, United States Code;

(B) Child abuse or neglect;

(C) A crime against children, including child pornography;

(D) Spousal abuse;

(E) A crime involving rape or sexual assault;

(F) Kidnapping;

(G) Arson;

(H) Physical assault or battery; or

(I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, and sexual assault, or of any misdemeanor involving child pornography.

(2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.

(d)

(1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request, to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory Web site described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.

(2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:

(i) Prior to the date an individual becomes a child care staff member of the provider; and

(ii) Not less than once during each 5-year period for any existing staff member.

(3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:

(i) The staff member received qualifying results from a background check described in paragraph (b) of this section;

(A) Within 5 years before the latest date on which such a submission may be made; and

(B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after receiving qualifying results for either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years.

(e) ***Background check results.***

(1) The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member, along with information on the opportunity to appeal, described in paragraph (e)(3) of this section.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive clear instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report;

(iii) If the staff member files an appeal, the State, Territory, or Tribe will attempt to verify the accuracy of the information challenged by the child care staff member, including making an effort to locate any missing disposition information related to the disqualifying crime;

(iv) The appeals process is completed in a timely manner for each child care staff member; and

(v) Each child care staff member shall receive written notice of the decision. In the case of a negative determination, the decision should indicate the State's efforts to verify the accuracy of information challenged by the child care staff member, as well as any additional appeals rights available to the child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) ***Fees for background checks.*** Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) ***Transparency.*** The State or Territory must ensure that its policies and procedures under this section, including the process by which a child care provider or other State or Territory may submit a background check request, are published in the Web site of the State or Territory as described in § 98.33(a) and the Web site of local lead agencies.

(h) ***Disqualification for other crimes.***

(1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in paragraph (c)(1) of this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members or prospective staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

[81 FR 67584, Sept. 30, 2016, as amended at 89 FR 15414, Mar. 1, 2024]

§ 98.44 Training and professional development.

(a) The Lead Agency must describe in the Plan the State or Territory framework for training, professional development, and postsecondary education for caregivers, teachers, and directors, including those working in school-age care, that:

(1) Is developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body;

(2) May engage training and professional development providers, including higher education in aligning training and education opportunities with the State's framework;

(3) Addresses professional standards and competencies, career pathways, advisory structure, articulation, and workforce information and financing;

(4) Establishes qualifications in accordance with § 98.41(d)(3) designed to enable child care and school-age care providers that provide services for which assistance is provided in accordance with this part to promote the social, emotional, physical, and cognitive development of children and improve the knowledge and skills of caregivers, teachers and directors in working with children and their families;

(5) Includes professional development conducted on an ongoing basis, providing a progression of professional development (which may include encouraging the pursuit of postsecondary education);

(6) Reflects current research and best practices relating to the skills necessary for caregivers, teachers, and directors to meet the developmental needs of participating children and engage families, including culturally and linguistically appropriate practices; and

(7) Improves the quality, diversity, stability, and retention (including financial incentives and compensation improvements) of caregivers, teachers, and directors.

(b) The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (to be completed within three months) and ongoing professional development for caregivers, teachers, and directors of child care providers of services for which assistance is provided under the CCDF that, to the extent practicable, align with the State framework:

(1) Accessible pre-service or orientation training in health and safety standards appropriate to the setting and age of children served that addresses:

(i) Each of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and specifying critical health and safety training that must be completed before caregivers, teachers, and directors are allowed to care for children unsupervised;

(ii) At the Lead Agency option, matters described in § 98.41(a)(1)(xii); and

(iii) Child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning);

(2) Ongoing, accessible professional development, aligned to a progression of professional development, including the minimum annual requirement for hours of training and professional development for eligible caregivers, teachers and directors, appropriate to the setting and age of children served, that:

(i) Maintains and updates health and safety training standards described in § 98.41(a)(1)(i) through (xi), and at the Lead Agency option, in § 98.41(a)(1)(xii);

(ii) Incorporates knowledge and application of the State's early learning and developmental guidelines for children birth to kindergarten (where applicable);

(iii) Incorporates social-emotional behavior intervention models for children birth through school-age, which may include positive behavior intervention and support models including preventing and reducing expulsions and suspensions of preschool-aged and school-aged children;

(iv) To the extent practicable, are appropriate for a population of children that includes:

(A) Different age groups;

(B) English learners;

(C) Children with developmental delays and disabilities; and

(D) Native Americans, including Indians, as the term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 6207 of the Elementary and Secondary Education Act of 1965);

(v) To the extent practicable, awards continuing education units or is credit-bearing; and

(vi) Shall be accessible to caregivers, teachers, and directors supported through Indian tribes or tribal organizations that receive assistance under this subchapter.

[81 FR 67585, Sept. 30, 2016]

§ 98.45 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide in the Plan a summary of the data and facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers is made available, and the extent to which child care providers participate in the CCDF subsidy system and any barriers to participation including barriers related to payment rates and practices, based on information obtained in accordance with paragraph (d)(2) of this section;

(2) How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology conducted in accordance with paragraph (c) of this section;

(3) How base payment rates enable providers to meet health, safety, quality, and staffing requirements in accordance with paragraphs (f)(1)(ii)(A) and (f)(2)(ii) of this section;

(4) How the Lead Agency took the cost of higher quality into account in accordance with paragraph (f)(2)(iii) of this section, including how payment rates for higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, relate to the estimated cost of care at each level of quality;

(5) How co-payments based on a sliding fee scale are affordable and do not exceed 7 percent of income for all families, as stipulated at paragraph (l) of this section; if applicable, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts (based on information obtained in accordance with paragraph (d)(2) of this section);

(6) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

(7) How and on what factors the Lead Agency differentiates payment rates; and

(8) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access.

(c) The Lead Agency shall demonstrate in the Plan that it has developed and conducted, not earlier than two years before the date of the submission of the Plan, either:

(1) A statistically valid and reliable survey of the market rates for child care services; or

(2) An alternative methodology, such as a cost estimation model, that has been:

(i) Proposed by the Lead Agency; and

(ii) Approved in advance by ACF.

(d) The Lead Agency must:

(1) Ensure that the market rate survey or alternative methodology reflects variations by geographic location, category of provider, and age of child;

(2) Track through the market rate survey or alternative methodology, or through a separate source, information on the extent to which:

(i) Child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices; and

(ii) CCDF child care providers charge amounts to families more than the required family co-payment (under paragraph (l) of this section) in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

(e) Prior to conducting the market rate survey or alternative methodology, the Lead Agency must consult with:

(1) The State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, local child care program administrators, local child care resource and referral agencies, and other appropriate entities; and

(2) Organizations representing child care caregivers, teachers, and directors.

(f) After conducting the market rate survey or alternative methodology, the Lead Agency must:

(1) Prepare a detailed report containing the results, and make the report widely available, including by posting it on the Internet, not later than 30 days after the completion of the report. The report must include:

(i) The results of the market rate survey or alternative methodology;

(ii) The estimated cost of care necessary (including any relevant variation by geographic location, category of provider, or age of child) to support:

(A) Child care providers' implementation of the health, safety, quality, and staffing requirements at §§ 98.41 through 98.44; and

(B) Higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, at each level;

(iii) The Lead Agency's response to stakeholder views and comments; and,

(iv) The data and summary required at paragraph (d)(2)(ii) of this section.

(2) Set payment rates for CCDF assistance:

(i) In accordance with the results of the most recent market rate survey or alternative methodology conducted pursuant to paragraph (c) of this section;

(ii) With base payment rates established at least at a level sufficient for child care providers to meet health, safety quality, and staffing requirements in accordance with paragraph (f)(1)(ii)(A) of this section;

(iii) Taking into consideration the cost of providing higher-quality child care services, including consideration of the information at each level of higher quality required by paragraph (f)(1)(ii)(B) of this section;

(iv) Taking into consideration the views and comments of the public obtained in accordance with paragraph (e) and through other processes determined by the Lead Agency; and

(v) Without, to the extent practicable, reducing the number of families receiving CCDF assistance.

(g) To facilitate parent choice, increase program quality, build supply, and better reflect the cost of providing care, it is permissible for a Lead Agency to pay an eligible child care provider the Lead Agency's established payment rate at paragraph (a) of this section, which may be more than the price charged to children not receiving CCDF subsidies.

(h) A Lead Agency may not establish different payment rates based on a family's eligibility status, such as TANF status.

(i) Payment rates under paragraph (a) of this section shall be consistent with the parental requirements in § 98.30

(j) Nothing in this section shall be construed to create a private right of action if the Lead Agency acts in accordance with the Act and this part.

(k) Nothing in this part shall be construed to prevent a Lead Agency from differentiating payment rates on the basis of such factors as:

(1) Geographic location of child care providers (such as location in an urban or rural area);

(2) Age or particular needs of children (such as the needs of children with disabilities, children served by child protective services, and children experiencing homelessness);

(3) Whether child care providers provide services during the weekend or other non-traditional hours; or

(4) The Lead Agency's determination that such differential payment rates may enable a parent to choose high-quality child care that best fits the parents' needs.

(l) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF child care services that:

(1) Helps families afford child care and enables choice of a range of child care options;

(2) Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment;

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part, not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance; and

(4) At Lead Agency discretion, allows for co-payments to be waived for families whose incomes are at or below 150 percent of the poverty level for a family of the same size, that have children who are in foster or kinship care or otherwise receive or need to receive protective services, that are experiencing homelessness, that have children who have a disability as defined at § 98.2, that are enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*), or that meet other criteria established by the Lead Agency.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF child care providers that reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency can demonstrate that such practices are not generally-accepted for a type of child care setting):

(1) Ensure timeliness of payment to child care providers by paying in advance of or at the beginning of the delivery of child care services to children receiving assistance under this part;

(2) Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Basing payment on a child's authorized enrollment; or,

(ii) An alternative approach for which the Lead Agency provides a justification in its Plan that the requirements at paragraph (m)(2)(i) of this section are not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

(3) Pay providers on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(4) Pay for reasonable mandatory registration fees that the provider charges to private-paying parents.

(n) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF providers that:

(1) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (n)(3);

(2) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment, and that such notice is sent to providers no later than the day the Lead Agency becomes aware that such a change will occur;

(3) Include timely appeal and resolution processes for any payment inaccuracies and disputes;

(4) May include taking precautionary measures when a provider is suspected of fiscal mismanagement; and

(5) Ensure the total payment received by CCDF child care providers is not reduced by the determination of affordable family co-payment as described in the sliding fee scale at § 98.45(l).

[81 FR 67586, Sept. 30, 2016, as amended at 89 FR 15414, Mar. 1, 2024]

§ 98.46 Priority for child care services.

(a) Lead Agencies shall give priority for services provided under § 98.50(a) to:

(1) Children of families with very low family income (considering family size);

(2) Children with special needs, which may include any vulnerable populations as defined by the Lead Agency; and

(3) Children experiencing homelessness.

(b) Lead Agencies shall prioritize increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

[81 FR 67587, Sept. 30, 2016]

§ 98.47 List of providers.

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67584, Sept. 30, 2016]

§ 98.48 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67584, Sept. 30, 2016]

§ 98.49 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a)(1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67584, Sept. 30, 2016]

Subpart F—Use of Child Care and Development Funds

§ 98.50 Child care services.

(a) Direct child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.45(l);

(3) Using funding methods provided for in § 98.30 including grants or contracts for slots for children in underserved geographic areas, for infants and toddlers, and children with disabilities. Grants solely to improve the quality of child care services like those in (b) of this section would not satisfy the requirements at § 98.30(b); and

(4) Based on the priorities in § 98.46.

(b) Of the aggregate amount of funds expended by a State or Territory (*i.e.,* Discretionary, Mandatory, and Federal and State share of Matching funds):

(1) No less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the State or Territory from reserving a larger percentage of funds to carry out activities described in paragraphs (b)(1) and (2) of this section.

(4) Amounts reserved pursuant to this subsection may not be used to satisfy requirements at § 98.30(b).

(c) Funds expended from each fiscal year's allotment on quality activities pursuant to paragraph (b) of this section:

(1) Must be in alignment with an assessment of the Lead Agency's need to carry out such services and care as required at § 98.53(a);

(2) Must include measurable indicators of progress in accordance with § 98.53(g); and

(3) May be provided directly by the Lead Agency or through grants or contracts with local child care resource and referral organizations or other appropriate entities.

(d) Of the aggregate amount of funds expended (*i.e.,* Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.54.

(e) Not less than 70 percent of the State and Territory Mandatory and Federal and State share of State Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act;

(2) Are attempting through work activities to transition off such assistance program; and

(3) Are at risk of becoming dependent on such assistance program.

(f) From Discretionary amounts provided for a fiscal year, the Lead Agency shall:

(1) Reserve the minimum amount required under paragraph (b) of this section for quality activities, and the funds for administrative costs described at paragraph (d) of this section; and

(2) From the remainder, use not less than 70 percent to fund direct services (provided by the Lead Agency).

(g) Of the funds remaining after applying the provisions of paragraphs (a) through (f) of this section, the Lead Agency shall spend a substantial portion of funds to provide direct child care services to low-income families who are working or attending training or education.

(h) Pursuant to § 98.16(i)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

[81 FR 67587, Sept. 30, 2016, as amended at 89 FR 15415, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.51 Services for children experiencing homelessness.

Lead Agencies shall expend funds on activities that improve access to quality child care services for children experiencing homelessness, including:

(a) The use of procedures to permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained;

(1) If, after full documentation is provided, a family experiencing homelessness is found ineligible,

(i) The Lead Agency shall pay any amount owed to a child care provider for services provided as a result of the initial eligibility determination; and

(ii) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part;

(2) [Reserved]

(b) Training and technical assistance for providers and appropriate Lead Agency (or designated entity) staff on identifying and serving children experiencing homelessness and their families; and

(c) Specific outreach to families experiencing homelessness.

[81 FR 67588, Sept. 30, 2016]

§ 98.52 Child care resource and referral system.

(a) A Lead Agency may expend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

(b) If a Lead Agency uses funds as described in paragraph (a) of this section, the local or regional child care resource and referral organizations supported shall, at the direction of the Lead Agency:

(1) Provide parents in the State with consumer education information referred to in § 98.33 (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;

(2) To the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in paragraph (b)(1) of this section, to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the Lead Agency);

(3) Collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431, *et seq.*), for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(4) Collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(5) Work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(6) As appropriate, coordinate their activities with the activities of the State Lead Agency and local agencies that administer funds made available in accordance with this part.

[81 FR 67588, Sept. 30, 2016]

§ 98.53 Activities to improve the quality of child care.

(a) The Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to §§ 98.50(b) and 98.83(g) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the following quality activities to improve the quality of child care services for all children, regardless of CCDF receipt, in accordance with paragraph (e) of this section:

(1) Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development through activities such as those included at § 98.44, in addition to:

(i) Offering training, professional development, and postsecondary education opportunities for child care caregivers, teachers and directors that:

(A) Relate to the use of scientifically based, developmentally-appropriate, culturally-appropriate, and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity; and

(B) Offer specialized training, professional development, and postsecondary education for caregivers, teachers and directors caring for those populations prioritized at § 98.44(b)(2)(iv), and children with disabilities;

(ii) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education;

(iii) Including effective, age-appropriate behavior management strategies and training, including positive behavior interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors;

(iv) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;

(v) Providing training corresponding to the nutritional and physical activity needs of children to promote healthy development;

(vi) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(vii) Connecting child care caregivers, teachers, and directors with available Federal and State financial aid that would assist these individuals in pursuing relevant postsecondary education, or delivering financial resources directly through programs that provide scholarships and compensation improvements for education attainment and retention.

(2) Improving upon the development or implementation of the early learning and development guidelines at § 98.15(a)(9) by providing technical assistance to eligible child care providers in order to enhance the cognitive, physical, social, and emotional development and overall well-being of participating children.

(3) Developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services to meet consumer education requirements at § 98.33, which may:

(i) Support and assess the quality of child care providers in the State, Territory, or Tribe;

(ii) Build on licensing standards and other regulatory standards for such providers;

(iii) Be designed to improve the quality of different types of child care providers and services;

(iv) Describe the safety of child care facilities;

(v) Build the capacity of early childhood programs and communities to promote parents' and families' understanding of the early childhood system and the rating of the program in which the child is enrolled;

(vi) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and

(vii) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child centered settings, or similar settings that offer a distinctive approach to early childhood development.

(4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include:

(i) Establishing or expanding high-quality community or neighborhood based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;

(ii) Establishing or expanding the operation of community or neighborhood-based family child care networks;

(iii) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through, but not limited to:

(A) Training and professional development for caregivers, teachers and directors, including coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and

(B) Improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431. *et seq.*);

(iv) If applicable, developing infant and toddler components within the Lead Agency's quality rating and improvement system described in paragraph (a)(3) of this section for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

(v) Improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care as described at § 98.33; and

(vi) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers.

(5) Establishing or expanding a statewide system of child care resource and referral services.

(6) Facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.

(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.

(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.

(9) Supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.

(10) Carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

(b) Lead Agencies are strongly encouraged to engage families and providers with direct experience in the child care subsidy system to improve the quality of child care and child care subsidy policy. Lead Agencies may expend quality funds to support such engagement including:

(1) Planning and implementing an engagement strategy to solicit and implement feedback from families, child care providers, and staff who have direct experience with the child care subsidy program and/or quality improvement activities;

(2) Compensating participating parents, child care providers, and child care staff for their time and for expenses incurred as a result of their participation (*i.e.* transportation, child care); and

(3) Hiring parents, child care providers, or child care staff to serve as subject matter experts in the development or refinement of subsidy policy and quality initiatives.

(c) Pursuant to § 98.16(j), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.,* the maintenance-of effort amount) are not subject to the requirement at paragraph (a) of this section.

(e) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(f) Unless expressly authorized by law, targeted funds for quality improvement and other set asides that may be included in appropriations law may not be used towards meeting the quality expenditure minimum requirement at § 98.50(b).

(g) States shall annually prepare and submit reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available and shall include:

(1) An assurance that the State was in compliance with requirements at § 98.50(b) in the preceding fiscal year and information about the amount of funds reserved for that purpose;

(2) A description of the activities carried out under this section to comply with § 98.50(b);

(3) The measures the State will use to evaluate its progress in improving the quality of child care programs and services in the State, and data on the extent to which the State had met these measures;

(4) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children receiving assistance under this part, and in other regulated and unregulated child care centers and family child care homes, to the extent possible; and

(5) A description of how the Lead Agency responded to complaints submitted through the national hotline and Web site, required in section 658L(b) of the CCDBG Act (42 U.S.C. 9858j(b)).

[81 FR 67588, Sept. 30, 2016, as amended at 89 FR 15415, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.54 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.55(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before-and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and

(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57.

(b) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

(1) Establishment and maintenance of computerized child care information systems;

(2) Establishing and operating a certificate program;

(3) Eligibility determination and redetermination;

(4) Preparation/participation in judicial hearings;

(5) Child care placement;

(6) Recruitment, licensing, inspection of child care providers;

(7) Training for Lead Agency or sub recipient staff on billing and claims processes associated with the subsidy program;

(8) Reviews and supervision of child care placements;

(9) Activities associated with payment rate setting;

(10) Resource and referral services; and

(11) Training for child care staff.

(c) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.,* the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described in this section shall be counted towards the five percent limit.

[63 FR 39981, July 24, 1998. Redesignated and amended at 81 FR 67588, 67590, Sept. 30, 2016]

§ 98.55 Matching fund requirements.

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched at the Federal medical assistance rate for the applicable fiscal year for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use;

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to paragraph (f) of this section (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(d)(2).

(g) The following are not counted as an eligible State expenditure under this part:

(1) In-kind contributions; and

(2) Family contributions to the cost of care as required by § 98.45(l).

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(w), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to draw down the State's full allotment of Federal matching funds available under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(4).

[63 FR 39981, July 24, 1998, as amended at 72 FR 27979, May 18, 2007. Redesignated and amended at 81 FR 67588, 67590, Sept. 30, 2016; 89 FR 52397, June 24, 2024]

§ 98.56 Restrictions on the use of funds.

(a) ***General.***

(1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) ***Construction.***

(1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 8.41.

(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction and renovation.

(c) ***Tuition.*** Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) ***Sectarian purposes and activities.*** Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) ***Non-Federal share for other Federal programs.*** The CCDF may not be used as the non-Federal share for other Federal grant programs, unless explicitly authorized by statute.

[63 FR 39981, July 24, 1998. Redesignated and amended at 81 FR 67588, 67590, Sept. 30, 2016]

§ 98.57 Cost allocation.

(a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67588, Sept. 30, 2016]

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes;

(2) State Mandatory and Matching Funds are available to States;

(3) Territory Mandatory Funds are available to Territories; and

(4) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold a portion of the CCDF funds made available for a fiscal year for the provision of technical assistance, for research, evaluation, and demonstration, and for a national toll free hotline and Web site;

(2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)

(i) Mandatory Funds for States requesting Matching Funds per § 98.55 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Mandatory Funds for Territories shall be obligated in the fiscal year in which funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(5) Except for paragraph (d)(6) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 75.2, Expenditures and Obligations.

(6) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(7) In instances where the Lead Agency issues child care certificates, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(8) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

(9) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,

(1) if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or

(2) if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.

(h) Repayment of loans made to child care providers as part of a quality improvement activity pursuant to § 98.53, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

[63 FR 39981, July 24, 1998, as amended at 81 FR 3020, Jan. 20, 2016; 81 FR 67591, Sept. 30, 2016; 89 FR 15415, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance, research, and the national hotline and Web site, pursuant to § 98.60(b), and amounts reserved for the Territories and Tribes, pursuant to § 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act (42 U.S.C. 9858m(b)).

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2)

(i) The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\sum(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "YCF_t" means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "APF_t" means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) not less than two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to $2,000,000 may be reserved from the tribal funds reserved at paragraph (c) of this section. From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the FEDERAL REGISTER.

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016]

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3)(A) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under subsections (g) and (i) of section 402 of the Social Security Act (as in effect before October 1, 1995) for fiscal year 1994 or 1995 (whichever is greater); or

(2) the average of the Federal share of its child care expenditures under the subsections referred to in subparagraph (a)(1) of this section for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations will be allocated from the funds appropriated under section 418(a)(3)(B) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

(1) The Metlakatla Indian Community of the Annette Islands Reserve:

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)

(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to § 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of Indian children in each Tribe's service area pursuant to § 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) The Territories will be allocated from the funds appropriated under section 418(a)(3)(C) of the Social Security Act based upon the following factors:

(1) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(2) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(i) Per capita income shall be:

(A) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(B) Determined every two years.

(ii) [Reserved]

[63 FR 39981, July 24, 1998, as amended at 89 FR 15415, Mar. 1, 2024

§ 98.63 Allotments from the Matching Fund.

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this section, the amounts available under section 418(a)(3) of the Social Security Act (42 U.S.C. 618(a)(3)) excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance, research and evaluation, and the national toll-free hotline and Web site and under § 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this section are available pursuant to the requirements at § 98.55(c).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016]

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds and Territory Mandatory Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Mandatory Funds granted to Territories are redistributed only to Territories. Discretionary Funds granted to the Territories are not subject to reallotment. Any Discretionary funds granted to the Territories that are returned after they have been allotted will revert to the Federal Government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term “State” means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(a).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) States receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)

(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.55(c) in the period for which the grant was first made. For purposes of this paragraph (c)(1), the term “State” means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under § 98.63(a), but not granted, shall also be redistributed in the manner described in paragraph (1) of this section.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(4) A State eligible to receive redistributed Matching Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallotted tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by a deadline established by the Secretary.

(2) Based upon the reallotment reports submitted by Tribes, the Secretary will reallot Tribal Discretionary Funds among the other Tribes.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to § 98.62(c).

(ii) If the total amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to an applicant Tribe is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a Tribe does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that Tribe does not have any funds available for reallotment; or

(ii) In the case of a report received after the deadline established by the Secretary, any funds reported to be available for reallotment shall revert to the Federal government.

(4) Tribes receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(e)

(1) Any portion of the Mandatory Funds that are not obligated in the period for which the grant is made shall be redistributed. Territory Mandatory Funds, if any, will be redistributed on the request of, and only to, those other Territories that have obligated their entire Territory Mandatory Fund allocation in full for the period for which the grant was first made.

(2) The amount of Mandatory Funds granted to a Territory that will be made available for redistribution will be based on the Territory's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(3) A Territory eligible to receive redistributed Mandatory Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(4) A Territory's share of redistributed Mandatory Funds is based on the same ratio as § 98.62(d).

(5) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016; 89 FR 15416, Mar. 1, 2024]

§ 98.65 Audits and financial reporting.

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with 45 CFR part 75, subpart F, and the Single Audit Act Amendments of 1996.

(b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.

(e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

(f) The audit required in paragraph (a) of this section shall be conducted by an agency that is independent of the State, Territory or Tribe as defined by generally accepted government auditing standards issued by the Comptroller General, or a public accountant who meets such independent standards.

(g) Lead Agencies shall submit financial reports, in a manner specified by ACF, quarterly for each fiscal year until funds are expended.

(h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes realloted funding and any funds transferred from the TANF block grant), Mandatory, and Matching Funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) Child care administration;

(2) Quality activities, including any sub-categories of quality activities as required by ACF;

(3) Direct services for both grant or contracted slots and certificates;

(4) Non-direct services, including:

(i) Establishment and maintenance of computerized child care information systems;

(ii) Certificate program cost/eligibility determination;

(iii) All other non-direct services; and

(5) Such other information as specified by the Secretary.

(i) Tribal Lead Agencies shall submit financial reports annually in a manner specified by ACF.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016; 89 FR 15416, Mar. 1, 2024]

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.

(c)

(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Lead Agency may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Lead Agency's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)

(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.

(3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.90, the findings of which have been appealed by the Lead Agency.

(j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

(1) Preparation of reports required by the Secretary under this subpart and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

§ 98.68 Program integrity.

(a) Lead Agencies are required to describe in their Plan effective internal controls that are in place to ensure integrity and accountability, while maintaining continuity of services, in the CCDF program. These shall include:

(1) Processes to ensure sound fiscal management;

(2) Processes to identify areas of risk;

(3) Processes to train child care providers and staff of the Lead Agency and other agencies engaged in the administration of CCDF about program requirements and integrity; and

(4) Regular evaluation of internal control activities.

(b) Lead Agencies are required to describe in their Plan the processes that are in place to:

(1) Identify fraud or other program violations, which may include, but are not limited to the following:

(i) Record matching and database linkages;

(ii) Review of attendance and billing records;

(iii) Quality control or quality assurance reviews; and

(iv) Staff training on monitoring and audit processes.

(2) Investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

(c) Lead Agencies must describe in their Plan the procedures that are in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination and redetermination. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1):

(1) The Lead Agency shall pay any amount owed to a child care provider for services provided for such a child during this period under a payment agreement or authorization for services; and

(2) Any CCDF payment made for such a child during this period shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances, as set forth at § 98.21(a).

[81 FR 67591, Sept. 30, 2016]

Subpart H—Program Reporting Requirements

§ 98.70 Reporting requirements.

(a) Quarterly Case-level Report—

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly case-level report of monthly family case-level data. Data shall be collected monthly and submitted quarterly. States may submit the data monthly if they choose to do so.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than August 31, 1998, and quarterly thereafter. The first report shall include data from the third quarter of FFY 1998 (April 1998 through June 1998). States and Territorial Lead Agencies which choose to submit case-level data monthly must submit their report for April 1998 no later than July 30, 1998. Following reports must be submitted every thirty days thereafter.

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting case-level data for the entire population receiving CCDF services.

(4) Quarterly family case-level reports to the Secretary shall include the information listed in § 98.71(a).

(b) Annual Report—

(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report. The report shall be submitted, in a manner specified by the Secretary, by December 31 of each year and shall cover the most recent federal fiscal year (October through September).

(2) The first annual aggregate report shall be submitted no later than December 31, 1997, and every twelve months thereafter.

(3) Biennial reports to Congress by the Secretary shall include the information listed in § 98.71(b).

(c) Tribal Annual Report—

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual aggregate report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Biennial reports to Congress by the Secretary shall include the information listed in § 98.71(c).

(d) State and territorial Lead Agencies shall make the following reports publicly available on a Web site in a timely manner:

(1) Annual administrative data reports under paragraph (b) of this section;

(2) Quarterly financial reports under § 98.65(g); and

(3) Annual quality progress reports under § 98.53(g).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67592, Sept. 30, 2016; 89 FR 52397, June 24, 2024]

§ 98.71 Content of report.

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in § 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) The total monthly family income and family size used for determining eligibility;

(2) Zip code of residence of the family and zip code of the location of the child care provider;

(3) Gender and month/year of birth of children;

(4) Ethnicity and race of children;

(5) Whether the head of the family is a single parent

(6) The sources of family income and assistance from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act (42 U.S.C. 609(a)(7)), cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977, and other assistance programs;

(7) The month/year child care assistance to the family started;

(8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care;

(9) Whether the child care provider was a relative;

(10) The total monthly child care copayment by the family;

(11) [Reserved]

(12) The total expected dollar amount per month to be received by the provider for each child;

(13) The total hours per month of such care;

(14) Unique identifier of the head of the family unit receiving child care assistance, and of the child care provider;

(15) Reasons for receiving care;

(16) Whether the family is experiencing homelessness;

(17) Whether the parent(s) are in the military service;

(18) Whether the child has a disability;

(19) Primary language spoken at home;

(20) Date of the child care provider's most recent health, safety and fire inspection meeting the requirements of § 98.42(b)(2);

(21) Indicator of the quality of the child care provider; and

(22) Any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in § 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) The total number (without duplication) of children and families served under CCDF;

(5) For Lead Agencies implementing presumptive eligibility in accordance with § 98.21(e):

(i) The number of presumptively eligible children ultimately determined fully eligible;

(ii) The number of presumptively eligible children for whom the family does not complete the documentation for full eligibility verification; and,

(iii) The number of presumptively eligible children who are determined not to be eligible after full verification;

(6) The number of child fatalities by type of care; and

(7) Any additional information that the Secretary shall require.

(c) A Tribal Lead Agency's annual report as required in § 98.70(c), shall include such information as the Secretary shall require.

[81 FR 67592, Sept. 30, 2016, as amended at 89 FR 15416, Mar. 1, 2024]

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or tribal organization (as described in subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to the requirements under this part as specified in this section based on the size of the awarded funds. The Secretary shall establish thresholds for Tribes' total CCDF allotments pursuant to §§ 98.61(c) and 98.62(b) to be divided into three categories:

(1) Large allocations;

(2) Medium allocations; and

(3) Small allocations.

(b) An Indian Tribe applying for or receiving CCDF funds shall:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and

(2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium;

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age;

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67592, Sept. 30, 2016]

§ 98.81 Application and Plan procedures.

(a) In order to receive CCDF funds, a Tribal Lead Agency shall apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

(b) Tribal Lead Agencies with large and medium allocations shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility.

(i) If the Tribe's median income is below a certain level established by the Secretary, then, at the Tribe's option, any Indian child in the Tribe's service area shall be considered eligible to receive CCDF funds, regardless of the family's income, work, or training status, provided that provision for services still goes to those with the highest need.

(ii) If the Tribe's median income is above the level established by the Secretary, then a tribal program must determine eligibility for services pursuant to § 98.20(a)(2). A tribal program, as specified in its Plan, may use either:

(A) 85 percent of the State median income for a family of the same size; or

(B) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

(2) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(3) The Tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to § 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to § 98.83(b).

(4) The Plan shall include any information, as prescribed by the Secretary, necessary for determining the number of children in accordance with §§ 98.61(c), 98.62(c), and 98.80(b)(1).

(5) The Plan shall include a description of the Tribe's payment rates, how they are established, and how they support quality including, where applicable, cultural and linguistic appropriateness.

(6) The Plan is not subject to the following requirements:

(i) The early learning and developmental guidelines requirement at § 98.15(a)(9);

(ii) The certification to develop the CCDF Plan in consultation with the State Advisory Council at § 98.15(b)(1);

(iii) The licensing requirements applicable to child care services at §§ 98.15(b)(6) and §§ 98.16(u);

(iv) The identification of the public or private entities designated to receive private funds at § 98.16(d)(2);

(v) A definition of very low income at § 98.16(g)(8);

(vi) A description at § 98.16(i)(4) of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(vii) The description of the sliding fee scale at § 98.16(k);

(viii) The description of the market rate survey or alternative methodology at § 98.16(r);

(ix) The description relating to Matching Funds at § 98.16(w);

(x) The description of how the Lead Agency uses grants or contracts for supply building at § 98.16(z);

(xi) The description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentration of poverty at § 98.16(aa); and

(xii) The description of provider payment practices at § 98.16(ee).

(7) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to § 98.80(b)(2).

(8) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to § 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to § 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at § 98.80(c)(4).

(9) Plans for Tribal Lead Agencies with medium allocations are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) The assurance at § 98.15(a)(2) regarding options for services;

(ii) A description of any limits established for the provision of in-home care at § 98.16(i)(2), or

(iii) A description of the child care certificate payment system(s) at § 98.16(q).

(c) Tribal Lead Agencies with small allocations shall submit an abbreviated CCDF Plan, as described by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67593, Sept. 30, 2016; 89 FR 15416, Mar. 1, 2024]

§ 98.82 Coordination.

Tribal applicants shall coordinate the development of the Plan and the provision of services, to the extent practicable, as required by §§ 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

[81 FR 67593, Sept. 30, 2016]

§ 98.83 Requirements for tribal programs.

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities for the benefit of Indian children shall be carried out on or near an Indian reservation.

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their three-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (*e.g.,* Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (*e.g.,* Tribal Mandatory Funds).

(4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d)

(1) Tribal Lead Agencies shall not be subject to:

(i) The requirements to use grants or contracts to build supply for certain populations at § 98.30(b);

(ii) The requirement to produce a consumer education website at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (d), but may do so using methods other than a website;

(iii) The requirement to have licensing applicable to child care services at § 98.40;

(iv) The requirement for a training and professional development framework at § 98.44(a);

(v) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(vi) The requirement for a sliding fee scale at § 98.45(l);

(vii) The requirement to have provider payment practices that reflect generally accepted payment practices at § 98.45(m);

(viii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a)(1);

(ix) The requirement that Lead Agencies shall prioritize increasing access to high-quality child care in areas with significant concentrations of poverty and unemployment at § 98.46(b);

(x) The requirements to use grants or contracts at § 98.50(a)(3);

(xi) The requirements about Mandatory and Matching Funds at § 98.50(e);

(xii) The requirement to complete the quality progress report at § 98.53(g);

(xiii) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(xiv) The Matching fund requirements at §§ 98.55 and 98.63.

(2) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the provision at § 98.42(b)(2) to require inspections of child care providers and facilities, unless a Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

(3) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the requirement at § 98.43 to conduct comprehensive criminal background checks, unless the Tribal Lead Agency describes an alternative background check approach in its Plan and provides adequate justification for the approach.

(e) Tribal Lead Agencies with medium and small allocations shall not be subject to the requirement for certificates at § 98.30(a) and (d).

(f) Tribal Lead Agencies with small allocations must spend their CCDF funds in alignment with the goals and purposes described in § 98.1. These Tribes shall have flexibility in how they spend their CCDF funds and shall be subject to the following requirements:

(1) The health and safety requirements described in § 98.41;

(2) The monitoring requirements at §§ 98.42 and 98.83(d)(2); and

(3) The background checks requirements described in §§ 98.43 and 98.83(d)(3);

(4) The requirements to spend funds on activities to improve the quality of child care described in §§ 98.83(g) and 98.53;

(5) The use of funds requirements at § 98.56 and cost allocation requirement at § 98.57;

(6) The financial management requirements at subpart G of this part that are applicable to Tribes;

(7) The reporting requirements at subpart H of this part that are applicable to Tribes;

(8) The eligibility definitions at § 98.81(b)(2);

(9) The 15 percent limitation on administrative activities at § 98.83(i);

(10) The monitoring, non-compliance, and complaint provisions at subpart J of this part; and

(11) Any other requirement established by the Secretary.

(g) Of the aggregate amount of funds expended (*i.e.*, Discretionary and Mandatory Funds):

(1) For Tribal Lead Agencies with large, medium, and small allocations, no less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) For Tribal Lead Agencies with large and medium allocations, no less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the Tribal Lead Agencies from reserving a larger percentage of funds to carry out activities described in paragraph (g)(1) and (2) of this section.

(h) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (i) of this section, the direct services requirement at § 98.50(f)(2), or the quality expenditure requirement at § 98.53(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(i) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under paragraph (h) of this section) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(j)

(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (i)(1) of this section is subject to the actual availability of the appropriation.

[81 FR 67593, Sept. 30, 2016, as amended at 82 FR 3186, Jan. 11, 2017; 89 FR 15416, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.84 Construction and renovation of child care facilities.

(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year. The Secretary shall waive this requirement if:

(i) The Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(ii) The Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed:

(A) The level of direct child care services will increase; or

(B) The quality of child care services will improve.

(c)

(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 75.318;

(2) Transfer and disposition of property requirements at 45 CFR 75.318(c);

(3) Title requirements at 45 CFR 75.318(a);

(4) Cost principles and allowable cost requirements at subpart E of this part;

(5) Program income requirements at 45 CFR 75.307;

(6) Procurement procedures at 45 CFR 92.36; 75.326 through 75.335; and

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall obligate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. Tribal construction and major renovation funds must be liquidated at the end of the second succeeding fiscal year following this obligation deadline. Any Tribal construction and major renovation funds that remain unliquidated by the end of this period will revert to the Federal government.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

(1) planning costs as allowed at § 98.84(c);

(2) labor, materials and services necessary for the functioning of the facility; and

(3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

[63 FR 39981, July 24, 1998, as amended at 81 FR 3020, Jan. 20, 2016; 81 FR 67594, Sept. 30, 2016; 89 FR 15417, Mar. 1, 2024]

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)

(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) ***Length of retention period.***

(1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to § 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to § 98.90 or § 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow any improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)

(i) A penalty of not more than four percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to implement a provision of the Act, these regulations, or the Plan required under § 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; or

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(3)

(i) A penalty of five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld for any For Fiscal Year the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.46(a);

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty;

(iii) This penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure; and

(iv) The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

(4)

(i) A penalty of five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld for any Fiscal Year that the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43;

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty; and

(iii) This penalty will not be applied if the State, Territory, or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(d) Nothing in this section, or in § 98.90 or § 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b) of this section.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67594, Sept. 30, 2016]

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in § 98.90.

[63 FR 39981, Sept. 24, 1998, as amended at 81 FR 67595, Sept. 30, 2016]

Subpart K—Error Rate Reporting

Source: 72 FR 50898, Sept. 5, 2007, unless otherwise noted.

§ 98.100 Error Rate Report.

(a) ***Applicability*** —The requirements of this subpart apply to the fifty States, the District of Columbia and Puerto Rico.

(b) ***Generally*** —States, the District of Columbia and Puerto Rico shall calculate, prepare and submit to the Department, a report of errors occurring in the administration of CCDF grant funds, at times and in a manner specified by the Secretary in instructions. States, the District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); the average amount of improper payment; and the estimated annual amount of improper payments. The report also will provide strategies for reducing their error rates and allow States, the District of Columbia and Puerto Rico to set target error rates for the next cycle.

(c) ***Error Defined*** —For purposes of this subpart, an "error" shall mean any violation or misapplication of statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds, regardless of whether such violation results in an improper payment.

(d) ***Improper Payment Defined*** —For purposes of this subpart, "improper payment."

(1) Means any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds; and

(2) Includes any payment of CCDF grant funds to an ineligible recipient, any payment of CCDF grant funds for an ineligible service, any duplicate payment of CCDF grant funds and payments of CCDF grant funds for services not received. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a) and (b).

(e) ***Costs of Preparing the Error Rate Report*** —Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to § 98.54(a).

[72 FR 50898, Sept. 5, 2007, as amended at 81 FR 67595, Sept. 30, 2016]

§ 98.101 Case Review Methodology.

(a) ***Case Reviews and Sampling*** —In preparing the error reports required by this subpart, States, the District of Columbia and Puerto Rico shall conduct comprehensive reviews of case records using a methodology established by the Secretary. For purposes of the case reviews, States, the District of Columbia and Puerto Rico shall select a random sample of case records which is estimated to achieve the calculation of an estimated annual amount of improper payments with a 90 percent confidence interval of ±5.0 percent.

(b) ***Methodology and Forms*** —States, the District of Columbia and Puerto Rico must prepare and submit forms issued by the Secretary, following the accompanying instructions setting forth the methodology to be used in conducting case reviews and calculating the error rates.

(c) ***Reporting Frequency and Cycle*** —States, the District of Columbia and Puerto Rico shall conduct case reviews and submit error rate reports to the Department according to a staggered three-year cycle established by the Secretary such that each State, the District of Columbia, and Puerto Rico will be selected once, and only once, in every three years.

(d) ***Access to Federal Staff*** —States, the District of Columbia and Puerto Rico must provide access to Federal staff to participate and provide oversight in case reviews and error rate calculations, including access to forms related to determining error rates.

(e) ***Record Retention*** —Records pertinent to the case reviews and submission of error rate reports shall be retained for a period of five years from the date of submission of the applicable error rate report or, if the error rate report was revised, from the date of submission of the revision. Records must be made available to Federal staff upon request.

§ 98.102 Content of Error Rate Reports.

(a) ***Baseline Submission Report*** —At a minimum, States, the District of Columbia and Puerto Rico shall submit an initial error rate report to the Department, as required in § 98.100, which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) Percentage of cases with an error (regardless of whether such error resulted in an over or under payment), expressed as the total number of cases in the sample with an error compared to the total number of cases in the sample;

(2) Percentage of cases with an improper payment (both over and under payments), expressed as the total number of cases in the sample with an improper payment compared to the total number of cases in the sample;

(3) Percentage of improper payments (both over and under payments), expressed as the total dollar amount of improper payments in the sample compared to the total dollar amount of payments made in the sample;

(4) Average amount of improper payments (gross over and under payments, divided by the total number of cases in the sample that had an improper payment (both over and under payments));

(5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period;

(6) For each category of data listed above, targets for errors and improper payments in the next reporting cycle;

(7) Summary of methodology used to arrive at estimate, including fieldwork preparation, sample generation, record review and error rate computation processes;

(8) Discussion of the causes of improper payments identified and actions that will be taken to correct those causes in order to reduce the error rates;

(9) Description of the information systems and other infrastructure that assist the State, the District of Columbia and Puerto Rico in identifying and reducing improper payments, or if the State, the District of Columbia or Puerto Rico does not have these tools, a description of actions that will be taken to acquire the necessary information systems and other infrastructure; and

(10) Such other information as specified by the Secretary.

(b) ***Standard Report*** —At a minimum, the State, the District of Columbia and Puerto Rico shall submit an error rate report to the Department, as required in § 98.100, made subsequent to the baseline submission report as set forth in § 98.102(a) which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) All the information reported in the baseline submission, as set forth in § 98.102(a), updated for the current cycle;

(2) For each category of data listed in § 98.102(a)(1) through (5), States, the District of Columbia and Puerto Rico must include data and targets from the prior cycle in addition to data from the current cycle and targets for the next cycle;

(3) Description of whether the State, the District of Columbia or Puerto Rico met error rate targets set in the prior cycle and, if not, an explanation of why not;

(4) Discussion of the causes of improper payments identified in the prior cycle and actions that were taken to correct those causes, in addition to a discussion on the causes of improper payments identified in the current cycle and actions that will be taken to correct those causes in order to reduce the error rates; and

(5) Such other information as specified by the Secretary.

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Root causes of error as identified on the Lead Agency's most recent ACF-404 and other root causes identified;

(iii) Detailed descriptions of actions to reduce improper payments and the name and/or title of the individual responsible for ensuring actions are completed;

(iv) Milestones to indicate progress towards action completion and error reduction goals;

(v) A timeline for completing each action of the plan within 1 year, and for reducing the improper payment rate below the threshold established by the Secretary; and

(vi) Targets for future improper payment rates.

(3) Subsequent progress reports including updated corrective action plans must be submitted as requested by the Assistant Secretary until the Lead Agency's improper payment rate no longer exceeds the threshold.

(4) Failure to carry out actions as described in the approved corrective action plan or to fulfill requirements in this paragraph (c) will be grounds for a penalty or sanction under § 98.92.

[72 FR 50898, Sept. 5, 2007, as amended at 81 FR 67595, Sept. 30, 2016; 89 FR 15417, Mar. 1, 2024]

Gmail

GRRC - ADOA <grrc@azdoa.gov>

DHS Response to GRRC Inquiry on 5YRR (9 A.A.C. 3) for Child Care Group Homes

Lucinda Feeley <lucinda.feeley@azdhs.gov> Tue, Sep 24, 2024 at 1:54 PM
To: GRRC - ADOA <grrc@azdoa.gov>

Dear Vice Chair Thorwald,

Thank you for your inquiry about the requirements for group child care homes in Arizona. As you know, a group child care home is a family residence where a caregiver provides child care for a small group of nonresident children for compensation. In Arizona, a group child care home is defined as a place that cares for 5–10 nonresident children for compensation.

The rules for group child care homes in Arizona are designed to ensure the health and safety of the children in care. These rules include requirements for the adults who work or reside at the residence. For example, adults in the residence must obtain a fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1. However, the rules for group child care homes do not provide specific stipulations for adult care.

I hope this information is helpful. Please do not hesitate to contact me if you have any further questions.

Best Regards,

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Lucinda Feeley
Senior Rules Analyst
Arizona Department of Health Services

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DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 4, Articles 1-5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 17, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 4, Articles 1-5

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) concerns sixteen (16) rules in Title 9, Chapter 4, Articles 1 through 5 regarding reporting requirements and processes for non-communicable diseases, including cancer, pesticide poisoning, and high blood lead levels. Articles 1 through 5 of the Chapter were last revised in a regular rulemaking that was effective on January 1, 2020.

The Department previously submitted 5YRRs in 2014 and 2019 for these rules. The most recent 5YRR was approved by the Council in November 2019, and the Department also submitted a corresponding rulemaking to address the concerns identified in the 2019 5YRR. The proposed course of action indicated in the 2019 5YRR appears to have been completed by the accompanying rulemaking, which became effective on January 1, 2020.

Proposed Action

The Department plans to conduct a rulemaking to address the issues identified in its 5YRR and anticipates submitting the Notice of Final Rulemaking to the Council by June 2025.

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

The Department cited general and specific authorizing statutes.

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

The Department states that the rules in Chapter 4 cover the reporting of pesticide illnesses, blood lead levels, cancer, and birth defects to the Department. The Department indicates that during the last five years, it received 2,343 reported cases of pesticide illness from poison control centers, which reported the names, gender, and age of the suspected cases. Of these suspected cases, 57% reported experiencing symptoms after exposure to pesticides, according to the Department. The Department indicates it receives approximately 51,000 results of blood lead tests on children annually. The Arizona Cancer Registry within the Department collects and maintains data on the incidence of cancer in Arizona. For the last five years, the Department has received an average of approximately 41,000 reports per year from hospitals, approximately 5,000 per year from clinics, approximately 1,000 per year from physicians and other practitioners, and approximately 5,300 per year from pathology laboratories. The Arizona Birth Defects Monitoring Program within the Department collects and maintains data on birth defects, including reports from approximately 65 facilities, and reviews an average of 2,500 medical records per year. The Department reports that approximately 800 patients who have a birth defect are detected and reported each year.

The Department states that all the rules in Articles 1 through 5 of the Chapter were last revised in a regular rulemaking that was effective on January 1, 2020. The Department estimates that the actual economic impact of the rules was consistent with the economic, small business, and consumer impact statement (EIS) for the rulemaking. Stakeholders include The Department; The Arizona Department of Agriculture; hospitals; clinics; physicians, registered nurse practitioners, physician assistants; doctors of naturopathic medicine; dentists; poison control centers; clinical laboratories; pathology laboratories; prenatal diagnostic facilities; high-risk perinatal practices; genetic testing facilities; clinics; individuals who have a pesticide illness, elevated blood lead levels, cancer or a birth defect and their families; employers of individuals who have a pesticide illness, elevated blood lead levels, or cancer; and the general public.

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

The Department states that these rules cover the reporting of exposures to pesticides, the results of blood tests for lead, cancer-related information, and birth defects. The information required to be reported is consistent with national reporting standards and is the minimum necessary to address public health and safety needs. The Department believes that the information contained in these reports is important to public health, that

the benefits to public health outweigh the costs of reporting, and the rules impose the least burden and costs on reporting entities, consistent with the objectives of the rules.

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

No written criticisms have been received.

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

The Department determined that the rules are clear, concise, and understandable. However, the Department intends to address a typo in R9-4-202 Subsection (A)(2) by changing "one business days" to "one business day."

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

The Department stated the rules are consistent with other applicable rules and statutes.

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

The Department stated that three (3) rules are not effective in achieving their objectives for the following reasons:

- **R9-4-302**
  - To improve Subsection (B)(9), the Department would like to require information that is currently collected under Subsections (B)(9)(a) through (c) to be collected for all children with blood lead levels between 3.5 and 10 μm to allow for better engagement with families.
  - The rule would also be more effective if the Department collected the refugee status of children with elevated blood levels to engage in targeted outreach, education, and support given limited resources and to provide culturally competent care.
- **R9-4-404**
  - To improve this Rule, the Department would like to require a designated cancer registrar to report as specified in Subsection (A)(1) any cases for a hospital system with fewer than 50 inpatient beds .
  - The Department also would like to require clinics reporting 50-100 cases each year to submit reports electronically.
- **R9-4-405**
  - To reduce the burden of reporting, the Department would like to amend Subsection (C)(1) to include that reporting analytic patients should be for those diagnosed during the past fifteen (15) years or the hospital's reference date, whichever is shorter.

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

The Department stated the rules are enforced as written, with one minor exception:

- **R9-4-302**
  - The Department stated the rule is enforced as written, and the Department may request additional information that is required under Subsections (B)(9)(a) through (c) for children with blood lead levels between 3.5 and 10 μm to allow the Department to better engage with families.

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 determined that the rules outlined in Title 9, Chapter 4 of the Arizona Administrative Code are based on state law, not federal law.

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

The Department determined that the rules do not require the issuance of any permits, licenses, or agency authorization.

11. Conclusion

This 5YRR from the Department addresses sixteen (16) rules in Title 9, Chapter 4 of the Arizona Administrative Code regarding reporting requirements and processes for hospital systems with patients experiencing non-communicable diseases, such as cancer, pesticide illness, and elevated blood lead levels. The proposed rule amendments appear to make the rules more clear, concise, and understandable and pose no new costs for patients or hospital systems. The Department indicates that it plans to create a rulemaking to address the issues identified in its 5YRR and anticipates filing a Notice of Final Rulemaking with the Council by June 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

July 24, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 4, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 4, which is due on or before August 30, 2024.

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

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 4. Department of Health Services Noncommunicable Diseases

July 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-136(G)

Article	Specific Statutory Authority
Article 1	A.R.S. §§ 36-133, 36-606, 36-1673, 36-1675
Article 2	A.R.S. § 36-606
Article 3	A.R.S. §§ 36-1673, 36-1675
Article 4	A.R.S. §§ 36-133, 36-606
Article 5	A.R.S. § 36-133

2. The objective of each rule:

Rule	Objective
R9-4-101	To define terms used in more than one Article in Chapter 4 to enable the reader to understand clearly the requirements of the Chapter and allow for consistent interpretation.
R9-4-201	To define terms used only in Article 2 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-4-202	To specify: 1) the individuals who are required to submit reports of pesticide illness; 2) under what circumstances reports are required; 3) within what time periods reports are required to be submitted; 4) the information that is required to be included in the report; and 5) how reports may be submitted.
R9-4-301	To define terms used only in Article 3 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-4-302	To specify: 1) the individuals who are required to submit reports of blood lead levels; 2) under what circumstances reports are required; 3) within what time periods reports are required to be submitted; 4) the information that is required to be included in the report; and 5) how reports may be submitted.
Table 3.1	To specify the criteria for physician reporting of blood lead levels.
Table 3.2	To specify the criteria for clinical laboratory director reporting of blood lead levels.
R9-4-401	To define terms used only in Article 4 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-4-402	The objective of the rule is to establish the types of hospitals to which the rules in Article 4 do not apply.
R9-4-403	The objectives of the rule are to specify: 1) the persons who are required to submit cancer case reports; 2) the information that is required to be included in a case report; and 3) the source codes

	required in a case report.
R9-4-404	The objectives of the rule are to specify: 1) under what circumstances specific persons are required to report to the Department; 2) under what circumstances and with what frequency specific persons are required to allow the Department to review patient records or pathology reports to obtain specified information; 3) the time period during which a report is required to be submitted to the Department, if applicable; 4) under what circumstances specific persons are required to provide requested information to the Department or a hospital requesting specific information; 5) the time period during which a specific person is required to provide the requested information to the Department or hospital; and 6) in what format specific persons are required to provide information or, if applicable, copies of documents to the Department.
R9-4-405	The objectives of the rule are to specify: 1) the methods the Department may use to help ensure the accuracy of reported information; 2) the time period associated with each quality assurance method; and 3) the circumstances under which the Department shall consider a specified person as having complied with the requirements of Article 4.
R9-4-501	The objective of the rule is to define terms used only in Article 5 to enable he reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-4-502	The objectives of the rule are to specify: 1) the individuals who are required to submit reports about birth defects; 2) under what circumstances reports are required; 3) within what time periods reports are required to be submitted; 4) how reports are to be submitted; and 5) the information that is required to be included in the report.
R9-5-503	The objectives of the rule are to specify: 1) under what circumstances and with what frequency specific persons or facilities are required to allow the Department access to the facility and specific records; 2) the types of records that the Department may review at the facility; and 3) the types of information the Department may collect.
R9-4-504	The objectives of the rule are to specify: 1) that the Department may request revision of a report submitted to the Department; 2) the time period during which a person who receives a request from the Department for revision of a report is required to submit a revised report; and 3) that the Department may discuss the information the Department obtains under this Article with another person specified in the Article to obtain additional information about a patient's diagnosis or treatment.

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

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

Rule	Explanation
R9-4-302	Subsection (B)(9) would be more effective if the additional information in subsections (B)(9)(a) through (c) were required for all children with a blood lead level greater than or equal to 3.5 µg of lead per dL of whole blood. Consistent with recent national guidelines, the Department follows up with the parents of children with a blood lead level greater than or equal to 3.5 µg, providing educational information and other services as needed. Having this additional information for the parents of children with blood lead levels between 3.5 and the current 10 µg of lead per dL would enable the Department to better interact with the families. In addition, since a significant percentage of children with elevated blood lead levels are refugees, the rule would be more effective if the refugee status of children with elevated blood lead levels were also reported to the Department.
R9-4-404	The rule would be more effective if a designated cancer registrar for a hospital system were required to report as specified in subsection (A)(1) any cases from a hospital with fewer than 50 inpatient beds that is part of the hospital system. The rule would also be more effective if clinics

	submitting between 50 and 100 case reports per year were also required to submit electronically in a Department-provided format.
R9-4-405	Since some hospitals have been reporting to the Department for a very long time, the rule would be just as effective and less burdensome if subsection (C)(1) were changed to include that reporting analytic patients should be for those diagnosed during the past 15 years or the hospital's reference date, whichever is shorter.

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

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

Rule	Explanation

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

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

Rule	Explanation
R9-4-302	While the rule is enforced as written, the Department may request the additional information required in subsection (B)(9)(a) through (c) for children with blood lead levels between 3.5 and 10 µg of lead per dL to enable the Department to better interact with the families.

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

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

Rule	Explanation
R9-4-202	While the rule is clear, concise, and understandable, it could be improved if, in subsection (A)(2), "one business days" were replaced with "one business day."

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

If yes, please fill out the table below:

Rule	Explanation

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

The rules in Chapter 4 cover the reporting of pesticide illnesses, blood lead levels, cancer, and birth defects to the Department. During the last five years, the Department received 2,343 reported cases of pesticide illness from poison control centers, which reported the names, gender, and age of the suspected cases. Of these

suspected cases, 57% reported experiencing symptoms after exposure to pesticides. The Department receives approximately 51,000 results of blood lead tests on children annually. An average of 50 children are identified each year with blood lead levels greater than 10 micrograms per deciliter. Over the past five years, the number of new cases ranged from 236 in 2019 to 390 in 2022. An additional 177 children, on average, are identified annually through clinical laboratory test results with blood lead levels between five and 10 micrograms per deciliter (µg/dL). In 2022, the Department adopted a new Centers for Disease Control blood lead reference value of 3.5 µg/dL for children. In 2022, 216 children were identified with a blood lead level between 3.5 µg/dL and 5 µg/dL. For adults, the Department received approximately 250 blood lead tests per year equal to or greater than 5 µg/dL, with 84 having blood lead level results between 10 µg/dl and 24 µg/dl, and 11 with blood lead results equal to or greater than 25 µg/dl. The Arizona Cancer Registry within the Department collects and maintains data on the incidence and characteristics of cancer in Arizona. For the last five years, the Department has received an average of approximately 41,000 reports per year from hospitals, approximately 5,000 per year from clinics, approximately 1,000 per year from physicians and other practitioners, and approximately 5,300 per year from pathology laboratories. The Arizona Birth Defects Monitoring Program within the Department collects and maintains data on birth defects, including reports from approximately 65 facilities, and reviews an average of 2,500 medical records per year. Approximately 800 patients who have a birth defect are detected and reported each year.

The Department has implemented the requirements of A.R.S. § 36-606 "for reporting and preventing pesticide provoked illness" in Article 2 of 9 A.A.C. 4. Article 3 implements A.R.S. §§ 36-1673 and 36-1675 and specifies requirements for reporting the results of blood tests for lead. Article 4 specifies reporting of cancer-related information and implements both A.R.S. §§ 36-133 and 36-606. Article 5 also implements A.R.S. § 36-133 and specifies birth defect-related reporting requirements. Article 1 contains definitions common to more than one Article in 9 A.A.C. 4. The rules in the Chapter affect the Department; the Arizona Department of Agriculture; hospitals; clinical laboratories; pathology laboratories; genetic testing facilities; prenatal diagnostic facilities; high-risk perinatal practices; clinics; physicians; registered nurse practitioners; physician assistants; doctors of naturopathic medicine; dentists; poison control centers; individuals who have a pesticide illness, elevated blood lead levels, cancer, or a birth defect and their parents or guardians; employers of individuals who have a pesticide illness, elevated blood lead levels, or cancer; and the general public.

All the rules in Articles 1 through 5 of the Chapter were last revised in a regular rulemaking that was effective on January 1, 2020. An EIS is available for the rulemaking. The EIS stated that annual costs/revenues changes were designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. According to the EIS, the clarifying changes made as part of the rulemaking were thought to provide a significant benefit to all affected persons. Making the rules consistent with the practice of the Department at the time was also anticipated to provide a significant benefit to the Department and to affected persons that were complying with the then-current practice, but could impose a minimal increased cost for those that were not. For Article 4, revising the definition of "clinic"

to include physician group cancer practices was anticipated to cause up to a substantial increase in cost for a large physician group cancer practice that would be required to report as a clinic, rather than as a physician. Both this change and others updating reporting, follow-up, or quality assurance standards were thought to provide a significant benefit to the Department and the general public and to cause few, if any, new real costs to reporting entities, which were already following the updated reporting standards. Changes for pathology laboratories were expected to cause minimal-to-moderate costs to set up and implement an electronic reporting system for cancer patients, which were believed to be offset by not incurring the minimal-to-moderate costs to comply with the then-current rules. For Article 5, changes to the definition of "clinic" were anticipated to cause a minimal-to-moderate increase in costs to a facility that had not been reporting as a clinic, but the costs were thought to be off-set by changes to the frequency of reporting. Other changes were believed to reduce confusion as to reporting requirements or increase flexibility of reporting, providing a significant benefit to reporting facilities, the Department, patients and their families, and the general public. The Department estimates that the actual economic impact of the rules is consistent with the EIS for this rulemaking.

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

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

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

This is the first five-year-review report on these rules, which were effective on January 1, 2020.

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:

These rules cover the reporting of exposures to pesticides, the results of blood tests for lead, cancer-related information, and birth defects. The information required to be reported is consistent with national reporting standards and is the minimum necessary to address public health and safety needs. The Department believes that the information contained in these reports is important to public health, that the benefits to public health outweigh the costs of reporting, and that the rules impose the least burden and costs on reporting entities, consistent with the objectives of the rules.

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

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

The rules in 9 A.A.C. 4 are based on state statutes, rather than federal regulation.

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

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

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

The Department plans to conduct a rulemaking to address the issues identified in this report and anticipates filing a Notice of Final Rulemaking by June 2025.

TITLE 9. HEALTH SERVICES

CHAPTER 4.NONCOMMUNICABLE DISEASES

ARTICLE 1. DEFINITIONS
ARTICLE 2. PESTICIDE ILLNESS
ARTICLE 3. BLOOD LEAD LEVELS
ARTICLE 4. CANCER REGISTRY
ARTICLE 5. BIRTH DEFECTS MONITORING PROGRAM

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

September 2019

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 4.NONCOMMUNICABLE DISEASES

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-133 requires the Arizona Department of Health Services (Department) to develop a chronic disease surveillance system for the collection, management, and analysis of information on the incidence of chronic diseases in Arizona. A.R.S. § 36-606 states that the Department "shall develop and implement … a system for reporting and preventing pesticide provoked illnesses." A.R.S. §§ 36-1673 and 36-1675 require the Department to adopt rules for reporting blood test results showing significant levels of lead and other rules "necessary and feasible to implement the purposes" of A.R.S. Title 36, Chapter 13, Article 6. The Department has implemented these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 4, Articles 1 through 5. The Department has identified several issues with the current rules that cause the rules to impose an undue burden on some regulated entities and reduce their effectiveness. After receiving an exception from the Governor's rulemaking moratorium established by Executive Order 2019-01, the Department is revising the rules in 9 A.A.C. 4, to address these issues, including moving definitions used throughout Chapter 4 to Article 1; updating and clarifying definitions, cross-references, and formatting; making revisions to comply with statutory changes; and updating and clarifying reporting requirements and time-frames.

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

- The Department
- The Arizona Department of Agriculture
- Hospitals
- Clinics
- Physicians, registered nurse practitioners, physician assistants
- Doctors of naturopathic medicine
- Dentists
- Poison control centers
- Clinical laboratories
- Pathology laboratories
- Prenatal diagnostic facilities

- High-risk perinatal practices
- Genetic testing facilities
- Clinics
- Individuals who have a pesticide illness, elevated blood lead levels, cancer, or a birth defect and their families
- Employers of individuals who have a pesticide illness, elevated blood lead levels, or cancer
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule. No new FTEs will be required due to this rulemaking. This rulemaking is not associated with a fee. In general, this rulemaking reduces the burden on persons affected by the rules. Moving definitions used throughout Chapter 4 to Article 1 ensures consistency in definitions and make the rules more concise. Updating and clarifying definitions, cross-references, and formatting make the rules clearer and more understandable. Revisions made to comply with statutory changes or to update and clarify reporting requirements and time-frames provide benefits but may also cause some persons to incur additional costs. These effects are described below. Annual costs/revenues are designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Consolidating definitions, updating cross-references, and correcting grammar and formatting	None	Significant
	Clarifying requirements for reporting pesticide illness or blood lead levels to match the current reporting forms and practice	None	Significant
	Revising the definition of "clinic" in Article 4 to include physician group cancer practices	None	Moderate/Significant
	Requiring active cancer reporting by pathology laboratories	None	Minimal-to-moderate
	Updating requirements for cancer case reports and cancer follow-up reports to match current reporting practices	None-to-minimal	Significant
	Updating and updating methods for assessing	None-to-minimal	Minimal

	cancer data quality and completeness to match current practice		
	Combining birth defect reporting requirements	None	Significant
	Revising the definition of "clinic" in Article 5 to include other classes of health care institution in which a birth defect many be detected and updating requirements for clinics	None	Significant
	Updating requirements for reporting birth defects to reduce the frequency of reporting	None	Significant
	Making birth defect reporting by genetic testing facilities more flexible	None	Significant
	Clarifying requirements for review of records and services related to birth defects	None	Significant
	Clarifying with whom the Department may discuss information	None	Significant
Arizona Department of Agriculture	Consolidating definitions, updating cross-references, and correcting grammar and formatting	None	Significant
	Clarifying requirements for reporting pesticide illness to match the current reporting forms and practice	None	Significat
B. Privately Owned Businesses			
Hospitals	Updating requirements for cancer case reports to match current reporting practices	None-to-moderate	Significant
	Updating requirements for cancer follow-up reports and methods for assessing cancer data quality and completeness to match current practice	None-to-minimal	Significant
	Updating requirements for reporting birth defects to reduce the frequency of reporting	None	Minimal
	Revising information reported for birth defects	None	Minimal
Clinical laboratories Pathology laboratories Genetic testing facilities	Clarifying requirements for reporting blood lead levels to match the current reporting forms and practice	None-to-minimal	Significant
	Requiring active cancer reporting by pathology laboratories	None-to-moderate	Minimal-to-moderate
	Making birth defect reporting by genetic testing facilities more flexible	None	Significant
Prenatal diagnostic facilities	Combining birth defect reporting requirements to reduce confusion	None	Significant
High-risk perinatal practices	Updating requirements for reporting birth defects to reduce the frequency of reporting	None	Minimal
Clinics	Revising the definition of "clinic" in Article 4 to include physician group cancer practices	Minimal-to-moderate	Minimal
	Changing reporting requirements for cancer to match current practice	Minimal	Significant
	Updating and updating methods for assessing cancer data quality and completeness to match current practice	Minimal-to-moderate	Significant
	Changing reporting requirements for birth	Minimal-to-moderate	Minimal

	defects Including clinics in facility types for which the revision of a report about birth defects may be requested	Minimal-to-moderate	None
Physicians, registered nurse practitioners, physician assistants Doctors of naturopathic medicine Dentists	Clarifying reporting requirements for pesticide illness and, for physicians, blood lead levels to match the current reporting forms and practice Clarifying reporting of "point-of-care" tests for blood lead Changing reporting requirements for cancer Adding submission of reports for cancer data quality assurance, upon request	None-to-minimal None-to-minimal None-to-minimal Minimal	Significant Significant Significant Significant
Poison control centers	Clarifying reporting requirements for pesticide illness to match the current reporting forms and practice Changing the time specified in rule for submission of reports of pesticide illness	None-to-minimal Minimal	Significant Minimal
C. Consumers			
Individuals who have a pesticide illness, elevated blood lead levels, cancer, or a birth defect and their parents or guardians	Clarifying requirements for reporting pesticide illness, blood lead levels, cancer, and birth defects to match the current reporting forms and practice	None	Significant
Employers of individuals who have a pesticide illness, elevated blood lead levels, or cancer	Clarifying requirements for reporting pesticide illness, blood lead levels, cancer, and birth defects to match the current reporting forms and practice	None-to-moderate	Significant
General public	Clarifying requirements for reporting pesticide illness, blood lead levels, cancer, and birth defects to match the current reporting forms and practice and improving cancer data quality	None	Significant

- **The Department**

  The Department believes that consolidating definitions, updating cross-references, and correcting grammar and formatting may make the rules in 9 A.A.C. 4 easier to understand, leading to less staff time being spent answering questions about the rules and explaining reporting requirements to persons affected by the rules. The Department anticipates receiving a significant benefit from these changes.

  The current rules in Articles 2, for Pesticide Illness, and Article 3, for Blood Lead Levels, have been in place since 2000 and do not reflect current practice for persons submitting reports to the Department. Although the Department has not received any reports about pesticide illness recently, the Department receives approximately 66,000 results of blood lead tests on children

annually and approximately 7,800 blood lead tests for adults per year. Approximately 98% of these reports are being submitted electronically directly into Department-provided databases, rather than faxing hard copies of forms and laboratory reports. While the new rules for Articles 2 and 3 do not change the information currently being reported, some requirements in the new rules are changes from what is in the current rules. For example, the new rules contain requirements for including "race" and "ethnicity" when reporting for both pesticide illness and blood lead levels. For reporting pesticide illness, requirements in the new rules include reporting symptoms, reporting laboratory tests performed, stating how strongly the health care professional or medical director believes the individual has a pesticide illness, and better identifying the individual and entity making the report. For reporting blood lead levels, changes include a requirement for physicians to report the name of a child-patient's parent or guardian and the language predominantly spoken in the patient's home to assist with follow-up, and for clinical laboratories to report the date of test result, instead of the date the test result was received by the physician, and the name and telephone number of the clinical laboratory director. Under the new rules, a clinical laboratory would not be required to report the name of a child's parent. A clinical laboratory report would report an adult patient's occupation and the name, address, and telephone number of the patient's employer, as well as the source of payment for the test for blood lead, only if known. All of these changes are already included in the reporting forms currently being used by the Department, and the Department is already receiving this information from reporting persons; however, these requirements are not in rule. The Department anticipates receiving a significant benefit from these rule changes through a reduction of staff time spent explaining the discrepancies.

In the 13 years since the rules in Article 4 were adopted, there have been many changes in the delivery of medical care, and great improvements have been made in the diagnosis and treatment of patients with cancer. The current rules do not reflect many of these changes. When the current rules were adopted, patients were mainly treated in hospitals or large clinics licensed as outpatient treatment centers. Physician private practices were generally small and controlled by a single physician or at most a few physicians, who referred patients with cancer to larger health care institutions like hospitals and clinics, as defined in the rules. Few patients were treated in private physician offices, and R9-4-404(E) was adopted to ensure that these physicians were not over-burdened with reporting.

Today, very large physician group practices are the norm, with some specializing in the diagnosis and treatment of cancer patients. These cancer practices are not licensed under 9 A.A.C. 10 because they meet the criteria for exemption under A.R.S. § 36-402(A)(3) and are, therefore,

not included under the current definition of "clinic." Some of these practices treat hundreds of patients with cancer per year. However, because they use pathology reports as part of the diagnostic methodology, they are not required to report, only to respond to a letter from the Department or, less frequently, a hospital requesting information under R9-4-404(F) or (G). In the new rules, the definition of "clinic" is being revised to include these practices. The Department anticipates that this change will provide a moderate benefit to the Department from less staff time spent finding the correct practice, after reviewing a pathology report about a patient, and requesting necessary information about the patient. The change may also provide a significant benefit due to the Department's receiving more complete and timely case reports.

Similarly, when the rules were adopted, it was the norm for documentation to be maintained in hard-copy, so the current rules require a pathology laboratory to allow the Department to review pathology reports to obtain the information required for a case report. Pathology reports are now maintained electronically, and it may be more effective and efficient, and less burdensome for all persons, to require active reporting by pathology laboratories through the submission of an electronic pathology report to the Department under the revised R9-4-404(H). The Department believes that this change may provide up to a moderate benefit to the Department as it will save time/effort/costs associated with traveling to pathology laboratories and some data entry.

Since cancer diagnosis and treatment methodologies have changed since the current rules were adopted, the new rules in R9-4-403 update requirements for cancer case reports to include new methodologies and practices and to match current reporting practices. Changes in R9-4-404(A)(2) and (3) update requirements for cancer follow-up reports to match current reporting practices, while changes in R9-4-405(A)(2) and (3) update methods for assessing cancer data quality and completeness to match current practice. The Department receives over 45,000 case reports per year from hospitals, clinics, providers of different sorts, and pathology laboratories. Because these changes make the rules consistent with current practice, they provide a significant benefit to the Department, and may also provide a minimal benefit through a reduction in staff time to explain discrepancies between current practice and rule requirements to those submitting case reports. The Department may incur up to minimal costs to answer questions about the rule changes.

The Arizona Birth Defects Monitoring Program collects and maintains data on birth defects under Article 5, including reports from approximately 63 facilities, and reviews an average of 2,600 medical records per year. Depending on the diagnostic services provided by a facility/practice and the complexity of the patients receiving prenatal or birthing services, a

facility/practice could meet the definition of prenatal diagnostic facility or high-risk perinatal practice or both. In the current rules, these reporting requirements are similar, but not identical, and could cause confusion on the part of the facility/practice as to which reporting requirements to follow. In the new rules, there is now a single consolidated list of reporting elements for these facilities. The Department anticipates that this change may make it easier for these types of facilities/practices to report and, thus, result in more complete, accurate, and timely reporting, providing a significant benefit to the Department, as well as requiring less staff time to answer questions from or provide technical assistance to these facilities.

A birth center could be licensed under 9 A.A.C. 10 as more than one class of health care institution, depending on what other services are provided by the facility, or be the private practice of a physician or registered nurse practitioner and, thus, be exempt from licensing by the Department under A.R.S. § 36-402(A)(3). Depending on the complexity of the patients of the facility/practice receiving prenatal or birthing services, the facility/practice could also meet the definition of prenatal diagnostic facility or high-risk perinatal practice. Therefore, it may be difficult to determine if a facility providing birthing services should report as a clinic or other reporting group under the current rules. To avoid confusion, clarify requirements, and ensure more complete reporting, the Department is changing the definition of "clinic," to include birth centers since they are another type of health care institution in which a birth defect many be detected. Clinics are also being required to report the same set of information as prenatal diagnostic facilities and high-risk perinatal practices. The Department anticipates that these changes may also result in more complete, accurate, and timely reporting, providing a significant benefit to the Department.

In this rulemaking, the Department is also reducing the frequency of reporting for hospitals, prenatal diagnostic facilities, and high-risk perinatal practices from monthly to "upon the request of the Department and no more often than once per month." This change will not only benefit the reporting entities, as described below, but also the Department in allowing the Department to schedule submission of reports from different types of reporting entities and for different categories of birth defects to times when the Department has resources available to analyze and act on the information being submitted. Similarly, genetic testing facilities are currently required to report monthly, but the new rules allow them to report either monthly or within 30 calendar days after the date of a test. These changes are expected to provide the Department with a significant benefit.

The new rules also clarify that "other individuals who clinically evaluated, diagnosed, or treated a patient or the patient's mother" may include physical therapists, occupational therapists,

podiatrists, and speech-language pathologists, and that the Department may also review reports from these health professionals as part of a medical record. In R9-4-504, the new rules also clarify that the Department may discuss information submitted to the Department as specified in R9-4-502 or collected as specified in R9-4-503(B)(2) with the Arizona Early Intervention Program and with the parent or guardian of a patient, as allowed by A.R.S. § 36-133, as amended by Laws 2008, Ch. 52. The Department anticipates that these changes may provide a significant benefit to the Department by clarifying current practice.

- **Arizona Department of Agriculture**

  Under A.R.S. Title 3, Chapter 2, Articles 5 and 6, the Arizona Department of Agriculture is responsible for the regulation of pesticides in Arizona and for pesticide control. The rules in 3 A.A.C. 3, Article 3 and 3 A.A.C. 8, Article 3 specify requirements for the use of pesticides, which are enforced by the Arizona Department of Agriculture. A.R.S. § 3-343(B)(2) allows the director of the Arizona Department of Agriculture to "[d]etermine whether or not pesticides present an unreasonable risk to humans." Through the reports on pesticide illness made under R9-4-202, the Department is able to notify the Arizona Department of Agriculture of events that may indicate noncompliance with statute or rules regarding pesticides and allow the Arizona Department of Agriculture to investigate these events. By consolidating definitions, updating cross-references, and correcting grammar and formatting, the Department is making the rules easier to understand. By clarifying requirements for reporting pesticide illness to match the current reporting forms and practice, the Department is making the rules easier to comply with. This may lead to improved reporting and more accurate information, and may provide a significant benefit to the Arizona Department of Agriculture in ensuring the safe use of pesticides in Arizona.

- **Hospitals**

  Hospitals are the main source of information about cancer cases in Arizona, since almost all cases will be treated in a hospital at some point. The Department receives approximately 36,000 case reports from hospitals each year. Currently 51 hospitals with a licensed capacity of 50 or more inpatient beds actively submit case reports under R9-4-404(A), with a maximum of approximately 2,860 case reports being submitted by a single hospital. The average number of case reports submitted by larger hospitals is approximately 1,560 per hospital. There are currently 13 hospitals with a licensed capacity of less than 50 inpatient beds that report under R9-4-404(B). The smallest number of reports from these hospitals is five per year, with an average of 155 cases from smaller hospitals.

  The new rules update requirements for cancer case reports to match current reporting practices. These changes include requiring codes for new types of cancer treatment, such as

hormone therapy, immunotherapy, hematologic transplant, or endocrine procedures. Other changes include, as applicable, requiring a code for the reason no radiation treatment was administered, the sequence of two treatments, the status of a patient's treatment, and a code related to the recurrence of cancer. Hospitals are already complying with the reporting requirements in the new rules, so there are few, if any, new real costs being imposed by the changes. However, compared with requirements in the current rules, the new rules are adding reporting requirements for hospitals, which could result in minimal-to-moderate additional costs to a hospital that was not reporting as is now standard practice. Additionally, having rules that are consistent with current practice may reduce confusion and make it easier for a hospital to comply with reporting requirements, providing a significant benefit to a hospital.

It is standard practice for a hospital to submit electronic follow-up reports, as specified in R9-4-404(A)(2), correcting information that had previously been submitted by the hospital. Similarly, changes in R9-4-405(A)(2) and (3) update methods for assessing cancer data quality and completeness to match current practice. Hospitals with a licensed capacity of fewer than 50 inpatient beds that do not report electronically, as specified in R9-4-404(A), routinely provide to the Department a patient's date of birth rather than age. Therefore, the changes in R9-4-404(A)(2) and (B)(1)(b)(ii) and R9-4-405(A)(2) and (3) make the rules consistent with current practice, and may provide a significant benefit to a hospital by reducing confusion, but could impose a minimal additional cost on a hospital that was not already complying.

As mentioned above, the Department is reducing the frequency of reporting of birth defects for hospitals from monthly to "upon the request of the Department and no more often than once per month." This change will likely reduce the number of reports that a hospital is required to report each year. The requirement for reporting the race and ethnicity of the patient or patient's mother is also being removed in the new rules. These changes may provide at least a minimal benefit to a hospital.

- **Clinical laboratories, including pathology laboratories and genetic testing facilities**

  Approximately 80% of the almost 74,000 results of blood lead tests received by the Department each year come from clinical laboratories. The new rules in Article 3 clarify requirements for clinical laboratories to report blood lead levels to match the current reporting forms and practice, and may, thus, provide a significant benefit to a clinical laboratory by reducing confusion about reporting requirements. As mentioned above, the new rules contain requirements for including "race" and "ethnicity" when reporting blood lead levels. Clinical laboratories will also be required under the new rules to the name and telephone number of the clinical laboratory director, which is already a regulatory requirement for clinical laboratories

under CLIA (the Clinical Laboratory Improvement Act of 1988, 42 C.F.R. 493, Laboratory Requirements), under which clinical laboratories are certified. Under the new rules, a clinical laboratory would report an adult patient's occupation and the name, address, and telephone number of the patient's employer, as well as the source of payment for the test for blood lead, only if known, and would not be required to report the name of a child's parent. All of these changes are already included in the reporting forms being used by the Department and should, therefore, cause no real increase in cost to a clinical laboratory reporting according to current practice. However, the Department believes that a clinical laboratory that was not reporting according to current practice could incur a minimal increase in cost to change the information being reported.

In the current rules in Article 4, pathology laboratories are required in R9-4-404(H) to allow the Department to review pathology reports at least once every 90 calendar days, to obtain the information specified in R9-4-403. Under this rule, when it was first adopted, Department staff might visit a pathology laboratory and view pathology reports in hard-copy to obtain the information required for a case report. While Department staff members were on the premises, the pathology laboratory would incur costs associated with providing space for the Department's review, having someone from the pathology laboratory available to gather records and pathology reports, and making copies for the Department. Since pathology reports are now maintained electronically, it may be more cost effective for a pathology laboratory to submit a copy of a pathology report electronically to the Department. Two pathology laboratories are already submitting pathology reports electronically, with an average of 262 reports per year. An additional five pathology laboratories are submitting pathology reports on paper, with an average of 2,335 reports received per year from these pathology laboratories. Although the Department anticipates that most pathology laboratories will batch pathology reports, the new rules allow a pathology laboratory to determine whether to send these reports to the Department as they are produced and sent out to the ordering health care provider or to batch them and send them on a schedule determined by the pathology laboratory, as long as the pathology reports are provided at least once every 90 calendar days. Therefore, the Department anticipates that this change may provide up to a minimal-to-moderate ongoing benefit to a pathology laboratory, while causing at most a moderate cost for initial set-up of electronic reporting for those not already doing so.

Some birth defects are routinely detected through genetic testing facilities, so these facilities are included as reporting sources in Article 5. The Department currently confirms approximately 160 patients with a chromosomal defect each year, all of which are potentially reportable by genetic testing facilities. Under the current rules, genetic testing facilities are required to prepare

and submit to the Department a written report each month about applicable individuals. In the new rules, a genetic testing facility may report either monthly or within 30 calendar days after the date of a test. The Department believes that this flexibility may provide a significant benefit to a genetic testing facility.

- **Prenatal diagnostic facilities and high-risk perinatal practices**

  The Department estimates that there are approximately 20 prenatal diagnostic facilities and high-risk perinatal practices that could report birth defects under R9-4-402(B) or (D). Depending on the diagnostic services provided by a facility/practice and the complexity of the patients receiving prenatal or birthing services, a facility/practice could meet the definition of prenatal diagnostic facility or high-risk perinatal practice or both. In the current rules, these reporting requirements are similar, but not identical, and could cause confusion on the part of the facility/practice as to which reporting requirements to follow. In the new rules, there is now a single consolidated list of reporting elements. The Department anticipates that this change may make it easier for these types of facilities/practices to report and, thus, provide a significant benefit to a prenatal diagnostic facility or high-risk perinatal practice.

  The frequency with which a prenatal diagnostic facility or high-risk perinatal practice is required to report a birth defect is also being reduced in the new rules from monthly to "upon the request of the Department and no more often than once per month," thus, likely reducing the number of reports each year. The Department estimates that this change may provide a minimal benefit to a prenatal diagnostic facility or high-risk perinatal practice.

- **Clinics**

  As mentioned above, in response to the changing landscape of medical practice, the Department is revising the definition of "clinic" in R9-4-401 to include private offices/medical practices in which 50 or more cancer patients are treated per year. Since over 120 physicians are currently reporting, the Department believes that at least this number of medical practices may be affected by the rule change. The Department believes that staff of practices that will be included in the revised definition of "clinic," especially those that treat a large number of patients each year, may currently spend a large amount of time pulling records and gathering information together in response to a request from the Department, perhaps months after a diagnosis was made, for information about a patient for whom the Department received a report from a pathology laboratory. Under the new rules, such a practice would be required to report according to R9-4-404(C) or (D), depending on how many case reports the practice anticipates submitting to the Department per year. While this change may result in staff of the practice spending less time responding to requests from the Department for information of patients and result in at least a

minimal benefit, the change may also result in the practice incurring minimal-to-moderate costs to establish and implement a system for submitting case reports.

These practices, as well as facilities already reporting as "clinics," may also be affected by requirements that update cancer case reports to match current reporting practices and to submit data quality assurance information as required in the new rules in R9-4-405(A)(2). The Department receives approximately 2,600 case reports per year from clinics. Over the past five years, the average number of case report from clinics was 62 per year, with the highest number being 358 case reports and the lowest being one case report per year. Facilities already reporting as clinics may not have any real changes in how reporting is done or what is reported, but they may receive a significant benefit from having rules that agree with practice, resulting in less confusion over requirements. However, the Department estimates that a clinic that was reporting according to requirements in the current rules, rather than as is the current reporting practice, could incur a minimal increase in costs due to the rule changes. Clinics may also incur minimal-to-moderate costs, depending on the number of cases being treated by the facility, from the added quality assurance report.

To avoid confusion, clarify requirements, and ensure more complete reporting, the Department is also changing the definition of "clinic" in Article 5 to include birth centers, since they are another type of health care institution in which a birth defect may be detected. Clinics are also being required to report the same set of information as prenatal diagnostic facilities and high-risk perinatal practices. Some of these facilities may have already been reporting under requirements for prenatal diagnostic facilities or high-risk perinatal practices or responding to the Department's requests for information about birth defects detected in the facility. The Department anticipates that a birth center that has not been reporting or responding to a request from the Department for revision of a report about birth defects may incur a minimal-to-moderate cost to comply with these new requirements. Another category of facility under "clinic" may also incur a minimal-to-moderate cost to begin reporting or respond to a request for revision of a report about birth defects. However, the new rules also reduce and simplify the information required to be submitted, which may provide a minimal benefit to all facilities that meet the definition of "clinic."

- **Physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists**

  Physicians, registered nurse practitioners, physician assistants, and any other individuals who are authorized by law to diagnose human illness are included in the definition of "health care professional" in R9-4-201. These individuals are required under current rules in Article 2 to

submit reports of pesticide illness. The new rules clarify and simplify reporting requirements for pesticide illness to match the current reporting forms and practice. Therefore, they may provide a significant benefit to a physician, a registered nurse practitioner, a physician assistant, or any other individual who is authorized by law to diagnose human illness. The Department estimates that the small changes in the rules related to the information being reported to match the current reporting forms and practice (adding reporting of race and ethnicity, symptoms reported by the individual, and information about laboratory tests) may cause a health care provider that was not reporting according to current practice to incur at most minimal additional costs.

Physicians are required by A.R.S. § 36-1673 to report elevated blood lead levels. The Department receives a few hundred such reports annually from physicians, with some registered nurse practitioners also submitting reports to the Department. These include reports from physicians of blood lead levels less than 10 µg/dL for a child. The Department anticipates that the clarity of the new rules in Article 3 and their being consistent with current practice may provide a significant benefit to those reporting blood lead levels. Adding information being reported to match the current reporting forms and practice (reporting of race and ethnicity and information to assist in follow-up of elevated blood lead levels, such as the name of the parent or guardian of a patient who is a child and the language spoken in the patient's home, if known) may cause a physician who was not reporting according to current practice to incur at most minimal additional costs.

Since the rules in Article 3 were adopted, new point-of-care tests for blood lead have been developed that can be performed outside a clinical laboratory. Persons performing these tests must obtain a CLIA certificate of waiver. These point-of-care tests for blood lead are being performed routinely in many physician offices and clinics. Because physicians are performing the tests under a CLIA certificate, the Department had been requesting from these physicians reports of any test results, not just those with elevated blood lead levels, just a clinical laboratory reports all test results. Reports from point-of-care tests account for approximately 20% of the blood lead test results reported, with 29 provider offices currently reporting these test results. Receiving test results below 25 µg of lead per dL of whole blood for an adult or 10 µg of lead per dL of whole blood for a child allows the Department to determine the incidence of blood lead levels to evaluate whether the threshold for designating a blood lead level as elevated should be changed, as recommended by the Centers for Disease Control and Prevention, as well as to monitor the efficacy of treatment and strategies to reduce the blood lead levels in patients who had had an elevated blood lead level in previous tests. The new rules are being changed to reflect this practice, and the change should have no real effect on physicians who had been reporting

according to current practice. However, the Department estimates that a physician who performs point-of-care tests for blood lead, but does not now reports the results of tests below 25 µg of lead per dL of whole blood for an adult or 10 µg of lead per dL of whole blood for a child, may incur as much as a minimal increased cost to report these results. These physicians may receive a significant benefit from follow-up provided through the Department for these cases of elevated blood lead levels.

The Department receives over 3,500 case reports per year under Article 4 from physicians, doctors of naturopathic medicine, dentists, registered nurse practitioners, and the designees of clinics. Over the past five years, the average number of case report from these practitioners was 28 per year, with the highest number being 266 case reports and the lowest being one case report. As mentioned above, cancer diagnosis and treatment methodologies have changed greatly since the rules in Article 4 were adopted. Case reporting requirements for physicians, doctors of naturopathic medicine, dentists, registered nurse practitioners, and the designees of clinics in R9-4-403(A) have been changed in the new rules to reflect the changes in cancer diagnosis and treatment and be consistent with current reporting practices. These changes include the reporting of biomarkers and clinical indicators of cancer in R9-4-403(A)(1)(q) and (r), respectively. The Department believes that the changes should have no real effect on those reporting according to current practice and may result in a significant benefit of having rules that agree with practice. However, the Department believes that a physician, doctor of naturopathic medicine, dentist, registered nurse practitioner, or the designee of a clinic who does not now reports as is current practice may incur as much as a minimal increased cost to do so. These persons may also be affected by requirements to submit data quality assurance information as required in the new rules in R9-4-405(A)(2). The Department estimates that this rule change may cause a minimal increase in costs to physician, doctor of naturopathic medicine, dentist, registered nurse practitioner, or the designee of a clinic.

- **Poison control centers**

  There are currently two poison control centers in Arizona, one associated with the University of Arizona in Tucson and one with Banner Good Samaritan Hospital in Phoenix. These facilities may receive a significant benefit from having reporting requirements for pesticide illness to match the current reporting forms. Under A.R.S. § 36-606 and the current rules in Article 2, the medical directors of these poison control centers are required to report pesticide illness within five working days from the date of diagnosis or identification, except in certain circumstances. In practice, poison control centers have been reporting annually. Under the new rules, a poison control center would be required to report at least once each month, unless the individual with

pesticide illness was determined to be part of a cluster illness, and to provide information to match the current reporting forms and practice. The Department anticipates that a poison control center may receive a theoretical minimal benefit from the lengthening of the time-frame for reporting in rule from five working days to monthly, but may incur minimal costs from changing the practice of annual reporting to monthly reporting and from the changes in the information reported to be consistent with current reporting forms and practice.

- **Individuals who have a pesticide illness, elevated blood lead levels, cancer, or a birth defect and their parents or guardians**

  Each year approximately 90 children are identified with elevated blood lead levels, greater than or equal to 10 µg of lead per dL of whole blood, and 30 adults are identified with elevated blood lead levels greater than or equal to 25 µg of lead per dL of whole blood. Physicians and other practitioners follow up on the test results to try to decrease these levels. Because elevated blood lead levels have potentially more serious effects on children, the Department assists in follow-up for children with elevated blood lead levels. Due to confusion about current reporting requirements for pesticide illness, the Department is not sure how many individuals are diagnosed each year with pesticide illness. The Department receives over 45,000 case reports for cancer each year, with between 10 and 25% being duplicative with other reports for the same cases. An average of 34,542 new Arizona resident cases are diagnosed per year, with the total number being 37,054 new cases if non-residents are included. Approximately 800 patients who have a birth defect are detected and reported each year. The Department anticipates that clarifying requirements for reporting pesticide illness, blood lead levels, cancer, and birth defects to match the current reporting forms and practice may help those reporting to better understand reporting requirements and to submit more accurate and complete information. Having better information about these non-communicable diseases may allow policymakers, public health officials, health care practitioners, researchers, etc. to better address the effects that these non-communicable diseases have on individuals and, potentially, provide a significant benefit to these individuals. In addition, the changes in R9-4-504, related to the persons with whom the Department may discuss the information submitted to the Department about a birth defect, to include the parent or guardian of a patient may provide a significant benefit to the parent or guardian in connecting them with resources needed to address issues arising due to the birth defect.

- **Employers of individuals who have a pesticide illness, elevated blood lead levels, or cancer**

  The Department believes that clarifying requirements for reporting pesticide illness, blood lead levels, cancer, and birth defects to match the current reporting forms and practice may also provide a significant benefit to the employers of individuals who have a pesticide illness, elevated

blood lead levels, or cancer, especially if the non-communicable disease may be related to the occupation of the individual. Better information may lead to better strategies to reduce the risk of exposure to conditions that could lead to other individuals developing the non-communicable disease and provide a healthier workforce in these industries. However, implementation of some of these strategies may cause an employer to incur up to a moderate increase in costs.

- **General public**

  Similarly, clarifying requirements for reporting pesticide illness, blood lead levels, cancer, and birth defects and improving data quality may provide a significant benefit to the general public. The general public may benefit from new discoveries arising from more accurate and complete data that reduce the incidence of or improve the prognosis for these non-communicable diseases. In addition, better data may result in measures that may be taken to improve strategies to prevent these diseases or lead to better and earlier interventions.

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

Neither public employment nor private employment in the State of Arizona is expected to be affected due to the changes in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rules may include small hospitals; small clinical laboratories, pathology laboratories, and genetic testing facilities; small prenatal diagnostic facilities, high-risk perinatal practices, and clinics; and the practices of physicians, registered nurse practitioners, physician assistants, doctors of naturopathic medicine, and dentists. The two poison control centers in Arizona are part of much larger organizations, the University of Arizona and the Banner healthcare system, so the Department does not consider them to be small businesses.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rules are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department has already included methods to reduce the impact of the rules on small businesses, having more flexible reporting of cancer cases for small hospitals; requiring less information to be reported by physicians, doctors of naturopathic medicine, dentists, registered nurse practitioners, and clinics; and limiting the reports required of physicians,

doctors of naturopathic medicine, dentists, registered nurse practitioners, and clinics to those cases not required to be reported by other entities. The Department is unaware of any measures that may be taken to reduce the impact on small businesses while still protecting the health and safety of the citizens of and visitors to Arizona.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rulemaking are described in paragraph 3.

6. A statement of the probable effect on state revenues

The rulemaking does not include any fees, so the Department does not expect the rules to affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES - NONCOMMUNICABLE DISEASES

ARTICLE 1. DEFINITIONS

Section

ARTICLE 2. PESTICIDE ILLNESS

Section

ARTICLE 3. BLOOD LEAD LEVELS

Section

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Section

ARTICLE 5. BIRTH DEFECTS MONITORING PROGRAM

Section

ARTICLE 1. DEFINITIONS

R9-4-101. Definitions, General

In this Chapter, unless otherwise specified:

1. "Admitted" means the same as in A.A.C. R9-10-101.
2. "Business day" means any day of the week other than a Saturday, a Sunday, a state legal holiday, or a day on which the Department is authorized or obligated by law or executive order to close.
3. "Calendar day" means any day of the week, including a Saturday or a Sunday.
4. "Clinical laboratory" means a facility that:
   a. Meets the definition in A.R.S. § 36-451;
   b. Holds a certificate of accreditation or certificate of compliance issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967; and
   c. Is located within Arizona.
5. "Code" means a single number or letter, a set of numbers or letters, or a set of both numbers and letters that represents specific information.
6. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
7. "Department" means the Arizona Department of Health Services.
8. "Diagnosis" means the identification of a disease or injury, by an individual authorized by law to make the identification.
9. "Discharge" means the same as in A.A.C. R9-10-101.
10. "Discharge date" means the month, day, and year of an individual's discharge from a hospital.
11. "Electronic" means the same as in A.R.S. § 44-7002.
12. "Guardian" means a person appointed as a legal guardian by a court of competent jurisdiction.
13. "Health care institution" means the same as in A.R.S. § 36-401.
14. "Health-related services" means the same as in A.R.S. § 36-401.
15. "Hospital" means the same as in A.A.C. R9-10-101.
16. "International Classification of Diseases Code" or "ICD Code" means a code, such as the ICD-9-CM or ICD-10-CM codes, which is used by a hospital for billing or reporting purposes.
17. "Medical records" means the same as in A.R.S. § 12-2291.
18. "Medical services" means the same as in A.R.S. § 36-401.
19. "Nursing services" means the same as in A.R.S. § 36-401.
20. "Ordered" means instructed by a physician, registered nurse practitioner, or physician assistant to perform a test on an individual.

21. “Parent” means the:
    a. Biological or adoptive father of an individual; or
    b. Woman who:
        i. Gave birth to an individual; or
        ii. Adopts an individual.
22. “Pathology laboratory” means a clinical laboratory in which human cells or tissues are examined for the purpose of diagnosing diseases.
23. “Physician” means an individual licensed as a doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.
24. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
25. “Registered nurse practitioner” means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601, and is licensed under A.R.S. Title 32, Chapter 15.
26. “Treatment” means the same as in A.A.C. R9-10-101.

ARTICLE 2. PESTICIDE ILLNESS

R9-4-201. Definitions

In this Article, unless otherwise specified:

1. "Cluster illness" means pesticide illness in two or more individuals that is caused by or may be related to one pesticide exposure incident.
2. "Documented" means evidenced by written information such as pesticide applicator reports, statements of individuals with pesticide illness, or medical records.
3. "Health care professional" means a physician, a registered nurse practitioner, a physician assistant, or any other individual who is authorized by law to diagnose human illness.
4. "Medical director" means the individual designated by a poison control center as responsible for providing medical direction for the poison control center or for approving and coordinating the activities of the individuals who provide medical direction for the poison control center.
5. "Pesticide" means the same as in A.R.S. § 3-361, but does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning.
6. "Pesticide illness" means any sickness reasonably believed by a health care professional or medical director to be caused by or related to documented exposure to any pesticide, based upon professional judgment and:
   a. The history, signs, or symptoms of the sickness;
   b. Laboratory findings regarding the individual; or
   c. The individual's response to treatment for the sickness.
7. "Poison control center" means an organization that is a member of and may be certified by the American Association of Poison Control Centers.

R9-4-202. Pesticide Illness Reporting Requirements

A. A health care professional who believes that an individual has pesticide illness shall submit a report to the Department, either personally or through a representative:

1. Except as specified in subsections (A)(2) and (C), within five business days after the health care professional determines that the individual may have pesticide illness; and
2. Within one business days after the individual is admitted to a hospital or dies due to pesticide illness.

B. Except as specified in subsection (C), a medical director who believes that an individual has pesticide illness shall submit a report to the Department, either personally or through a representative at least once each month.

C. A health care professional or medical director who believes that an individual is part of a cluster illness shall submit a report to the Department, either personally or through a representative, within one business day after determining that the individual has pesticide illness.

D. A health care professional or medical director shall ensure that the report required in subsection (A), (B), or (C) includes the following information:

1. The name, address, and telephone number of the individual with pesticide illness;
2. The date of birth of the individual with pesticide illness;
3. The gender, race, and ethnicity of the individual with pesticide illness;
4. The date symptoms of pesticide illness began;
5. The date the health care professional or medical director determined that the individual may have pesticide illness;
6. The occupation of the individual with pesticide illness;
7. The name of the pesticide, if known;
8. The symptoms reported by the individual with pesticide illness;
9. Whether any laboratory tests were performed for the individual with pesticide illness and, if so, for each test:
    a. The type of specimen collected,
    b. The date the specimen was collected,
    c. The type of test performed,
    d. The results of the test, and
    e. What results of the test would be considered normal;
10. A description of any treatment provided to the individual with pesticide illness;
11. On what basis the health care professional or medical director believes the individual has pesticide illness;
12. The name and telephone number of the health care professional or medical director who believes that the individual has pesticide illness;
13. The name and address of the health care institution or poison control center at which the health care professional or medical director determined that the individual may have pesticide illness; and
14. A description of the type of health care institution or poison control center specified in subsection (D)(13).

E. A health care professional or medical director, either personally or through a representative, shall submit the report required in subsection (A), (B), or (C):

1. By telephone;

2. In person;
3. In a document sent by fax, delivery service, or mail; or
4. Through an electronic reporting system authorized by the Department.

ARTICLE 3. BLOOD LEAD LEVELS

R9-4-301. Definitions

In this Article, unless otherwise specified:

1. "Adult" means an individual 16 years of age or older.
2. "Child" means an individual younger than 16 years of age.
3. "Patient" means the individual whose blood has been tested for lead content.
4. "Point-of-care test for blood lead" means an analysis to screen an individual for exposure to lead:
   a. That is performed outside a clinical laboratory, and
   b. For which the results of the analysis are available before the individual leaves the location at which the analysis was performed.
5. "Whole blood" means human blood from which plasma, erythrocytes, leukocytes, and thrombocytes have not been separated.

R9-4-302. Blood Lead Level Reporting Requirements

A. For each patient, a physician shall submit a report to the Department, either personally or through a representative, for the levels of lead and within the time periods specified in Table 3.1, Criteria for Physician Reporting of Blood Lead Levels.

B. A physician shall ensure that the report required in subsection (A) includes the following information:

1. The patient's name, address, and telephone number;
2. The patient's date of birth;
3. The patient's gender, race, and ethnicity;
4. If the patient is an adult, the patient's occupation and the name, address, and telephone number of the patient's employer;
5. Whether the blood collected from the patient was venous blood or capillary blood;
6. The date the blood was collected;
7. The results of the blood lead level test;
8. The date of the test result;
9. If the test result indicates a blood lead level greater than or equal to 25 µg of lead per dL of whole blood for an adult or greater than or equal to 10 µg of lead per dL of whole blood for a child:
   a. The funding source for the medical services provided to the patient and, if applicable, the name of the patient's health plan and the identification number for the patient assigned by the health plan;
   b. The language predominantly spoken in the patient's home, if known; and

c. If the patient is a child, the name of the patient's parent or guardian;

10. The date the physician performed the point-of-care test for blood lead or received the test result from a clinical laboratory;
11. If applicable, the name, address, and telephone number of the clinical laboratory that tested the blood; and
12. The name, practice name, address, and telephone number of the physician who performed the point-of-care test for blood lead or received the test result from the clinical laboratory.

C. For each blood lead level test, a clinical laboratory director shall submit a report to the Department, either personally or through a representative, for the levels of lead and within the time periods specified in Table 3.2, Criteria for Clinical Laboratory Director Reporting of Blood Lead Levels.

D. A clinical laboratory director shall ensure that the report required in subsection (C) includes the following information:

1. The patient's name, address, and telephone number;
2. The patient's date of birth;
3. The patient's gender, race, and ethnicity;
4. If the patient is an adult, the patient's occupation and the name, address, and telephone number of the patient's employer if known;
5. The name, practice name, address, and telephone number of the physician who ordered the test;
6. If known, the funding source for the test for blood lead, the name of the patient's health plan, and the identification number for the patient assigned by the health plan;
7. Whether the blood collected from the patient was venous blood or capillary blood;
8. The date the blood was collected;
9. The results of the blood lead level test;
10. The date of the test result;
11. The name and address of the clinical laboratory that tested the blood; and
12. The name and telephone number of the clinical laboratory director.

E. A physician or clinical laboratory director, either personally or through a representative, shall submit the report required in subsection (A) or (C):

1. By telephone;
2. In person;
3. In a document sent by fax, delivery service, or mail; or
4. Through an electronic reporting system authorized by the Department.

Table 3.1. Criteria for Physician Reporting of Blood Lead Levels

	Child	**Adult**
Within One Business Day After Performing a Point-of-Care Test for Blood Lead or Receiving the Result of a Test for Blood Lead from a Clinical Laboratory	≥ 45 µg of lead per dL of whole blood	≥ 60 µg of lead per dL of whole blood
Within Five Business Days After Performing a Point-of-Care Test for Blood Lead or Receiving the Result of a Test for Blood Lead from a Clinical Laboratory	≥ 10 µg to < 45 µg of lead per dL of whole blood	≥ 25 µg to <60 µg of lead per dL of whole blood
At Least Once Each Month After Performing a Point-of-Care Test for Blood Lead	< 10 µg of lead per dL of whole blood	< 25 µg of lead per dL of whole blood

Table 3.2. Criteria for Clinical Laboratory Director Reporting of Blood Lead Levels

	Child	**Adult**
Within One Business Day After Completing the Test	≥ 45 µg of lead per dL of whole blood	≥ 60 µg of lead per dL of whole blood
Within Five Business Days After Completing the Test	≥ 10 µg to < 45 µg of lead per dL of whole blood	≥ 25 µg to <60 µg of lead per dL of whole blood
At Least Once Each Month	< 10 µg of lead per dL of whole blood	< 25 µg of lead per dL of whole blood

ARTICLE 4. CANCER REGISTRY

R9-4-401. Definitions

In this Article, unless otherwise specified:

1. "Analytic patient" means a patient, who is:
   a. Diagnosed at a facility, or
   b. Administered any part of a first course of treatment at the facility.
2. "Calendar year" means January 1 through December 31.
3. "Cancer" means a group of diseases characterized by uncontrolled cell growth and the spread of abnormal cells.
4. "Cancer registry" means a unit within a hospital or clinic that collects, stores, summarizes, distributes, and maintains information specified in R9-4-403 about patients who:
   a. Are admitted to the hospital;
   b. Receive diagnostic evaluation at, or cancer-directed treatment from, the hospital or clinic; or
   c. Show evidence of cancer, carcinoma in situ, or a benign tumor of the central nervous system while receiving treatment from the hospital or clinic.
5. "Carcinoma" means a type of cancer that is characterized as a malignant tumor derived from epithelial tissue.
6. "Carcinoma in situ" means a cancer that is confined to epithelial tissue within the site of origin.
7. "Case report" means an electronic or paper document that includes the information in R9-4-403 for a patient.
8. "Chemotherapy" means the treatment of cancer using specific chemical agents or drugs that are selectively destructive to malignant cells and tissues.
9. "Clinic" means a facility that is not physically connected to or affiliated with a hospital, where a physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner provides cancer diagnosis, cancer treatment, or both, and that is:
   a. An outpatient treatment center, as defined in A.A.C. R9-10-101.
   b. An outpatient surgical center, as defined in A.A.C. R9-10-101.
   c. An outpatient radiation treatment center; or
   d. A private office of one or more physicians, doctors of naturopathic medicine, dentists, or registered nurse practitioners that:
      i. Is exempt from licensing under A.R.S. § 36-402(A)(3), and
      ii. Treats 50 or more cancer patients per year.
10. "Clinical evaluation" means an examination of the body of an individual for the presence of

disease or injury to the body, and review of any laboratory test results for the individual by a physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner.

11. "Clinical or pathological" means an analysis of evidence either acquired solely before a first course of treatment was initiated, or acquired both before a first course of treatment, and supplemented or modified by evidence acquired during and subsequent to surgery or other treatment.
12. "Cytology" means the microscopic examination of cells.
13. "Date of first contact" means the day, month, and year a reporting facility first began to provide cancer-related medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401, to a patient.
14. "Date of last contact" means the day, month, and year that a reporting facility last knew a patient to be alive.
15. "Designee" means a person assigned by the governing authority, as defined in A.R.S. § 36-401, of a hospital or clinic or by an individual acting on behalf of the governing authority to gather information for or report to the Department, as specified in R9-4-403 or R9-4-404.
16. "Distant lymph node" means a lymph node that is not in the same general area of a human body as the primary site of a tumor.
17. "Distant site" means an area of a human body that is not adjacent to or in the same general area of the human body as the primary site of a tumor.
18. "Doctor of naturopathic medicine" means an individual licensed under A.R.S. Title 32, Chapter 14.
19. "First course of treatment" means the initial set of cancer- or non-cancer-directed treatment that is planned and administered to the patient when a cancer is diagnosed.
20. "Follow-up report" means an electronic document that includes the information stated in R9-4-404(A)(2) for a patient.
21. "Inpatient beds" means the same as in A.R.S. § 36-401.
22. "Licensed capacity" means the same as in A.R.S. § 36-401.
23. "Lymph" means the clear, watery, sometimes faintly yellowish fluid that circulates throughout the lymphatic system.
24. "Lymph node" means any of the small bodies located along lymphatic vessels, particularly at the neck, armpit, and groin, that filter bacteria and foreign particles from lymph.
25. "Lymphatic system" means the organ system that consists of lymph, lymph nodes, and vessels or channels that contain and convey lymph throughout a human body.
26. "Malignant" means an inherent tendency of a tumor to sequentially spread to areas of a human

body beyond the site of origin.

27. "Medical record number" means a unique number assigned by a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner to an individual for identification purposes.
28. "Melanocyte" means a skin cell that makes melanin, which is a dark pigment.
29. "Melanoma" means a dark-pigmented, malignant tumor arising from a melanocyte and occurring most commonly in the skin.
30. "Metastasis" means the spread of a cancer from a primary site into a regional site or a distant site.
31. "Narrative description" means a written text describing an act, occurrence, or course of events.
32. "Organ" means a somewhat independent part of a human body, such as a heart or a kidney, that performs a specific function.
33. "Organ system" means one or more organs and associated tissues that perform a specific function, such as the circulatory system.
34. "Outpatient radiation treatment center" means a facility regulated under 9 A.A.C. 7 that provides radiation treatment.
35. "Patient" means an individual who has been diagnosed with a cancer, carcinoma in situ, or benign tumor of the central nervous system:
    a. Including melanoma; and
    b. Excluding skin cancer that:
        i. Is confined to the primary site, or
        ii. Was diagnosed after January 1, 2003.
36. "Primary site" means a specific organ or organ system within a human body where the first cancer tumor originated.
37. "Principal diagnosis" means the primary condition for which an individual is admitted to a hospital or treated by the hospital.
38. "Radiation treatment" means the exposure of a human body to a stream of particles or electromagnetic waves for the purpose of selectively destroying certain cells or tissues.
39. "Reconstructive surgery" means a medical procedure that involves cutting into a body tissue or organ with instruments to repair damage or restore function to, or improve the shape and appearance of, a body structure that is missing, defective, damaged, or misshapen by cancer or cancer-directed therapies.
40. "Reference date" means the date on which the hospital's cancer registry began reporting patient information to the Department.
41. "Regional lymph node" means a lymph node that is in the same general area of a human body as

the primary site of a tumor.

42. "Regional site" means an area of a human body that is adjacent to or in the same general area of the human body as the primary site of a tumor.
43. "Release" means to transfer care of a patient from a hospital to a physician, a doctor of naturopathic medicine, a registered nurse practitioner, an outpatient treatment center, another hospital, the patient, the patient's parent if the patient is under 18 years of age and unmarried, or the patient's legal guardian.
44. "Reporting facility" means a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner that submits a case report to the Department.
45. "Secondary diagnosis" means all other diagnoses of an individual that may be related to cancer made after the principal diagnosis.
46. "Skin cancer" means cancer of any of the following types:
    a. Papillary tumor, a tumor of the skin producing finger-like projections from the skin surface;
    b. Squamous cell, a flat, scale-like skin cell that forms part of the surface of the skin;
    c. Basal cell, a cell of the inner-most layer of the skin; or
    d. Other carcinoma of the skin, where a specific diagnosis has not been determined.
47. "Stage group" means a scheme for categorizing a patient, based on the staging classification of the patient's cancer, to enable a physician, doctor of naturopathic medicine, or registered nurse practitioner to provide better treatment and outcome information to the patient.
48. "Staging classification" means the categorizing of a cancer according to the size and spread of a tumor from its primary site, based on an analysis of three basic components:
    a. The tumor at the primary site,
    b. Regional lymph nodes, and
    c. Metastasis.
49. "Tumor" means an abnormal growth of tissue resulting from uncontrolled multiplication of cells and serving no physiological function.

R9-4-402. Exceptions

This Article does not apply to a hospital that is a special hospital, as defined in A.A.C. R9-10-101, that:

1. Is only licensed to provide psychiatric services, or
2. Limits admission to individuals requiring rehabilitation services, as defined in A.A.C. R9-10-101.

R9-4-403. Case Reports

A. A physician, doctor of naturopathic medicine, dentist, registered nurse practitioner, or the designee of

a clinic shall:

1. Prepare a case report in a format provided by the Department;
2. Include the following information in the case report:
    a. The name, address, and telephone number of, or the identification number assigned by the Department to, the reporting facility;
    b. The patient's name, and, if applicable, the patient's maiden name and any other name by which the patient is known;
    c. The patient's address at the date of last contact, and address at diagnosis of cancer;
    d. The patient's date of birth, Social Security number, sex, race, and ethnicity;
    e. The date of first contact with the patient for the cancer being reported, as applicable;
    f. If the patient is an adult, the:
        i. Primary type of activity carried out by the business where the patient was employed for the most number of years of the patient's life before the diagnosis of cancer, and
        ii. Kind of work performed by the patient for the most number of years of the patient's life during which the patient was employed for a salary or wages before the diagnosis of cancer;
    g. The patient's medical record number, if applicable;
    h. The date of diagnosis of the cancer being reported;
    i. If the diagnosis was not made at the reporting facility, the name and address of the facility at which the diagnosis was made;
    j. The primary site and the specific subsite area within the primary site for the cancer being reported;
    k. The following characteristics of the tumor at diagnosis:
        i. Size;
        ii. Histology, the microscopic structure of the tumor cells and surrounding tissues in relation to their function;
        iii. Grade, the degree of resemblance of the tumor to normal tissue, as an indication of the severity of the cancer; and
        iv. Laterality, the side of a paired organ or the side of the body in which the primary site of the tumor is located;
    l. A code that describes the presence or absence of malignancy in a tumor;
    m. Whether the cancer had spread from the primary site at the time of diagnosis and, if so, to where;
    n. The extent to which the cancer has spread from the primary site;

o. A narrative description of the extent to which the cancer had spread at diagnosis, as applicable;
p. The method or methods by which the diagnosis was made, or whether the method by which the diagnosis was made is unknown;
q. Whether the patient's laboratory results show the presence of specific substances, derived from tumor tissue, whose detection in the blood, urine, or tissues of a human body indicates the presence of a specific type of tumor, if applicable;
r. Any other physiological symptoms or diagnostic criteria that may indicate the presence of a specific type of tumor, if applicable;
s. For each treatment the patient received, the type of treatment, date of treatment, and the name of the facility where the treatment was performed;
t. Whether any residual tumor cells were left at the edges of a surgical site, after surgery to remove a tumor at the primary site;
u. Whether the patient is alive or dead, including:
    i. The date of last contact if the patient is alive, and
    ii. The date of death if the patient is dead;
v. Whether or not the patient has evidence of a current cancer, carcinoma in situ, or benign tumor of the central nervous system as of the date of last contact or death, or whether this information is unknown;
w. The name of the physician, nurse practitioner, or doctor of naturopathic medicine providing medical services to the patient; and
x. Whether the patient has a history of other cancers, and if so, identification of the primary site and the date the other cancer was diagnosed; and

3. Use codes and a coding format supplied by the Department for data items specified in subsection (A)(2) that require codes on the case report.

B. The cancer registry of a hospital that reports as specified in R9-4-404(A) shall:

1. Prepare a case report in a format provided by the Department;
2. Include the information specified in subsection (A) and the following information in the case report:
    a. The patient's unique accession number, separate from a medical record number, that was assigned by the hospital's cancer registry to the patient for identification purposes;
    b. The unique sequence number assigned by the cancer registry to the specific cancer within the body of the patient being reported;
    c. The date the patient was admitted to the hospital for diagnostic evaluation, cancer-directed

treatment, or evidence of cancer, carcinoma in situ, or a benign tumor of the central nervous system, if applicable;

d. The date the patient was discharged from the hospital after the patient received diagnostic evaluation or treatment at the hospital, if applicable;
e. The source of payment for diagnosis or treatment of cancer, or both;
f. The level of the facility's involvement in the diagnosis or treatment, or both, of the patient for cancer;
g. The year in which the hospital first provided diagnosis or treatment to the patient for the cancer being reported;
h. The patient's county of residence at diagnosis of cancer;
i. The patient's marital status and age at diagnosis of cancer, place of birth, and, if applicable, name of the patient's spouse;
j. If the patient is under 18 years of age and unmarried, the name of the patient's parent or legal guardian;
k. A narrative description of how the cancer was diagnosed, including a description of the primary site and the microscopic structure of the tumor cells and surrounding tissues;
l. The number of regional lymph nodes examined and the number in which evidence of cancer was detected;
m. The clinical, pathological, or other staging classification, based on the analysis of tumor, lymph node, and metastasis;
n. The patient's clinical, pathological, or other stage group;
o. If the cancer was diagnosed before 2018, the code for the person who determined the stage group of the patient;
p. A narrative description of the clinical evaluation of x-ray diagnostic films and scans of the patient, and the dates of the films or scans;
q. A narrative description of laboratory tests performed for the patient, including the date, type, and results of any of the patient's laboratory tests;
r. A narrative description of the results of the patient's clinical evaluation;
s. The procedures used by the reporting facility to obtain a diagnosis and staging classification, including:
    i. The dates on which the procedures were performed; and
    ii. The name of the facilities where the procedures were performed, if different from the reporting facility;
t. A narrative description of any cancer-related surgery on the patient, including the:

i. Date of surgery;
ii. Name of the facility where the surgery was performed, if different from the reporting facility; and
iii. Type of surgery;

u. The code associated with the type of surgery performed on the patient and the date of surgery;

v. The codes associated with the:
i. Extent of lymph node surgery;
ii. Number of lymph nodes removed;
iii. Surgery of regional sites, distant sites, or distant lymph nodes; and
iv. Reason for no surgery or that surgery was performed;

w. Whether reconstructive surgery on the patient was performed as a first course of treatment, delayed, or not performed;

x. A narrative description of cancer-related radiation treatment administered to the patient, including the:
i. Date of radiation treatment;
ii. Name of the facility where the radiation treatment was performed, if different from the reporting facility; and
iii. Type of radiation;

y. As applicable, the code specifying that radiation treatment was administered or associated with the reason for no radiation treatment;

z. The code associated with the type of radiation treatment administered to the patient and the date of radiation treatment;

aa. A narrative description of cancer-related chemotherapy administered to the patient, including the:
i. Date of cancer-related chemotherapy;
ii. Name of the facility that administered the chemotherapy, if different from the reporting facility; and
iii. Type of chemotherapy;

bb. The code associated with the type of chemotherapy administered to the patient and the date of chemotherapy;

cc. The code associated with any other types of cancer- or non-cancer-directed first course of treatment, not otherwise coded on the case report for the patient, including:
i. Hormone therapy, immunotherapy, hematologic transplant, or endocrine procedures

administered to the patient;

ii. Additional surgery, radiation, or chemotherapy administered to the patient; or

iii. Other treatment administered to the patient;

dd. If applicable, a narrative description of any other types of cancer or non-cancer-directed first course of treatment, including:

i. The dates of the treatment;

ii. The names of the facilities where the treatment was performed, if different from the reporting facility; and

iii. The type of treatment;

ee. If the patient's treatment included both surgery and another type of treatment, the sequence of the two treatments;

ff. The code for the status of the patient's treatment, including whether the patient received any treatment or the tumor was being actively observed and monitored;

gg. The code for whether the patient has had a reappearance of a cancer, carcinoma in situ, or benign tumor of the central nervous system, and, if additional cancer of the type diagnosed at the primary site is found after cancer-directed treatment:

i. The date of the reappearance; and

ii. A narrative description of the nature of the reappearance, including whether the additional cancer was found at the primary site, a regional site, or a distant site;

hh. If the patient has died, the place and cause of death and whether an autopsy was performed;

ii. The name of the individual or the code that identifies the individual completing the case report;

jj. The type of records used by the reporting facility to complete the case report;

kk. If applicable, a code that indicates the reason for a required date not to be included in the case report required in subsection (B)(1); and

ll. If applicable, a code that indicates that an apparently inconsistent code has been reviewed and is correct; and

3. Use codes and coding format supplied by the Department for data items specified in subsection (B)(2) that require codes in the case report.

R9-4-404. Requirements for Submitting Case Reports and Follow-up Reports and Allowing Review of Hospital Records

A. The cancer registry of a hospital with a licensed capacity of 50 or more inpatient beds shall ensure that:

1. An electronic case report, prepared according to R9-4-403(B), is submitted to the Department within 180 calendar days after the date a patient is first released from the hospital;
2. An electronic follow-up report, for correcting information previously submitted according to R9-4-403(A)(2)(j) through (l), or (B)(2)(a), (b), (m), (n), or (w), is submitted to the Department:
    a. Within 30 calendar days after identifying the correct information and at least annually,
    b. For all patients for whom applicable corrected information is obtained,
    c. That includes patient identifying information and the information to be corrected, and
    d. In a format provided by the Department; and
3. An electronic follow-up report for analytic patients, in a format provided by the Department:
    a. Is submitted to the Department at least annually for:
        i. All living analytic patients in the hospital's cancer registry database, and
        ii. All analytic patients in the hospital's cancer registry database who have died since the last follow-up report; and
    b. Includes, as applicable:
        i. A change of patient address;
        ii. A summary of additional first course of treatment; and
        iii. The information in R9-4-403(A)(2)(s), (u), (v), and (w) and R9-4-403(B)(2)(gg).

B. The cancer registry or other designee of a hospital with a licensed capacity of fewer than 50 inpatient beds shall either report as specified in subsection (A), or shall at least once every six months:

1. Prepare and submit to the Department, in a format provided by the Department:
    a. For all individuals:
        i. Released by the hospital since the last report was prepared, and
        ii. Whose medical records include ICD Codes specified in a list provided to the hospital by the Department; and
    b. The following information for each individual:
        i. The individual's medical record number assigned by the hospital,
        ii. The individual's date of birth,
        iii. The individual's admission and discharge dates,
        iv. All applicable ICD Codes for the individual that are in the list in subsection (B)(1)(a)(ii), and
        v. Whether the ICD Code reflects the individual's principal or secondary diagnosis; and
2. Allow the Department to review the records listed in R9-4-405(A) to obtain the information specified in R9-4-403 about a patient.

C. If the designee of a clinic submitted 100 or more case reports to the Department in the previous

calendar year or expects to submit 100 or more case reports in the current calendar year, the designee of the clinic shall:

1. Submit to the Department a case report, prepared according to R9-4-403(A), for each patient who is not referred by the clinic to a hospital for the first course of treatment; and
2. Ensure that the case report in subsection (C)(1) is submitted in electronic format within 90 calendar days after:
   a. Initiation of treatment of the patient at the clinic; or
   b. Diagnosis of cancer in the patient, if the clinic did not provide treatment and did not refer to a hospital for the first course of treatment.

D. If the designee of a clinic submitted fewer than 100 case reports to the Department in the previous calendar year and expects to submit fewer than 100 case reports in the current calendar year, the designee of the clinic shall submit to the Department an electronic or paper case report, prepared according to R9-4-403(A), for each patient, within 30 calendar days after the date of diagnosis of cancer in the patient, if the clinic:

1. Diagnoses cancer in the patient, and
2. Does not refer the patient to a hospital for the first course of treatment.

E. A physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner who diagnoses cancer in or provides treatment for cancer for fewer than 50 patients per year shall submit an electronic or paper case report to the Department for each patient, within 30 calendar days after the date of diagnosis of cancer in the patient, if the physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner does not refer the patient to a hospital or clinic for the first course of treatment.

F. A clinic, physician, dentist, registered nurse practitioner, or doctor of naturopathic medicine that receives a letter from the Department, requesting any of the information specified in R9-4-403 about a patient, shall provide to the Department the requested information on the patient within 15 business days after the date of the request.

G. A clinic, physician, dentist, registered nurse practitioner, or doctor of naturopathic medicine that receives a letter from a hospital, requesting any of the information specified in R9-4-403 about a patient, shall provide to the hospital the requested information on the patient within 15 business days after the date of the request.

H. A pathology laboratory shall:

1. At least once every 90 calendar days, provide to the Department electronic copies of pathology reports of patients; and
2. Include in a pathology report the following information:

a. The patient's name, address, and telephone number;
b. The patient's date of birth;
c. The patient's gender, race, and ethnicity;
d. Clinical information about the patient, if available;
e. The type of tissue collected;
f. The procedure by which the tissue was collected;
g. The date the tissue was collected;
h. The code number assigned by the clinical laboratory to the tissue collected for pathological analysis;
i. The results of the pathological analysis of the tissue, including the pathologist's interpretation of the results;
j. The date of the results;
k. The name, practice name, address, and telephone number of the physician who ordered the pathological analysis of the tissue;
l. The name and address of the clinical laboratory that performed the pathological analysis of the tissue; and
m. The name and telephone number of the clinical laboratory director.

R9-4-405. Data Quality Assurance

A. To ensure completeness and accuracy of cancer reporting:

1. Upon notice from the Department of at least five business days, a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner required to report under R9-4-404 shall allow the Department to review any of the following records, as are applicable to the facility:
   a. A report meeting the requirements of R9-4-404(B)(1);
   b. Patient medical records;
   c. Medical records of individuals not diagnosed with cancer;
   d. Pathology reports;
   e. Cytology reports;
   f. Logs containing information about surgical procedures, as specified in A.A.C. R9-10-215(6) or A.A.C. R9-10-911(A); and
   g. Records other than those specified in subsections (A)(1)(a) through (f) that contain information about diagnostic evaluation, cancer-directed treatment, or other treatment provided to an individual by the hospital, clinic, physician, doctor of naturopathic medicine,

dentist, or registered nurse practitioner;

2. Within 14 calendar days after the Department's request, a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner required to report under R9-4-404 shall submit the following information about patients who were diagnosed with cancer or received treatment for cancer within the time period specified in the Department's request whose medical records include ICD Codes specified in a list provided by the Department:
   a. The individual's name and date of birth,
   b. The individual's medical record number,
   c. The individual's admission and discharge dates,
   d. All applicable codes for the individual that are in the list provided by the Department, and
   e. Whether the code reflects the individual's principal or secondary diagnosis; and
3. Within 14 calendar days after the Department's request, a hospital shall resubmit all of the information required in R9-4-403(B)(2) for patients first released from the hospital within the time period specified in the Department's request.

B. The Department shall consider a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner required to report under R9-4-404 as meeting the criteria in R9-4-404 if the hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner submits a case report to the Department for at least 97% of the patients for whom a case report is required under R9-4-404 during a calendar year.

C. The Department shall consider a hospital required to report under R9-4-404(A)(3) as meeting the criteria in R9-4-404(A)(3) if the hospital submits a follow-up report specified in R9-4-404(A)(3) to the Department once each calendar year for at least:

1. Eighty percent of all analytic patients from the hospital's reference date; and
2. Ninety percent of all analytic patients diagnosed within the last five years or from the hospital's reference date, whichever is shorter.

D. The Department shall return a case report not prepared according to R9-4-403 to the hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner that submitted the case report, identifying the revisions that are needed in the case report.

E. Upon receiving a case report returned under subsection (D), a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner shall submit the revised case report to the Department within 15 business days after the date the Department requests the revision.

F. Upon written request by the Department, a hospital shall:

1. Prepare a case report based on a simulated medical record provided by the Department for the purpose of demonstrating the variability with which data is reported, and

2. Submit the case report to the Department within 15 business days after the date of the request.

ARTICLE 5. BIRTH DEFECTS MONITORING PROGRAM

R9-4-501. Definitions

In this Article, unless otherwise specified:

1. "Birth defect" means an abnormality:
   a. Of body structure, function, or chemistry, or of chromosomal structure or composition;
   b. That is present at or before birth; and
   c. That may be diagnosed before or at birth, or later in life.
2. "Clinic" means:
   a. A person under contract or subcontract with the Arizona Health Care Cost Containment System to provide the services specified in 9 A.A.C. 22, Article 13;
   b. An outpatient treatment center, as defined in A.A.C. R9-10-101;
   c. An outpatient surgical center, as defined in A.A.C. R9-10-101; or
   d. A birth center, as defined in A.A.C. R9-13-201.
3. "Clinical evaluation" means an examination of the body of an individual and review of the individual's laboratory test results to determine the presence or absence of a medical condition that may be related to a birth defect.
4. "Conception" means the formation of an entity by the union of a human sperm and ovum, resulting in a pregnancy.
5. "Co-twin" means a sibling of a patient, who was born to the same mother as the patient and as a result of the same pregnancy as the patient.
6. "Date of first contact" means the day, month, and year a physician, clinic, or other person specified in R9-4-503(A) first began to provide medical services, nursing services, or health-related services to a patient or the patient's mother.
7. "Date of last contact" means the day, month, and year:
   a. Of a patient's death; or
   b. That a physician, clinic, or other person specified in R9-4-503(A) last clinically evaluated, diagnosed, or provided treatment to a patient or the patient's mother.
8. "Designee" means an individual assigned by the governing power of a hospital, high-risk perinatal practice, genetic testing facility, or prenatal diagnostic facility or by another individual acting on behalf of the governing power to gather information for or report to the Department, as specified in R9-4-502, R9-4-503, or R9-4-504.
9. "Estimated date of confinement" means an approximation of the date on which a woman will give birth, based on the clinical evaluation of the woman.

10. “Estimated gestational age” means an approximation of the duration of a pregnancy, based on the date of the last menstrual period of the pregnant woman.
11. “Facility” means a building and associated personnel and equipment that perform or are used in connection with performing a particular service or activity.
12. “Family medical history” means an account of past and present illnesses or diseases experienced by individuals who are biologically related to a patient.
13. “Genetic testing facility” means an organization, institution, corporation, partnership, business, or entity that conducts tests to detect, analyze, or diagnose a disease or other abnormal state present at birth or before birth, as a result of an alteration of DNA, that may impair normal physiological functioning in an individual, including an evaluation to determine the structure of an individual’s chromosomes.
14. “Governing power” means the individual, agency, group, or corporation appointed, elected, or otherwise designated, in which the ultimate responsibility and authority for the conduct of a hospital, high-risk perinatal practice, genetic testing facility, or prenatal diagnostic facility are vested.
15. “High-risk perinatal practice” means a clinic or physician that routinely provides medical services prenatally to a patient or a patient’s mother with perinatal risk factors to prevent, clinically evaluate, diagnose, or treat the patient for a possible birth defect.
16. “Log” means a chronological list of individuals for or on whom medical services, nursing services, or health-related services were provided by a designated unit of a hospital or by another person specified in R9-4-503(A).
17. “Medical condition” means a disease, injury, other abnormal physiological state, or pregnancy.
18. “Medical record number” means a unique number assigned by a hospital, clinic, physician, or registered nurse practitioner to an individual for identification purposes.
19. “Midwife” means an individual licensed under A.R.S. Title 36, Chapter 6, Article 7, or certified under A.R.S. Title 32, Chapter 15.
20. “Mother” means the woman:
    a. Who is pregnant with or gives birth to a patient, or
    b. From whose fertilized egg a patient develops.
21. “Multiple gestation” means a pregnancy in which a patient is not the only fetus carried in a mother’s womb.
22. “Patient” means an individual, regardless of current age:
    a. Who, from conception to one year of age, was clinically evaluated for a possible birth defect or a medical condition that may be related to a birth defect:

i. By a physician, midwife, registered nurse practitioner, or physician assistant; or
ii. At a hospital or clinic;

b. Whose mother was clinically evaluated during her pregnancy with the individual:
i. For a medical condition that may be related to a possible birth defect, and
ii. By an individual or facility specified in subsection (22)(a);

c. Who, from conception to one year of age, was tested by a genetic testing facility or other clinical laboratory;

d. Whose mother was tested during her pregnancy with the individual by a:
i. Genetic testing facility or other clinical laboratory, or
ii. Prenatal diagnostic facility;

e. Who, from conception to one year of age, was provided treatment or whose mother during her pregnancy with the individual was provided treatment by a hospital, clinic, physician, registered nurse practitioner, or other person specified in R9-4-503(A) for a medical condition that may be related to a possible birth defect; or

f. Who has received a diagnosis of having a medical condition that may be related to a birth defect.

23. "Perinatal risk factor" means a situation or circumstance that may increase the chance of an individual being born with a birth defect, such as:
a. A family medical history of birth defects or other medical conditions;
b. The exposure of the individual or the individual's mother or biological father to radiation, medicines, chemicals, or diseases before the individual's birth; or
c. An abnormal result of a test performed for the individual or the individual's mother by a prenatal diagnostic facility or clinical laboratory, including a genetic testing facility.

24. "Prenatal diagnostic facility" means an organization, institution, corporation, partnership, business, or entity that conducts diagnostic ultrasound or other medical procedures that may diagnose a birth defect in a human being.

25. "Principal diagnosis" means the primary reason for which an individual is:
a. Admitted to a hospital;
b. Treated by a hospital, clinic, midwife, physician, registered nurse practitioner, or physician assistant; or
c. Tested by a genetic testing facility or prenatal diagnostic facility.

26. "Procedure" means a set of activities performed on a patient or the mother of a patient that:
a. Are invasive;
b. Are intended to diagnose or treat a disease, illness, or injury;

c. Involve a risk to the patient or patient's mother from the activities themselves or from anesthesia; and

d. Require the individual performing the set of activities to be trained in the set of activities.

27. "Refer" means to provide direction to an individual or the individual's parent or guardian to obtain medical services or a test for assessment, diagnosis, or treatment of a birth defect or other medical condition.
28. "Routinely" means occurring in the regular or customary course of business.
29. "Secondary diagnosis" means all other diagnoses that may be related to a birth defect for an individual besides the principal diagnosis.
30. "Singleton gestation" means a pregnancy in which a patient is the only fetus carried in a mother's womb.
31. "Support services" means activities, not related to the diagnosis or treatment of a birth defect, intended to maintain or improve the physical, mental, or psychosocial capabilities of a patient or those individuals biologically or legally related to the patient.
32. "Surgical procedure" means making an incision into an individual's body for the:
    a. Correction of a deformity or defect,
    b. Repair of an injury,
    c. Excision of a part of the individual's body, or
    d. Diagnosis, amelioration, or cure of a disease.
33. "Test" means:
    a. An analysis performed on body fluid, tissue, or excretion by a genetic testing facility or other clinical laboratory to evaluate for the presence or absence of a disease; or
    b. A procedure performed on the body of a patient or the patient's mother that may be used to evaluate for the presence or absence of a birth defect.
34. "Transfer" means for a hospital to discharge a patient or the patient's mother and send the patient or the patient's mother to another hospital for inpatient medical services without the intent that the patient or the patient's mother will return to the sending hospital.
35. "Treatment" means the same as in A.A.C. R9-10-101.
36. "Unit" means an area of a hospital designated to provide an organized service, as defined in A.A.C. R9-10-201.

R9-4-502. Reporting Sources; Information Submitted to the Department

A. The designee of a hospital shall:

1. Upon the request of the Department and no more often than once per month, prepare a report, in a

format specified by the Department, identifying all individuals:

a. Who are patients or the mothers of patients; and

b. Whose:

i. Discharge date is within the time period for which the report is being prepared, as specified in subsection (A)(2)(d); and

ii. Medical records include for the principal diagnosis, a secondary diagnosis, or a procedure performed on the individual, an ICD Code for a diagnosis or a procedure code specified in a list provided to the hospital by the Department;

2. Include the following information in the report specified in subsection (A)(1):

a. The name, address, and telephone number of the hospital, or the identification number assigned by the Department to the hospital;

b. The name, telephone number, and e-mail address of the designee of the hospital;

c. The date the report was completed;

d. The time period for which the report is being prepared; and

e. For each patient or the mother of the patient:

i. The patient's or mother's medical record number;

ii. The name of the patient or patient's mother, if available, and, if applicable, any other name by which the patient or patient's mother is known;

iii. The patient's gender and date of birth, if applicable;

iv. The admission and discharge dates;

v. The principal and secondary diagnoses or the ICD Codes for the principal and secondary diagnoses for the patient or patient's mother; and

vi. The codes for procedures provided to the patient or patient's mother; and

3. Submit the report specified in subsection (A)(1) to the Department, in a format specified by the Department, within 30 calendar days after the Department's request.

B. The designee of a prenatal diagnostic facility, high-risk perinatal practice, or clinic shall:

1. Upon the request of the Department and no more often than once per month, prepare a report, in a format specified by the Department, identifying all individuals:

a. For whom a specified test was conducted, with test results indicating a diagnosis in a list provided by the Department; or

b. Whose medical records include a principal diagnosis or secondary diagnosis specified in a list provided by the Department;

2. Include the following information in the report specified in subsection (B)(1):

a. Either:

i. The name, address, and telephone number of the prenatal diagnostic facility, high-risk perinatal practice, or clinic; or

ii. The identification number assigned by the Department to the prenatal diagnostic facility, high-risk perinatal practice, or clinic;

b. The name, telephone number, and e-mail address of the designee of the prenatal diagnostic facility, high-risk perinatal practice, or clinic;

c. The date the report was completed;

d. The time period for which the report is being prepared;

e. The mother's name, date of birth, and medical record number;

f. The estimated gestational age of the patient at the time of the test or diagnosis, as applicable;

g. The mother's estimated date of confinement;

h. The outcome of the pregnancy, if known;

i. The location and date of the patient's birth, if known;

j. The patient's gender, if known;

k. The principal diagnosis and secondary diagnoses for the patient or the patient's mother, as applicable; and

l. Information about the test leading to the diagnosis, including:

i. The type of test performed,

ii. The date the test was completed, and

iii. The results of the test; and

3. Submit the report specified in subsection (B)(1) to the Department, in a Department-provided format, within 30 calendar days after the Department's request.

C. The designee of a genetic testing facility shall:

1. Prepare a report, in a format specified by the Department, for all individuals:

a. Who are patients or the mothers of patients, and

b. For whom the genetic testing facility performed a test specified in a list provided by the Department;

2. Include the following information in the report specified in subsection (C)(1):

a. The name, address, and telephone number of the genetic testing facility, or the identification number assigned by the Department to the genetic testing facility;

b. The name, telephone number, and e-mail address of the designee of the genetic testing facility;

c. The date the report was completed;

d. The month for which the report is being prepared, if reporting according to subsection

(C)(3)(a); and

e. For each patient or mother of a patient:
   i. If the test was performed on the patient:
      (1) The patient's name, date of birth, and gender; and
      (2) The name of the patient's parent or guardian;
   ii. If the test was performed on the mother of the patient:
      (1) The mother's name and date of birth;
      (2) The estimated gestational age of the patient when the test was performed, if available; and
      (3) The mother's estimated date of confinement when the test was performed, if available;
   iii. The name of the physician, registered nurse practitioner, or physician assistant who ordered the test for the patient or the patient's mother; and
   iv. Information about the test, including:
      (1) The type of test performed on the patient or the patient's mother,
      (2) The date the test was completed, and
      (3) The results of the test; and

3. Submit to the Department the report specified in subsection (C)(1) and a copy of the test results within 30 calendar days after either:
   a. The end of the month during which the test was completed, or
   b. The date of the test.

R9-4-503. Review of Records; Information Collected

A. Upon notice from the Department of at least five business days, the following persons or facilities shall allow the Department access to the facility and the electronic or written records specified in subsection (B)(1) to collect the information specified in subsection (B)(2):

1. A hospital,
2. A clinic,
3. A physician,
4. A midwife,
5. A registered nurse practitioner,
6. A genetic testing facility,
7. A prenatal diagnostic facility,
8. A physician assistant,

9. A clinical laboratory, or
10. A medical examiner.

B. The Department may:

1. Review any of the following records in electronic or written format, as are applicable to the person or facility specified in subsection (A):
    a. Patient medical records;
    b. Medical records for the mother of a patient;
    c. Reports from:
        i. Physicians or other individuals who clinically evaluated, diagnosed, or treated a patient or the patient's mother, including physical therapists, as defined in A.R.S. § 32-2001; occupational therapists, as defined in A.R.S. § 32-3401; podiatrists, as defined in A.R.S. § 32-801; and speech-language pathologists, licensed according A.R.S. Title 35, Chapter 17;
        ii. High-risk perinatal practices;
        iii. Prenatal diagnostic facilities;
        iv. Genetic testing facilities;
        v. Pathology laboratories; or
        vi. Other facilities or clinical laboratories that performed a test for a patient or the patient's mother;
    d. Logs and registers containing information about surgical procedures, as specified in A.A.C. R9-10-215(6) or A.A.C. R9-10-911(A);
    e. Other logs that may contain information about a patient or the mother of a patient with a birth defect, such as:
        i. Labor and delivery unit logs,
        ii. Nursery unit logs,
        iii. Pediatric unit logs,
        iv. Intensive care unit logs,
        v. Autopsy logs, and
        vi. Ultrasound logs;
    f. Autopsy reports; and
    g. Records other than those specified in subsections (B)(1)(a) through (f) that contain information about or may lead to information about:
        i. A patient,
        ii. The patient's mother, or

iii. The patient's biological sibling; and

2. Collect the following information from a person or facility specified in subsection (A), as applicable to a patient or the mother of a patient:
   a. The name, address, and telephone number of the person or facility, or the identification number assigned by the Department to the person or facility;
   b. The date of first contact and the date of last contact;
   c. The date the patient was admitted to a hospital;
   d. The date the patient was discharged from a hospital;
   e. The dates the mother of the patient was admitted to and discharged from a hospital for:
      i. The birth of the patient, or
      ii. Treatment related to a possible birth defect in the patient;
   f. The name and address of the hospital or other location in which the patient was born;
   g. The name and address of a hospital in which the patient or the mother of the patient was admitted for treatment related to a possible birth defect in the patient;
   h. The specific unit of a hospital that provided medical services to the patient or the patient's mother;
   i. The medical record number of the patient or the patient's mother;
   j. The patient's name and any other name by which the patient is known;
   k. The names, addresses, and dates of birth of the patient's parents;
   l. The name, address and telephone number of the patient's guardian, if a parent of the patient does not have physical custody of the patient;
   m. The patient's date of birth and hour of birth;
   n. The estimated date of confinement for the pregnancy resulting in the patient's birth;
   o. The estimated gestational age, length, weight, and head circumference of the patient at birth;
   p. The patient's gender, race, and ethnicity;
   q. The race and ethnicity of the patient's biological mother and father;
   r. The address of the patient's mother at the time of the patient's birth;
   s. The address and telephone number of the patient at the date of last contact;
   t. The county in which the patient was born;
   u. The name of each physician, registered nurse practitioner, physician assistant, or other person that clinically evaluated, diagnosed, ordered a test for, or treated the patient or the patient's mother;
   v. The names of any facility from which or to which the patient or the patient's mother was transferred or referred;

w. Whether the patient was referred for or approved to receive services under 9 A.A.C. 22, Article 13, and, if so, the date of referral or approval;
x. Whether the patient is receiving any medical services, nursing services, health-related services, or other services to support the patient or the patient's parent related to a birth defect, other than services under 9 A.A.C. 22, Article 13, and, if so, the name of the person providing the services and the date the provision of the services began;
y. The name of the insurance company, if applicable, that:
    i. Paid for the birth of the patient, and
    ii. Is currently covering medical expenses for the patient or the patient's mother;
z. Any perinatal risk factors documented in:
    i. The patient's medical record,
    ii. The patient's mother's medical record, or
    iii. The patient's family medical history;
aa. Whether any tests were performed on the patient or the patient's mother by a genetic testing facility and, if so:
    i. The types of tests performed,
    ii. The test dates,
    iii. The test results,
    iv. The age or estimated gestational age of the patient at the time of each test,
    v. The estimated date of confinement of the patient's mother at the time of each test,
    vi. The name of the genetic testing facility that performed each test, and
    vii. The names of the individuals who interpreted the test results;
bb. Whether any tests were performed on the patient or the patient's mother by a prenatal diagnostic facility and, if so:
    i. The types of tests performed,
    ii. The test dates,
    iii. The test results,
    iv. The estimated gestational age of the patient at the time of each test,
    v. The estimated date of confinement of the patient's mother at the time of each test,
    vi. The name of the prenatal diagnostic facility that performed each test, and
    vii. The names of the individuals who interpreted the test results;
cc. Whether any other types of tests were performed on the patient or the patient's mother that may enable the diagnosis of a birth defect and, if so:
    i. The types of tests performed,

ii. The test dates,
iii. The test results,
iv. The age or estimated gestational age of the patient at the time of each test,
v. The estimated date of confinement of the patient's mother at the time of each test,
vi. The names of the facilities that performed the tests, and
vii. The names of the individuals who interpreted the test results;

dd. Whether any surgical procedures associated with a birth defect were performed on the patient or the patient's mother and, if so:
i. The types of surgical procedures performed,
ii. The dates of the surgical procedures,
iii. The results of the surgical procedures,
iv. The ages or estimated gestational ages of the patient at the time of the surgical procedures,
v. The estimated date of confinement of the patient's mother at the times of the surgical procedures,
vi. The names of the facilities at which the surgical procedures were performed, and
vii. The names of the individuals who performed the surgical procedures;

ee. For each diagnosis made for the patient or the patient's mother:
i. The diagnosis,
ii. Whether the diagnosis is a principal or secondary diagnosis,
iii. The facility at which the diagnosis was made,
iv. The date on which the diagnosis was made, and
v. The name of the individual who made the diagnosis;

ff. The number of times the patient's mother has been pregnant;

gg. The number of times a pregnancy of the patient's mother has lasted:
i. More than 37 weeks,
ii. Between 20 and 37 weeks, and
iii. Less than 20 weeks;

hh. The number of children who were born as a result of the patient's mother's pregnancies, and whether the children were born alive or dead;

ii. Whether the patient is from a singleton or multiple gestation, and, if from a multiple gestation, whether a co-twin of the patient:
i. Is identical or fraternal;
ii. Is alive, and, if not alive, the co-twin's date of death; and

iii. Has:

(1) The same birth defect as the patient,

(2) A different birth defect from that of the patient, or

(3) No birth defect;

jj. If the patient is being adopted or living with a guardian rather than a parent;

kk. If the patient is being adopted, the name, address, and telephone number of the individual who will adopt the patient;

ll. The date of last contact; and

mm. If the patient has died:

i. The patient's date and county of death,

ii. The facility in which the patient's death occurred, and

iii. Whether an autopsy was performed on the patient.

R9-4-504. Data Quality Assurance and Follow-up

A. The Department may request a hospital, clinic, high-risk perinatal practice, genetic testing facility, or prenatal diagnostic facility to revise a report:

1. That was submitted to the Department by the designee of the hospital, clinic, high-risk perinatal practice, genetic testing facility, or prenatal diagnostic facility under R9-4-502;
2. That was not prepared according to R9-4-502; and
3. By identifying the revisions that are needed in the report.

B. If a person receives a request from the Department for revision of a report under subsection (A), the person shall return a revised report, containing the revisions requested by the Department, to the Department within 15 business days after the date of the Department's request, or by a date agreed to by the person and the Department.

C. The Department may discuss the information submitted to the Department as specified in R9-4-502 or collected as specified in R9-4-503(B)(2) with:

1. Any of the entities specified in R9-4-503(A) to obtain additional information about a patient's diagnosis or treatment;
2. The Arizona Early Intervention Program, according to A.R.S. § 36-133(E); and
3. The parent or guardian of a patient, as allowed by A.R.S. § 36-133(E).

Statutory Authority for Rules in 9 A.A.C. 4

36-133. Chronic disease surveillance system; confidentiality; immunity; violation; classification

A. A central statewide chronic disease surveillance system is established in the department. Diseases in the surveillance system shall include cancer, birth defects and other chronic diseases required by the director to be reported to the department.

B. The department, in establishing the surveillance system, shall:

1. Provide a chronic disease information system.

2. Provide a mechanism for patient follow-up.

3. Promote and assist hospital cancer registries.

4. Improve the quality of information gathered relating to the detection, diagnosis and treatment of patients with cancer, birth defects and other diseases included in the surveillance system.

5. Monitor the incidence patterns of diseases included in the surveillance system.

6. Pursuant to rules adopted by the director, establish procedures for reporting diseases included in the surveillance system.

7. Identify population subgroups at high risk for cancer, birth defects and other diseases included in the surveillance system.

8. Identify regions of this state that need intervention programs or epidemiological research, detection and prevention.

9. Establish a data management system to perform various studies, including epidemiological studies, and to provide biostatistic and epidemiologic information to the medical community relating to diseases in the surveillance system.

C. A person who provides a case report to the surveillance system or who uses case information from the system authorized pursuant to this section is not subject to civil liability with respect to providing the case report or accessing information in the system.

D. The department may authorize other persons and organizations to use surveillance data:

1. To study the sources and causes of cancer, birth defects and other chronic diseases.

2. To evaluate the cost, quality, efficacy and appropriateness of diagnostic, therapeutic, rehabilitative and preventive services and programs related to cancer, birth defects and other chronic diseases.

E. The department of health services and the Arizona early intervention program in the department of economic security may use surveillance data to notify the families of children with birth defects regarding services that are available to them and provide these families with information about organizations that provide services to these children and their families.

F. Information collected on individuals by the surveillance system that can identify an individual is confidential and may be used only pursuant to this section. A person who discloses confidential information in violation of this section is guilty of a class 3 misdemeanor.

36-136. 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.

36-606. Pesticide illness; medical education; reports

A. The director of the department of health services shall develop and implement, in cooperation with rural health clinics, county health departments, state and local medical associations, poison control centers and other appropriate health care professionals, a system for reporting and preventing pesticide provoked illnesses. This program shall include:

1. Medical education programs to alert health care professionals to the symptoms, diagnosis, treatment and reporting of pesticide provoked illnesses.

2. A statewide reporting network, which shall:

(a) Require health care professionals and poison control centers to file incident reports of an illness that they reasonably believe, based on professional judgment, to be caused by or related to documented exposure to a pesticide.

(b) Catalogue and retrieve data regarding pesticide poisoning for use in worker and public health education programs to prevent pesticide poisoning.

B. The health care professional or poison control center required to file an incident report required pursuant to subsection A, paragraph 2, subdivision (a) of this section shall specifically indicate in the incident report the reason for believing that the illness is caused by or related to documented exposure to a pesticide and shall specify if the illness is caused by the documented exposure or is related to the documented exposure. All incident reports shall be filed with the director. The director shall provide to the Arizona department of agriculture all records, reports and information of all illnesses resulting from documented exposure to agriculture pesticides and structural pesticides.

36-1673. Reporting of lead levels

The director shall adopt rules and regulations establishing an effective procedure under which all physicians licensed pursuant to title 32, chapter 13, 14 or 17 shall report to the department all analyses of blood samples which indicate significant levels of lead. The regulations shall include such necessary criteria to determine those levels of significance which shall be reported.

36-1675. Administration

A. The director may adopt such rules and regulations as may be necessary and feasible to implement the purposes of this article.

B. No person shall interfere, obstruct or hinder an authorized representative of the department in the performance of his duty to administer the provisions of this article or the rules and regulations adopted thereunder.

C. The department, through its authorized representative, may take samples of materials for inspection and analysis, and hold for any item regulated by this article.

D. The department, through its authorized representative, may remove from availability for sale any regulated item when there is reasonable cause to believe a violation of this article or the rules and regulations adopted thereunder exists. When such regulated items are removed from availability for sale, they shall be so tagged, and such tags shall not be removed except by an authorized representative of the department, or as the department may direct, after satisfactory proof of compliance with all requirements of this article and such rules and regulations and a release for sale has been issued by the department through its authorized representative.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 9, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6, Article 4

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to ten (10) rules in Title 9, Chapter 6, Article 4 regarding the AIDS Drug Assistance Program (ADAP). Specifically, these rules implement A.R.S. § 36-136(I)(1) by establishing requirements related to ADAP. ADAP is a primarily federally-funded program, under the Ryan White CARE Act, through which the Department, as the payor of last resort, provides or assists eligible persons living with HIV, who are residents of Arizona, to obtain prescription drugs to prevent the occurrence of, or to alleviate disability and death from, HIV-related diseases, including AIDS.

In the prior 5YRR for these rules, which was approved by the Council in November 2019, the Department proposed to amend rules and submit a Notice of Final Rulemaking to the Council by December 2019. The Department completed its prior proposed course of action through a rulemaking, which substantially revised all but two rules, and became effective on December 3, 2019.

Proposed Action

In the current report, the Department is proposing to amend rule R9-6-403 to improve its clarity, conciseness, and understandability and rule R9-6-404 to improve its consistency with other rules and statutes and enforcement. The Department intends to submit a Notice of Final Expedited Rulemaking to the Council by March 2025 to implement these changes.

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

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

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

The rules provide a mechanism whereby individuals infected with HIV can obtain drugs they might not otherwise have access to, thus protecting their health, as well as helping to prevent the spread of infection; specifically, the rules establish requirements related to ADAP, a primarily federally-funded program through which the Department assists eligible HIV infected Arizona residents to obtain prescription drugs to prevent the occurrence of, or to alleviate disability and death from, HIV-related diseases. The ADAP rules in Article 4 were last revised in 2019, where all but two sections were substantially revised. The rules were revised to make them consistent with how ADAP was being implemented at the time: eligibility requirements, the timing of continuing enrollment, and the application process were updated. The Department had determined, at that time, that the economic cost of the rulemaking would be minimal—which was confirmed in this 5YRR.

Stakeholders are identified as the Department, case managers and the agencies employing them, HIV-care providers, the contract pharmacy, other pharmacies through which an individual may receive their drugs through ADAP, persons living with HIV applying for participation or enrolled in ADAP and their families, and the general public.

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

The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and ensure the best use of available funding. The Department also believes that they impose the least burden on regulated persons, consistent with requirements of the federal funders.

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

The Department indicates it received no written criticisms of the rules in the last five years.

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

The Department indicates the rules are generally clear, concise, and understandable. However, the Department indicates the supposition of all the rules in the Article is that an individual eligible for some sort of health insurance coverage would sign up for it, and that ADAP would be the payor of last resort to ensure adequate treatment of the individual. Therefore, the Department indicates rule R9-6-404 could be improved by clarifying the supposition and explicitly stating that an individual is not eligible for ADAP services if the individual has no health insurance coverage because the individual opted out of the health insurance coverage to which the individual is eligible.

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

The Department indicates the rules are generally consistent with other rules and statutes. However, the Department indicates, in rule R9-6-404, the cross-reference in subsection (A)(7) is incorrect and should refer to subsection (A)(1)(k)(iv).

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

The Department indicates the rules are effective in achieving their objectives

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

The Department indicates the rules are generally enforced as written. However, for rule R9-6-404 the Department indicates the letter of support in subsection (A)(9) is no longer required, so the subsection should be removed from the rule.

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

The Department indicates the rules are not more stringent than federal law. Specifically, the Department states ADAP is mostly funded through federal funds under the Ryan White Comprehensive AIDS Resources Emergency Act (Ryan White CARE Act), Pub.L. 101-381, 104 Stat. 576, enacted August 18, 1990, and follows requirements of the federal funding agency. The rules also impose the same requirements on participants as the applicable provisions of Medicare Part D (e.g. 20 CFR Part 418, Subpart D) for acquiring prescription drugs through plans under contract to Medicare. However, the rules in Article 4 are based on a state statute, rather than federal regulation.

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

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

11. Conclusion

This 5YRR from the Department relates to ten (10) rules in Title 9, Chapter 6, Article 4 regarding ADAP. Specifically, these rules implement A.R.S. § 36-136(I)(1) by establishing requirements related to ADAP. The Department is proposing to amend rule R9-6-403 to improve its clarity, conciseness, and understandability and rule R9-6-404 to improve its consistency with other rules and statutes and enforcement. The Department intends to submit a Notice of Final Expedited Rulemaking to the Council by March 2025 to implement these changes.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT OF HEALTH SERVICES

July 31, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 4, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 4, which is due on or before August 30, 2024.

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

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito Digitally signed by Stacie Gravito
Date: 2024.07.31 14:21:05 -07'00'

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services Communicable Diseases and Infestations

Article 4. AIDS Drug Assistance Program (ADAP)

July 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific Statutory Authority: A.R.S. § 36-136(I)(1)

2. The objective of each rule:

Rule	Objective
R9-6-401	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-6-402	To inform the public that ADAP is not an entitlement program and that ADAP ceases to provide drugs when ADAP funding is exhausted or terminated.
R9-6-403	To establish the eligibility requirements for ADAP participation.
R9-6-404	To establish what an individual is required to submit to the Department when applying for participation in ADAP and what information the primary care provider of an applicant is required to provide.
R9-6-405	To establish the process by which the Department will approve or deny ADAP participation to an applicant and under what circumstances an applicant may be granted provisional enrollment.
R9-6-406	To establish requirements for notifying the Department of a change in an enrolled individual's primary care provider or of circumstances that may affect the enrolled individual's eligibility to continue participation in ADAP.
R9-6-407	To establish requirements for an enrolled individual to continue participation in ADAP. To specify the Department's processes for determining eligibility for continuing enrollment in ADAP and for notifying an individual of the Department's decision.
R9-6-408	To establish the circumstances under which the Department may terminate an individual's participation in ADAP or approval of a restricted drug for the individual, and the process by which the Department will notify the individual of termination.
R9-6-409	To establish the process by which an individual enrolled in ADAP may receive drugs, including restricted drugs, through ADAP.
R9-6-410	To specify that the Department will comply with all applicable federal and state laws relating to protecting confidential information obtained by the Department while administering ADAP.

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

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

Rule	Explanation

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

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

Rule	Explanation
R9-6-404	The cross-reference in subsection (A)(7) is incorrect. It should refer to subsection (A)(1)(k)(iv).

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

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

Rule	Explanation
R9-6-404	The letter of support in subsection (A)(9) is no longer required, so the subsection should be removed from the rule.

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

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

Rule	Explanation
R9-6-403	The rule is clear, concise, and understandable. However, the supposition of all the rules in the Article is that an individual eligible for some sort of health insurance coverage would sign up for it, and that ADAP would be the payor of last resort to ensure adequate treatment of the individual. Therefore, the rule could be improved by clarifying the supposition and explicitly stating that an individual is not eligible for ADAP services if the individual has no health insurance coverage because the individual opted out of the health insurance coverage to which the individual is eligible.

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

If yes, please fill out the table below:

Rule	Explanation

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

A.R.S. § 36-136(I)(1) requires the Department to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases" and

prescribing measures "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 in 9 A.A.C. 6, Article 4, implement A.R.S. § 36-136(I)(1) by establishing requirements related to ADAP. ADAP is a primarily federally-funded program, under the Ryan White CARE Act, through which the Department, as the payor of last resort, provides or assists eligible persons living with HIV, who are residents of Arizona, to obtain prescription drugs to prevent the occurrence of, or to alleviate disability and death from, HIV-related diseases, including AIDS. The Department received $12,027,792 in federal funds for ADAP in fiscal year April 2022- March 2023 and $12,158,962 in federal funds for ADAP in fiscal year April 2023- March 2024. For each of these years, the Department received $750,000 from the state budget for ADAP. With these funds, the Department provided HIV-related prescription drugs for approximately 3,179 individuals during April 2022- March 2023 and 4,206 individuals during April 2023- March 2024.

The ADAP rules in Article 4 were last revised in a rulemaking that was effective in December 3, 2019, in which all but two Sections were substantially revised. An Economic, Small Business, and Consumer Impact Statement (EIS) is available for that rulemaking. Regarding the two unrevised rules, the unrevised R9-6-402 notifies the public that ADAP ceases to provide drugs when ADAP funding is exhausted or terminated. The unrevised R9-6-410 is also more informational than regulatory, specifying that the Department will comply with all applicable federal and state laws relating to protecting confidential information obtained by the Department while administering ADAP The Department believes that the economic impact of these rules has been and continues to be at most minimal. The 2007 EIS, which reflected changes in the rulemaking in which the two Sections were last revised, is also attached.

In the 2019 rulemaking, annual costs/revenues changes were designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. Those affected by the rulemaking were thought to include the Department, case managers and the agencies employing them, HIV-care providers, the contract pharmacy, other pharmacies through which an individual may receive their drugs through ADAP, persons living with HIV applying for participation or enrolled in ADAP and their families, and the general public. The rules were revised to make them consistent with how ADAP was being implemented at the time, in compliance with the requirements of the Ryan White CARE Act (RWCA), which provides the bulk of funding for ADAP. Eligibility requirements were being changed to include individuals who have health insurance coverage that is inadequate or unaffordable and to raise the income ceiling from 300% to 400% of the federal poverty level. In addition, the timing of continuing enrollment was being changed to conform to federal funding requirements. Since ADAP began collaborating more closely with other RWCA-funding recipients to improve continuity of services, a consolidated/universal application form was developed, which is used by an applicant for any RWCA-funded program and is accessible to other RWCA-funded programs. Use of this form requires an applicant to allow sharing of information among the programs, so the new rules included this requirement. Since ADAP was already complying with the RWCA requirements to retain funding, the changes provided a significant benefit to the Department through a reduction in confusion with

conflicting requirements. Making the rules consistent with current practice was also thought to provide a significant benefit to all other stakeholder groups. The Department anticipated that HIV-care providers and the vendor/contract pharmacy and other pharmacies might receive a significant benefit from the rule changes, as would case managers. Loosening eligibility criteria was expected to provide up to a substantial benefit to persons living with HIV and their families, while changing the time period for continuing enrollment was thought to impose at most a minimal burden on an enrolled individual. Since persons living with HIV who are in care and are able to obtain drugs to control HIV-infection and related diseases are healthier and more productive citizens, and are also less likely to infect others, the Department believed that by making it easier for persons living with HIV to enroll in ADAP, continue enrollment, and obtain drugs necessary to control HIV-infection and related diseases, the new rules might provide a significant benefit to the general public. The Department believes the economic impact is as estimated.

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

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

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

The 2019 five-year-review report stated a plan to amend the rules and submit a Notice of Final Rulemaking to the Council by December 2019. The rulemaking, which substantially revised all but two rules, was effective on December 3, 2019. Thus, the Department completed the course of action in the 2019 five-year-review report.

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

The rules provide a mechanism whereby individuals infected with HIV can obtain drugs they might not otherwise have access to, thus protecting their health, as well as helping to prevent the spread of infection. The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and ensure the best use of available funding. The Department also believes that they impose the least burden on regulated persons, consistent with requirements of the federal funders.

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)?

ADAP is mostly funded through federal funds under the Ryan White Comprehensive AIDS Resources Emergency Act (Ryan White CARE Act), Pub.L. 101-381, 104 Stat. 576, enacted August 18, 1990, and follows requirements of the federal funding agency. The rules also impose the same requirements on participants as the applicable provisions of Medicare Part D (*e.g.* 20 CFR Part 418, Subpart D) for acquiring prescription drugs

through plans under contract to Medicare. However, the rules in Article 4 are based on a state statute, rather than federal regulation.

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

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

14. Proposed course of action

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

The Department plans to make the changes described in paragraphs (4), (5), and (6) and submit a Notice of Final Expedited Rulemaking to the Council by March 2025.

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

R9-6-401. Definitions

In this Article, unless otherwise specified:

1. "ADAP" means the AIDS Drug Assistance Program.
2. "Adult" means an individual who is:
   a. Eighteen or more years old;
   b. Married; or
   c. Emancipated, as specified in A.R.S. Title 12, Chapter 15.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Annual household income" means the adjusted gross income of all adult individuals within a household, as would be reported on the federal income tax return for an individual in the household, modified to include:
   a. Federal taxable wages,
   b. Tips,
   c. Unemployment compensation,
   d. Social security income,
   e. Self-employment income,
   f. Social security disability income,
   g. Retirement or pension income,
   h. Capital gains,
   i. Investment income,
   j. Rental and royalty income,
   k. Excluded (untaxed) foreign income, and
   l. Alimony.
5. "Applicant" means an individual for whom a request for initial enrollment in ADAP is submitted to the Department, as specified in R9-6-404.
6. "Applying for a low-income subsidy" means submitting forms and supporting documentation to the Social Security Administration for determining eligibility for receiving a low-income subsidy.
7. "Calendar day" means any day of the week, including a Saturday, Sunday, or legal holiday.
8. "Case manager" means an individual who:
   a. Assesses the needs of a person living with HIV for:
      i. Medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401;
      ii. Services not related to the treatment of HIV infection, intended to maintain or improve

the physical, mental, or psychosocial capabilities of a person living with HIV or an individual in the person living with HIV's household;

iii. Housing; or

iv. Financial assistance;

b. If applicable, assists the person living with HIV with obtaining housing, financial assistance, or the services specified in subsection (8)(a)(i) and (ii);

c. Coordinates the interaction of the person living with HIV with individuals providing the services specified in subsection (8)(a)(i) and (ii); and

d. Monitors the interaction of the person living with HIV with individuals providing the services specified in subsection (8)(a)(i) and (ii) to:

i. Determine the effects of the activities of individuals providing the services specified in subsection (8)(a)(i) and (ii) on the needs of the person living with HIV, and

ii. Develop strategies to reduce unmet needs.

9. "CD4-T-lymphocyte count" means the number of a specific type of white blood cell in a cubic millimeter of blood.

10. "Contract pharmacy" means an entity that has a legally binding agreement with the Department to dispense drugs through ADAP to enrolled individuals.

11. "Current" means within the six months before the date on which an:

a. Individual submits the documents specified in R9-6-404 to the Department as an application for initial enrollment in ADAP, or

b. Enrolled individual submits to the Department the documents required in R9-6-407 for continuing enrollment.

12. "Date of application" means the month, day, and year that the Department receives the documents specified in R9-6-404 for enrollment in ADAP.

13. "Drug" means a chemical substance or a compound made by or derived from a plant or animal source that:

a. Has been determined by the U.S. Food and Drug Administration to be useful in the treatment of individuals with HIV infection, and

b. Is available through a prescription order.

14. "Formulary" means a list of drugs that are available to an individual through the individual's health insurance or ADAP.

15. "Health insurance enrollment period" means an interval of time during which an individual may apply for health insurance coverage, including:

a. An annual interval of time, and

b. Any additional intervals of time due to a change in the individual's situation or circumstances.

16. "HIV infection" means the same as in A.R.S. § 36-661.
17. "HIV-care provider" means the physician, registered nurse practitioner, or physician assistant who is treating an applicant or enrolled individual for HIV infection.
18. "Household" means an applicant or enrolled individual and any of the following individuals, as applicable, residing with the applicant or enrolled individual:
    a. The applicant's or enrolled individual's spouse;
    b. A dependent parent;
    c. A parent of a child who is:
        i. The applicant or enrolled individual, and
        ii. Claimed as a dependent by the parent;
    d. A dependent sibling or other relative;
    e. A dependent child of the applicant or enrolled individual, regardless of age and including an adopted child or a foster child;
    f. A non-dependent child or other relative if claimed or could be claimed as a dependent on the applicant's or enrolled individual's taxes; and
    g. A child who is a part of a shared custody agreement of the applicant or enrolled individual, in years for which the child is claimed or could be claimed as a dependent on the applicant's or enrolled individual's taxes.
19. "Job" means a position in which an individual is employed.
20. "Low-income subsidy" means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the annual household income for an individual.
21. "Medicare" means a federal health insurance program established under Title XVIII of the Social Security Act.
22. "Medicare drug plan" means insurance approved by Medicare to cover some of the costs of drugs for individuals enrolled in Medicare.
23. "Non-permanent housing" means a situation in which an individual is:
    a. Living in a place that is not designed to be a sleeping place for human beings or ordinarily used as a primary nighttime sleeping place for human beings, or
    b. Living in a shelter or other temporary living arrangement.
24. "Person living with HIV" means an individual who is HIV-infected.
25. "Physician" means an individual licensed as a:
    a. Doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or through a similar

licensing board in another state; or

b. Doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17, or through a similar licensing board in another state.

26. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25, or through a similar licensing board in another state.
27. "Poverty level" means the annual household income for a household of a particular size, as specified in the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services.
28. "Pre-approved enrollment status" means that an applicant may receive drugs or other services through ADAP on a temporary basis.
29. "Prescription order" means the same as in A.R.S. § 32-1901.
30. "Registered nurse practitioner" means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601 and is licensed under A.R.S. Title 32, Chapter 15, or through a similar licensing board in another state.
31. "Regular" means recurring at fixed intervals.
32. "Representative" means the:
    a. Guardian of an individual;
    b. Parent of an individual who is not an adult; or
    c. Person designated as an agent for an individual through a power of attorney, as specified in A.R.S. Title 14, Chapter 5, Article 5.
33. "Resident" means an individual who has a place of habitation in Arizona and is living in Arizona.
34. "Self-employed" means receiving money as a direct result of the work performed by an individual rather than from wages or a salary paid to the individual.
35. "Valid" means still in effect or having legal force.
36. "Viral load" means the amount of HIV circulating in the body of an individual.

R9-6-402. Limitations and Termination of Program

ADAP ceases to provide drugs when available funding is exhausted or terminated. ADAP is not an entitlement program and does not create a right to assistance absent available funding.

R9-6-403. Eligibility Requirements

An individual is eligible to enroll in ADAP if the individual:

1. Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;

2. Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(8);
3. Has an annual household income that is less than or equal to 400% of the poverty level; and
4. Satisfies one of the following:
    a. Has no health insurance coverage;
    b. Has inadequate health insurance coverage, which may include Medicare or an AHCCCS health plan, limiting the ability of the individual to obtain drugs, such as health insurance coverage that:
        i. Does not cover drugs,
        ii. Does not include on its formulary at least one of the drugs prescribed for the individual, or
        iii. Requires the use of specific pharmacies or higher co-payments for obtaining a drug;
    c. Has health insurance that is unaffordable because premiums exceed 9.5% of the applicant's annual household income;
    d. Is an American Indian or Alaska Native who:
        i. Is eligible for, but chooses not to use, the Indian Health Service or a clinic operated by a sovereign tribal nation to receive drugs; and
        ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c); or
    e. Is an individual who has served in the United States Armed Forces and who:
        i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
        ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c).

R9-6-404. Initial Application Process

A. An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following application packet:

1. An application in a Department-provided format, completed by the applicant or the applicant's representative, containing:
    a. The applicant's name, date of birth, and gender;
    b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
    c. If the applicant is in non-permanent housing, the address of a person that has agreed to receive written communications for the applicant;

d. If applicable, the address in Arizona to which the applicant would want drugs to be shipped;
e. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
f. Either:
    i. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant, or
    ii. An email address for the applicant;
g. The number of individuals in the applicant's household that can be claimed on the applicant's income taxes and the names and ages of the individuals;
h. The names of individuals, other than the persons specified in subsection (A)(1)(s)(v), with whom the applicant authorizes the Department to speak about the applicant's enrollment in ADAP;
i. The applicant's annual household income;
j. The applicant's race and ethnicity;
k. Whether the applicant or an adult in the applicant's household:
    i. Is employed;
    ii. Is self-employed;
    iii. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(k)(i) or (ii) and, if so, an identification of the source of the monetary payments; or
    iv. Is using a source not specified in subsections (A)(1)(k)(i) through (iii) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and if so, an identification of the source;
l. Whether the applicant is receiving health insurance coverage from AHCCCS and:
    i. If so, the name of the AHCCCS health plan and the date enrolled; and
    ii. If the applicant's eligibility determination for AHCCCS is pending, the date the application for AHCCCS was submitted;
m. Whether the applicant is eligible for Medicare health insurance coverage and, if not, the date on which the applicant will be eligible for Medicare health insurance coverage;
n. If the applicant is eligible for Medicare health insurance coverage, whether:
    i. The applicant, or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy; and
    ii. Either:
        (1) The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; or

(2) The applicant is enrolled in a Medicare drug plan;

o. Whether the applicant or the applicant's spouse has or is eligible to enroll in health insurance coverage other than AHCCCS or Medicare that would pay for drugs on the ADAP formulary;

p. If the applicant or the applicant's spouse is eligible to enroll in health insurance coverage other than Medicare that would pay for drugs on the ADAP formulary but enrollment is closed, the date the next health insurance enrollment period begins;

q. Whether the applicant is eligible to receive benefits from:

i. The Indian Health Service or a clinic operated by a sovereign tribal nation, or

ii. The Veterans Health Administration;

r. Whether the applicant is living in non-permanent housing or is in another situation in which the applicant's financial records to verify annual household income, as specified in subsection (A)(6), are not available to the applicant;

s. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:

i. Understands that, if the annual household income of the applicant is at an amount that may make the applicant eligible for enrollment in AHCCCS, the applicant or the applicant's representative is required to submit to the Department documentation stating the applicant's status for enrollment in AHCCCS before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

ii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare, understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare and the annual household income of the applicant is less than 175% of the poverty level, understands that the applicant or the applicant's representative is required to submit to Department documentation of the applicant's status for a low-income subsidy before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iv. Except as provided in R9-6-405(E), if the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare, understands that the applicant or the applicant's representative is required to submit to the Department

information about the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c), before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

v. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:
   (1) AHCCCS, for the purpose of determining AHCCCS eligibility;
   (2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
   (3) The applicant's HIV-care provider or designee;
   (4) The contract pharmacy or a pharmacy at which the applicant or the applicant's representative may request a drug through ADAP, to assist with drug distribution;
   (5) Other providers of services for persons living with HIV that are funded through Ryan White;
   (6) Other providers of HIV-related services, as applicable to the applicant; and
   (7) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant or payment of prescription co-payment costs;

vi. Understands that the applicant or the applicant's representative is required to submit to the Department proof of the applicant's annual household income as part of the application; and

vii. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);

t. A statement by the applicant or the applicant's representative attesting that:
   i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information and documents provided to the Department in the application packet is accurate and complete;
   ii. The applicant meets the eligibility criteria specified in R9-6-403; and
   iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and

u. The dated signature of the applicant or the applicant's representative;

2. The information specified in subsection (B), completed by the applicant's HIV-care provider in a Department-provided format;

3. If the annual household income of the applicant is an amount that may make the applicant eligible for enrollment in AHCCCS, a copy of documentation from AHCCCS, dated within 60 calendar days before the date of application, stating the status of the applicant's eligibility for enrollment in AHCCCS;
4. If the applicant is eligible for Medicare, a copy of valid documentation stating:
    a. The applicant's enrollment in a Medicare drug plan; and
    b. If the applicant's annual household income is at or below 175% of the poverty level, the status of the applicant's eligibility for a low-income subsidy;
5. If the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare:
    a. Information about the health insurance coverage to enable the Department to determine whether the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c); and
    b. If the applicant has other health insurance coverage, documentation confirming the health insurance coverage;
6. Except as provided in subsection (C), proof of the applicant's annual household income, including the following items as applicable to the applicant's household:
    a. An income tax return submitted by the applicant for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
    b. If an income tax return in subsection (A)(6)(a) is not available, for each job held by an adult in the household:
        i. Paycheck stubs from within 60 calendar days before the date of application, or
        ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;
    c. If an income tax return in subsection (A)(6)(a) is not available, from each self-employed adult in the household, documentation of the net income from self-employment, such as:
        i. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the household;
        ii. A profit and loss statement for the self-employed adult's business, covering a period ending no earlier than three months before the date of application; or
        iii. Bank statements from the self-employed adult's checking and savings accounts, covering a period ending no earlier than three months before the date of application; and
    d. Documentation showing the amount and source of any regular monetary payments received by an adult in the household from sources other than those specified in subsection (A)(6)(a)

through subsection (A)(6)(c);

7. If the applicant or the applicant's representative has stated according to subsection (A)(1)(k)(v) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(6), the following, in a Department-provided format, completed and signed within 30 calendar days before the date of application, containing:
    a. Information completed by the applicant or the applicant's representative stating whether:
        i. An adult in the applicant's household receives money from intermittent work performed by the adult in the household for which no paycheck stub is received and, if so, the average monthly earnings, and the adult's occupation;
        ii. The applicant is living in non-permanent housing;
        iii. The applicant is receiving assistance from another individual; and
        iv. The applicant has another source of assistance for obtaining food, water, housing, and clothing, and, if so, an identification of the source;
    b. A statement by the applicant or the applicant's representative attesting that, to the best of the knowledge and belief of the applicant or the applicant's representative, the information submitted under subsection (A)(7)(a) is accurate and complete; and
    c. The dated signature of the applicant or the applicant's representative;
8. Proof that the applicant is a resident of Arizona that includes:
    a. One of the following that shows the Arizona residential address specified according to subsection (A)(1)(b) and the name of the applicant or an adult in the applicant's household:
        i. Documentation issued by a governmental entity related to the applicant's eligibility for benefits, dated within 60 calendar days before the date of application;
        ii. Valid documentation from the Social Security Administration or the Department of Veterans Affairs related to the applicant's eligibility for benefits;
        iii. A property tax statement for the most recent tax year issued by a governmental entity;
        iv. A homeowners' association assessment or fee statement, dated within 60 calendar days before the date of application;
        v. A valid lease agreement;
        vi. A mortgage statement for the most recent tax year;
        vii. A letter issued by an entity providing non-permanent housing to the applicant, dated within 30 calendar days before the date of application;
        viii. Any document or mail dated within 60 calendar days before the date of application and received by the applicant, including a utility bill, check stub, or statement of direct deposit issued by an employer, a bank or credit union statement, a credit card statement, a

mobile telephone company billing statement, a billing statement or receipt from an HIV-care provider's office, or a document from an insurance company;

ix. A non-expired Arizona driver license issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;

x. A non-expired Arizona vehicle registration issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;

xi. A non-expired Arizona identification card issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months; or

xii. A tribal enrollment card or other type of tribal identification; or

b. If the applicant is unable to produce documentation that satisfies subsection (A)(8)(a), one of the following that includes the name of the applicant or an adult in the applicant's household and is dated within 30 calendar days before the date of application:

i. A written statement issued by the applicant's case manager verifying that the applicant is living in non-permanent housing and a resident of Arizona;

ii. A written statement issued by the applicant's case manager indicating that the case manager has conducted a home visit with the applicant at the Arizona residential address specified according to subsection (A)(1)(b); or

iii. A written statement issued by the applicant's HIV-care provider, verifying that the applicant is a resident of Arizona; and

9. If the applicant or the applicant's representative has stated according to subsection (A)(7) that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative.

B. The HIV-care provider of an applicant for initial enrollment in ADAP shall provide:

1. The following information for the applicant in a Department-provided format:
   a. The applicant's name;
   b. The HIV-care provider's name, business address, telephone number, email address, fax number, and professional license number;
   c. A statement that the applicant has been diagnosed with HIV infection;
   d. A list of each drug prescribed for the applicant by the HIV-care provider;
   e. A statement by the HIV-care provider attesting that, to the best of the HIV-care provider's knowledge and belief, the information provided to the Department as specified in subsection (B) is accurate and complete; and
   f. The dated signature of the HIV-care provider;
2. Documentation confirming HIV-infection of the applicant; and

3. A copy of the most recent laboratory report of a test for viral load and, if available, CD4-T-lymphocyte count conducted for the applicant.

C. If an applicant or the applicant's representative stated in subsection (A)(1)(r) that the applicant is in a situation in which the applicant's financial records to verify annual household income, as required in subsection (A)(6), are not available to the applicant, the applicant or the applicant's representative may submit to the Department a statement describing the applicant's situation and provide whatever documentation the applicant has available to demonstrate the applicant's annual household income.

R9-6-405. Enrollment Process; Pre-approved Enrollment Status

A. The Department shall:

1. Review the documents submitted by an applicant as required in R9-6-404(A);
2. Determine whether the applicant is eligible under R9-6-403;
3. Grant or deny enrollment based on applicant eligibility, the date of application, and the availability of funds; and
4. Notify the applicant or the applicant's representative of the Department's decision within five working days after receiving the documents specified in R9-6-404(A).

B. An applicant or the applicant's representative shall execute any consent forms or releases of information necessary for the Department to verify eligibility.

C. The Department shall send an applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03, if:

1. The applicant does not qualify for enrollment in ADAP, based on the documentation provided to establish eligibility;
2. The documentation submitted to the Department under R9-6-404 is found to contain false information; or
3. The Department does not have funds available to enroll the applicant in ADAP.

D. The Department shall grant pre-approved enrollment status in ADAP to an applicant, lasting until the end of the month after the month in which an applicant applied for ADAP, if:

1. The Department determines that the applicant meets the requirement in R9-6-403(1);
2. The applicant, whose annual household income is an amount that may make the applicant eligible for enrollment in AHCCCS, or the applicant's representative attests in writing that the applicant has applied for AHCCCS enrollment but is unable to provide documentation that states the status of the applicant's enrollment in AHCCCS;
3. Except as provided in subsection (E), the applicant, who is eligible for Medicare or other health insurance coverage, or the applicant's representative attests in writing that the applicant has

applied for, but is unable to provide documentation of, enrollment in Medicare and a Medicare drug plan or in other health insurance coverage, as applicable; and

4. The applicant or the applicant's representative attests in writing that the applicant or the applicant's representative will provide, before the end of the period during which the applicant has pre-approved enrollment status, a missing component of:
   a. Proof of the applicant's annual household income, according to R9-6-404(A)(6) or (7); or
   b. Proof of residency, according to R9-6-404(A)(8).

E. The Department shall grant pre-approved enrollment status in ADAP, lasting until the end of the month after the month in which an applicant may apply for Medicare or other health insurance, if the applicant or the applicant's representative provides documentation that the applicant would be eligible for Medicare or other health insurance coverage during the next health insurance enrollment period, but that enrollment was closed on the date of application for ADAP.

F. The Department shall provide an applicant to whom the Department has granted pre-approved enrollment status in ADAP with the drugs on the ADAP formulary during the period during which the applicant has pre-approved enrollment status.

G. Except as specified in subsection (I), to continue ADAP enrollment beyond the period in subsection (D) or (E) during which the applicant has pre-approved enrollment status, an applicant or the applicant's representative shall provide to the Department, before the end of the period, documentation that establishes eligibility according to R9-6-403.

H. Except as specified in subsection (I), if an applicant with pre-approved enrollment status or the applicant's representative fails to provide documentation as required in subsection (G) to the Department before the end of the period during which the applicant has pre-approved enrollment status, the Department shall send the applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03.

I. The Department may grant an extension of pre-approved enrollment status to an applicant beyond the period in subsection (D) or (E) if the applicant or the applicant's representative provides a justification for needing more time to obtain the required documentation to verify eligibility because of missing:

1. Documentation of health insurance coverage;
2. Financial records to verify annual household income, specified in R9-6-404(A)(6);
3. Proof of residency, specified in R9-6-404(A)(8); or
4. Viral load test results on the laboratory report required in R9-6-404(B)(2).

J. Based on the information provided by an applicant about the applicant's health insurance coverage and except as provided in R9-6-409(F), the Department shall:

1. For an applicant with no health insurance coverage, provide a drug on the ADAP formulary through the contract pharmacy;
2. For an applicant with health insurance coverage that is inadequate, according to R9-6-403(4)(b), provide a drug on the ADAP formulary that is not covered by the applicant's health insurance, as documented according to R9-6-409(E), through the contract pharmacy; or
3. For an applicant with health insurance coverage that is unaffordable, according to R9-6-403(4)(c), provide a drug on the ADAP formulary with no copayment cost to the applicant when requesting the filling of a prescription for the drug or obtaining a refill of the drug through ADAP.

R9-6-406. Notification Requirements

A. An enrolled individual or the enrolled individual's representative shall notify the Department in writing or by telephone and comply with the applicable requirements specified in R9-6-407 within 30 calendar days after any of the following occurs:
1. The residential or mailing address or the telephone number of the enrolled individual changes from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
2. The enrolled individual adds or removes an individual with whom the Department may speak about the enrolled individual's ADAP enrollment from the list specified in R9-6-404(A)(1)(h);
3. The enrolled individual has:
   a. Lost health insurance coverage;
   b. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
   c. Been determined eligible for or obtained health insurance coverage, other than through AHCCCS, the Indian Health Service, the Veterans Health Administration, or the health insurance coverage previously used by the enrolled individual; or
   d. Been determined eligible for a low-income subsidy;
4. The enrolled individual's annual household income has changed; or
5. The enrolled individual establishes residency outside Arizona.

B. Within 30 calendar days after an enrolled individual loses health insurance coverage, the enrolled individual shall provide to the Department documentation stating the loss of health insurance coverage.

C. An enrolled individual's case manager shall notify the Department in writing or by telephone within 30 calendar days after the case manager learns that:
1. The residential or mailing address or the telephone number of the enrolled individual has changed from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
2. The enrolled individual:

a. Has been determined eligible for and enrolled to receive drug coverage through AHCCCS;
b. Obtained health insurance coverage other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
c. Has been determined eligible for a low-income subsidy;

3. The enrolled individual's annual household income has changed;
4. The enrolled individual has established residency outside Arizona; or
5. The enrolled individual has died.

R9-6-407. Continuing Enrollment

A. To continue enrollment in ADAP, an enrolled individual or the enrolled individual's representative shall:

1. When the enrolled individual's residential address changes, comply with subsection (B);
2. When the enrolled individual's annual household income changes, comply with subsection (C);
3. When the enrolled individual becomes eligible for Medicare or other health insurance coverage, comply with subsection (D);
4. Before the end of the month that is six months after the enrolled individual's month of birth, comply with subsection (E); and
5. Before the end of the enrolled individual's month of birth each year after an individual's initial enrollment, comply with subsection (F).

B. When an enrolled individual's residential address changes, the enrolled individual or the enrolled individual's representative shall submit to the Department:

1. The following information for the enrolled individual in a Department-provided format:
   a. The enrolled individual's name and date of birth;
   b. The new residential address and mailing address for the enrolled individual;
   c. If the enrolled individual is in non-permanent housing, the address of a person that has agreed to receive written communications for the enrolled individual; and
   d. If applicable, the address in Arizona to which the enrolled individual would want drugs to be shipped; and
2. Proof of Arizona residency, as specified in R9-6-404(A)(8), showing the new Arizona residential address specified in subsection (B)(1)(b).

C. When an enrolled individual's annual household income changes, the enrolled individual or the enrolled individual's representative shall:

1. Submit to the Department, within 30 calendar days after the change, documentation of the enrolled individual's annual household income, as specified in R9-6-404(A)(6) or (7); and

2. If the enrolled individual's annual household income has decreased to an amount that may make the individual eligible for enrollment in AHCCCS:
    a. Apply for enrollment in AHCCCS within 30 calendar days after the change in annual household income; and
    b. Submit to the Department, within 30 calendar days after the change, documentation that states the status of the enrolled individual's enrollment in AHCCCS.

D. When an enrolled individual becomes eligible for Medicare or other health insurance coverage, the enrolled individual or the enrolled individual's representative shall, within 30 calendar days after the enrolled individual becomes eligible for Medicare or other health insurance coverage:

1. If eligible for Medicare:
    a. Enroll in a Medicare drug plan; and
    b. If the enrolled individual's annual household income is at or below 175% of the poverty level, apply for a low-income subsidy; and
    c. Submit to the Department a copy of valid documentation stating:
        i. The enrolled individual's enrollment in a Medicare drug plan; and
        ii. If the enrolled individual's annual household income is at or below 175% of the poverty level, the status of the enrolled individual's eligibility for a low-income subsidy; and
2. If eligible for other health insurance coverage, submit to the Department information about the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c).

E. Before the end of the month that is six months after the enrolled individual's month of birth, the enrolled individual or the enrolled individual's representative shall:

1. Either:
    a. Submit to the Department an attestation, in a Department-provided format, that there have been no changes specified in subsection (A)(1), (2), or (3); or
    b. Comply with subsections (B), (C), and (D), as applicable; and
2. Obtain from the enrolled individual's HIV-care provider and submit to the Department a copy of the most recent laboratory report of a test for viral load, and, if available, CD4-T-lymphocyte count conducted for the applicant.

F. Before the end of an enrolled individual's month of birth each year, an enrolled individual or the enrolled individual's representative shall submit to the Department the application packet required in R9-6-404(A).

G. The Department shall:

1. Review information about an enrolled individual and determine eligibility for continuing

enrollment for the enrolled individual:

a. At the end of the enrolled individual's month of birth each year,
b. At the end of the month that is six months after the enrolled individual's month of birth each year,
c. When the Department receives information from the enrolled individual or the enrolled individual's representative under subsection (A), or
d. When the Department no longer has sufficient funds to provide continuing enrollment to all enrolled individuals;

2. Grant continuing enrollment to an enrolled individual, subject to the availability of funds, when:
   a. The enrolled individual or the enrolled individual's representative complies with subsection (A); and
   b. The Department determines that:
      i. The information in the documents submitted to the Department is accurate and complete, and
      ii. The enrolled individual is eligible under R9-6-403; and
3. Notify the enrolled individual or the enrolled individual's representative of the Department's decision within five working days after receipt of the documents required in subsection (A).

H. The Department may grant pre-approved enrollment status in ADAP, according to R9-6-405(D) or (E) and ending according to R9-6-405(G), to an enrolled individual who is missing documentation to establish eligibility under R9-6-403.

I. If the Department denies continuing enrollment to an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

R9-6-408. Termination from ADAP Services

A. The Department may terminate an enrolled individual's enrollment in ADAP if:

1. The Department learns that information submitted to the Department by the enrolled individual or the enrolled individual's representative under R9-6-404(A) or (C), R9-6-407(A), or R9-6-409(E) or (F) is inaccurate or incomplete;
2. The enrolled individual or the enrolled individual's representative does not request a refill of any drug through ADAP for a period of 90 calendar days; or
3. The enrolled individual or the enrolled individual's representative exhibits violent or threatening behavior to an employee of the Department, the contract pharmacy, or a pharmacy in which the enrolled individual or the enrolled individual's representative is filling a prescription for a drug or

requesting a refill of a drug through ADAP, as established by documentation such as a police report or a written document from the individual.

B. The Department may terminate approval of a drug approved under R9-6-409(E) or (F) for an enrolled individual if funding is no longer available to pay for the drug approved under R9-6-409(E) or (F).

C. The Department shall send to an enrolled individual or the enrolled individual's representative a written notice of termination setting forth the information required under A.R.S. § 41-1092.03 if the Department terminates:

1. The enrolled individual's enrollment in ADAP, or
2. Approval of a drug approved under R9-6-409(E) or (F) for the enrolled individual.

R9-6-409. Drug Prescription and Distribution Requirements

A. A HIV-care provider shall:

1. Issue a prescription order:
   a. For each drug on the ADAP formulary prescribed for an applicant or enrolled individual by the HIV-care provider; and
   b. For dispensing up to a 30-day supply of the drug; and
2. Provide a written prescription order to the applicant or enrolled individual or an electronic prescription order to the contract pharmacy or a pharmacy at which the applicant or enrolled individual may request a drug through ADAP.

B. The Department shall:

1. Except as specified in subsection (D), provide up to a 30-day supply of a drug to an enrolled individual; and
2. Ensure that a drug to be shipped to an enrolled individual is sent to the address in Arizona provided by the enrolled individual according to R9-6-404(A)(1)(d) or R9-6-407(B)(1)(d).

C. The Department may authorize replacement of a drug when:

1. The drug has been dispensed by the contract pharmacy or a pharmacy in which the enrolled individual or the enrolled individual's representative requested a refill of the drug through ADAP; and
2. The enrolled individual or the enrolled individual's representative claims the dispensed drug was lost, stolen, or damaged.

D. The Department may authorize an enrolled individual to receive more than a 30-day supply of a drug if the enrolled individual:

1. Submits to the Department:
   a. The enrolled individual's name and date of birth;

b. The number of days for which the enrolled individual is requesting a supply of the drug; and
c. A justification for receiving more than a 30-day supply of a drug, such as that:
i. The enrolled individual will be out of Arizona for more than 30 days without changing residency, or
ii. The enrolled individual's health insurance coverage will allow for more than a 30-day supply of a drug; and

2. Is expected to continue to be enrolled in ADAP:
a. Past the number of days for which the enrolled individual is requesting a supply of the drug, and
b. Without needing to submit information or documentation for continuing enrollment, according to R9-6-407(E) or (F), during the time period.

E. For an enrolled individual who has health insurance coverage, the HIV-care provider of the enrolled individual, independently or through the contract pharmacy, may request approval of a drug on the ADAP formulary that is not covered by the enrolled individual's health insurance by submitting to the Department documentation that:
1. The drug is not covered by the enrolled individual's health insurance,
2. A request for health insurance coverage of the drug as a medical exception has been denied by the enrolled individual's health insurance, and
3. An appeal of the denial of the request in subsection (E)(2) has been denied by the enrolled individual's health insurance.

F. The HIV-care provider of an enrolled individual, independently or through the contract pharmacy, may request approval of a drug that is not covered by health insurance and not on the ADAP formulary for the enrolled individual by:
1. Providing to the Department the following information, in a Department-provided format, for each requested drug:
a. The name, business address, email address, and telephone number of the HIV-care provider;
b. The date of the request;
c. The enrolled individual's name and date of birth;
d. The name and any other identifier of the drug;
e. The cost of the drug, if available;
f. The expected duration of the enrolled individual's use of the drug, including whether:
i. Use of the drug is expected to be a one-time occurrence, or
ii. The enrolled individual is expected to need multiple refills of the drug and the expected number of refills;

g. A justification for use of the drug that is not on the ADAP formulary by the enrolled individual;
h. Whether the Department should consider adding the drug to the ADAP formulary and the reasons for the recommendation; and
i. The dated signature of the HIV-care provider;

2. Issuing a valid prescription order for the drug that is not on the ADAP formulary to the contract pharmacy; and
3. Unless the enrolled individual has no health insurance coverage, submitting to the Department the documentation required in subsections (E)(1) through (3).

G. When the Department receives a request under subsection (E) or (F) for an enrolled individual, the Department shall:

1. Review the documents submitted according to subsection (E) or (F), as applicable;
2. Determine whether the information submitted to the Department:
   a. Is complete; and
   b. Substantiates that the enrolled individual's use of the drug is indicated; and
3. Notify, through the contract pharmacy, the following of the Department's decision within five working days after receiving the request:
   a. The enrolled individual or the enrolled individual's representative, and
   b. The enrolled individual's HIV-care provider.

H. If the Department denies a request under subsection (E) or (F) for an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

I. The Department shall only authorize the distribution of drugs that are included on the ADAP formulary or approved for an enrolled individual according to subsection (F).

R9-6-410. Confidentiality

In administering ADAP, the Department shall comply with all applicable federal and state laws relating to confidentiality of information.

Statutory Authority for Rules in 9 A.A.C. 6, Article 4

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 11, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7, Article 4

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers fifty-six (56) rules, one (1) Table, and five (5) Appendices in Title 9, Chapter 7, Article 4 related to Radiation Control. Arizona is an Agreement State negotiated between the United States,the U.S. Nuclear Regulatory Commission (NRC), and the Governor of Arizona in March of 1967 under A.R.S. § 30-656. In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. These rules address those statutory requirements.

The Department did not complete its prior proposed course of action as proposed in their 2019 5YRR, but received approval to initiate a rulemaking in May of 2023.

Proposed Action

The Department anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by December 2025.

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

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

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

The Department of Health Services (Department) states that for the rules for which an economic impact statement was available, the economic impact was as estimated. For the rules for which no economic impact statement was available, the Department believes the rules had no effect on agencies, businesses, or public, and did not increase the cost of regulatory compliance.

Stakeholders include the Department; medical professional and practitioners in dental, chiropractic, podiatry, veterinary, mammography, medical, and hospital facilities; industrial and legal facilities; and patients along with the general public.

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

The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and comply with requirements of the Agreement.

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

The Department has not received written criticism of the rules in the past five years.

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

The Department indicates that the rule language within the control of the Department is generally clear, concise, and understandable, however because much of the rule language within this Article is taken directly from federal statutes, the Department has limited power to make amendments. The following rules should be amended to make them more clear, concise, and understandable:

- Typographical, grammatical, and sentence structure should be amended
- R9-7-403: definitions should be updated
- R9-7-404, R9-7-405: subsections in these rules are duplicative
- R9-7-407: rule should be amended for clarity for the reader
- R9-7-408: cross references should be updated and sentence structure should be amended
- R9-7-412: duplicative content in this rule
- R9-7-413: information is duplicative and unclear
- R9-7-417: grammar should be updated
- R9-7-419: information is duplicative and unclear and citations should be updated
- R9-7-420: citations should be updated

- R9-7-421: terms should be defined and citations added
- R9-7-422: sections should be reorganized and reworded
- R9-7-424: rule should be combined with rule 423
- R9-7-425: terms should be defined and subsections should be added to citations
- R9-7-428: picture description should be amended
- R9-7-438: cross references should be updated
- R9-7-443: report requirements should be updated
- R9-7-444: wording and content should be amended
- R9-7-448: subsections are duplicative
- R9-7-450: wording should be updated
- Appendix C: citation should be updated

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

The Department indicates the rules are not consistent with other rules and statutes and would be more consistent with the following amendments:

- R9-7-416: citations should be updated
- R9-7-418: incorporation by reference citations should be updated
- R9-7-419: citations should be updated
- R9-7-425: incorporation by reference citations should be updated
- R9-7-430: citations should be updated
- R9-7-433: incorporation by reference citations should be updated
- R9-7-439: incorporation by reference citations should be updated
- R9-7-454: incorporation by reference citations should be updated
- Appendix B: citations should be updated

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

The Department indicates the rules are generally effective in achieving their objectives with the following exceptions:

- Wording from the NRC could be amended to increase effectiveness
- R9-7-401, R9-7-402: rules would be more effective if they were combined
- R9-7-404, R9-7-405: rules appear duplicative and would be more effective if they were combined
- R9-7-412: reporting methods should be updated
- R9-7-423: citations should be added
- R9-7-446: cross references should be updated
- R9-7-453: notification requirements should be added

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

The Department states the rules are not enforced as written and would be more enforceable with the following amendments:

- R9-7-412: subsection (C)(3) is not enforced
- R9-7-452: subsection (E)(2) is not enforced
- Appendix B: incorrected citation listed

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

The Department states the rules are not more stringent than corresponding federal law.

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

The Department indicates that the rules qualify for an exception under ARS § 41-1037 (A)(3), as the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers fifty-six rules, one Table, and five Appendices in Title 9, Chapter 7, Article 4. As indicated above, the rules could benefit from amendments, but the Department has limited power to amend federal statutory requirements. The Department intends to submit a Notice of Final Rulemaking to the Council by December 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

May 20, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 4, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 4, which is due on or before May 31, 2024.

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

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Digitally signed by Stacie Gravito
Date: 2024.05.20 14:20:37 -07'00'

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 4. Standards for Protection Against Ionizing Radiation

May 2024

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

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, and 30-673

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

Rule	Objective
R9-7-401	To provide the purpose of the rules in Article 4.
R9-7-402	To specify the persons affected by the rules in Article 4.
R9-7-403	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-404	To specify the use of Standard International (SI) units in records required by the Article and to require the distinction by type of the quantities recorded.
R9-7-405	To specify the types and forms of records required and requirements related to how quantities of radioactive materials are recorded.
R9-7-406	To require license or registration conditions that are more restrictive to remain in effect until amendment or renewal of the license or registration.
R9-7-407	To require the establishment, implementation, and review of a radiation protection program. To specify requirements for radiation control program records, including types of records, retention periods, and those exempt from the requirements for records.
R9-7-408	To specify the limits on occupational exposure of adults to radiation, except for planned special exposures under R9-7-413.
R9-7-409	To specify how a licensee or registrant calculates occupational dose limits through summation of external and internal doses.
R9-7-410	To specify how an external dose from airborne radioactive material is determined.
R9-7-411	To specify how an internal dose of radioactivity is determined for occupational workers.
R9-7-412	To specify requirements related to determining a worker's current and previously accumulated occupational dose of radioactivity, including obtaining and maintaining exposure records.
R9-7-413	To specify requirements for a planned special exposure of an occupational worker to a level of radioactivity above that specified in R9-7-408, including restrictions and recordkeeping.
R9-7-414	To establish the annual dose limits for minor occupational workers.
R9-7-415	To establish the annual occupational exposure limit for a declared pregnant woman.

R9-7-416	To specify the limits for exposure to radioactivity from a licensed or registered operation to a member of the public, an exception from requirements, requirements for monitoring, and recordkeeping requirements. To establish a method for a licensee, registrant, or applicant to apply to operate with a higher annual dose limit.
R9-7-417	To specify methods of testing sealed sources of radioactive material for leakage or contamination.
R9-7-418	To specify requirements for surveys, processing of personnel dosimeters, individual monitoring devices, calibration, and recordkeeping.
R9-7-419	To specify what personnel are required to have individual monitoring devices and the placement of the devices, and to require monitoring of exposure and recordkeeping.
R9-7-420	To specify requirements for controlling access to high radiation areas and exceptions for areas containing radioactive materials packaged for transport or patients in hospitals who had been administered radioactive materials as part of treatment.
R9-7-421	To specify requirements for controlling access to very-high radiation areas and for recordkeeping.
R9-7-422	To specify requirements for controlling access to areas containing sources of radiation in non-self-shielded irradiators.
R9-7-423	To require the use of process or engineering controls to reduce the concentration of radioactive material in air.
R9-7-424	To describe other mechanisms a licensee may use to limit the intake of radioactive material in air.
R9-7-425	To specify requirements related to the use of respiratory protection equipment to limit the intake of radioactive material from air.
R9-7-426	To require a licensee or registrant to securely store registered sources of radiation that are in unrestricted areas.
R9-7-427	To specify licensee or registrant requirements for sources of radiation that are in unrestricted areas and not in storage.
R9-7-428	To specify signage requirements for radiation areas.
R9-7-429	To specify posting requirements for radiation areas.
R9-7-430	To specify exceptions to posting requirements for radiation areas.
R9-7-431	To describe the labelling requirements for containers of radioactive materials.
R9-7-432	To specify exceptions to the labelling requirements for containers of radioactive materials.
R9-7-433	To specify procedures for receiving and opening packages containing radioactive materials.
R9-7-434	To specify general requirements for disposal of radioactive waste.
R9-7-435	To specify requirements for Department approval of proposed procedures for disposal of radioactive waste.
R9-7-436	To specify conditions under which licensed radioactive materials may be discharged into a sanitary sewer.
R9-7-437	To specify requirements for disposal of radioactive waste by incineration.
R9-7-438	To specify requirements for disposal of specific types of radioactive waste.
R9-7-438.01	To specify requirements for disposal of certain types of radioactive material not otherwise covered in the rules.
R9-7-439	To describe requirements for the transfer of radioactive waste for disposal at a licensed land disposal facility.
R9-7-440	To establish that nothing in listed rules relieves a licensee from complying with other local, state, or federal rules or regulations.

R9-7-441	To establish requirements for maintaining and retaining records of disposal of licensed materials.
R9-7-442	To specify that radioactive wastes shipped from Arizona are subject to inspection by the Department.
R9-7-443	To specify the process for reporting a missing, lost, or stolen radioactive source.
R9-7-444	To specify requirements related to the notification of the Department of exposures, radiation levels, or concentrations of radioactive material exceeding the limits.
R9-7-445	To describe the timeframes for notification of the Department and the reporting of specified incidents.
R9-7-446	To require notification of individuals exposed to radiation or radioactive material.
R9-7-447	To specify requirements for a licensee and the Department when a licensee vacates a facility.
R9-7-448	To specify additional reporting requirements related to events that could pose an exposure hazard.
R9-7-449	To specify requirements for calibration of survey instruments and for retaining records of the calibration. To specify requirements for evaluation of dosimeters.
R9-7-450	To specify requirements related to possessing and using sealed sources of radiation, including inventory requirements.
R9-7-451	To describe procedures whereby a licensee may terminate a radioactive material license.
R9-7-452	To specify the radiological criteria for termination of a radioactive material license.
Table 1	To specify acceptable levels of radioactive contamination on a surface.
R9-7-453	To require notification of individuals of occupational exposure due to a planned special exposure, of an exposure exceeding limits, or of exposures due to license termination, including providing the affected individual with a copy of specified reports.
R9-7-454	To require a licensee to register certain radioactive material on a national source tracking system, in compliance with federal requirements.
R9-7-455	To specify security requirements for portable gauges.
Appendix A	To describe assigned protections factors for different types of respirators.
Appendix B	To describe the annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure, effluent concentrations, and concentrations for release to sanitary sewerage.
Appendix C	To describe the quantities of licensed or registered material requiring labeling.
Appendix D	To describe the classification and characteristics of low-level radioactive waste.
Appendix E	To describe the quantities for use with decommissioning forms.

3. <u>Are the rules effective in achieving their objectives?</u> **Yes _<u>X</u>_ No __**

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

Rule	Explanation
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules. However, much of the current wording must be word-for-word with requirements of the U.S. Nuclear Regulatory Commission (NRC) to comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967.

R9-7-401, R9-7-402	The two Sections would be more effective if they were combined. However, this is how the NRC and many Agreement States structure their rules. These two rules are identical to 10 CFR 20.1001.
R9-7-404, R9-7-405	R9-7-404(B) and R9-7-405(D) appear to be duplicative. The rules would be more effective if the Sections were combined. However, the rules are compatibility category A, meaning they must have the same wording as federal requirements.
R9-7-412	Subsection (C)(3) would be more effective if revised to indicate that verbal reports are not allowed, but that e-mail is an acceptable method for reporting.
R9-7-423	The rule would be more effective if the requirement were stated in other applicable Sections, such as R9-7-410, or if other Sections cited to this rule.
R9-7-446	Subsection (A) is duplicative of the cross-reference in subsection (B). However, it is identical to the wording of NRC and other Agreement States' requirements.
R9-7-453	The rule would be more effective if the requirement to notify an exposed individual were included under the respective cited Sections. However, it is identical to the wording in NRC and other Agreement States' requirements.

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

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

Rule	Explanation
R9-7-416	Subsections (A)(1) and (2) cite to R9-7-719, containing requirements for training of medical personnel. The cross-reference should be to R9-7-717 (Release of Individuals Containing Radioactive Material or Implants Containing Radioactive Material). In addition, the incorporation by reference in subsection (D) should be updated to the 2012 version of 40 CFR 190.
R9-7-418	The incorporation by reference in subsection (B)(1) should be updated to the 2010 versions of the NIST Handbooks.
R9-7-419	Subsections (E)(2) and (3) cite to subsection (D)(1). The cross-reference should be to subsection (E)(1).
R9-7-425	The incorporation by reference in subsection (A)(7) should be updated to the 2006 version of 29 CFR 1910.134.
R9-7-430	Subsection (B) cites to R9-7-719, containing requirements for training of medical personnel. The cross-reference should be to R9-7-717 (Release of Individuals Containing Radioactive Material or Implants Containing Radioactive Material).
R9-7-433	The incorporation by reference in subsection (A) should be updated to the November 30, 2021, version of 10 CFR 71.4. The incorporations by reference in subsection (B) should be updated to the April 15, 1976, version of 49 CFR 172.403 and the December 20,1991, version of 49 CFR 172.436 through 172.440.
R9-7-439	The incorporation by reference in subsection (A) should be updated to the December 1, 2015, version of 10 CFR 20, Appendix G.
R9-7-454	The incorporation by reference in subsection (A) should be updated to the August 9, 2021, 2015, version of 10 CFR 20.2207.
Appendix B	Table III cites to R9-7-435, but the requirements for release to a sanitary sewer are contained in R9-7-436.

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

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

Rule	Explanation
R9-7-412	The Department does not enforce subsection (C)(3) as written. Verbal reports by telephone are not allowed, but e-mail notification would be acceptable.
R9-7-422	Although there is no license category for these irradiators, there is an unclassified (D18) license category that allows charging the full cost for something for which there is not a specific category.
452	In subsection (E)(2), the Department does not provide notification in newspapers but does provide notification by e-mail.
Appendix B	Table III cites to R9-7-435, but requirements for release to a sanitary sewer are in R9-7-436. The Department enforces the requirement as if the citation were to R9-7-436.

6. Are the rules clear, concise, and understandable? **Yes ___No _X_**

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

Rule	Explanation
Multiple	The rules would be clearer if grammatical or punctuation errors were corrected. In addition, the wording of many Sections could be clearer. However, Arizona is required by the Agreement to include many requirements with the exact same wording as the corresponding federal requirements, regardless of whether the language is clear or not.
R9-7-403	Several definitions could be clearer, but the definitions are compatibility category A NRC requirements, meaning they must be word-for-word the same as the federal requirements. The last sentence in the definition of "nonstochastic effect," which is not part of an NRC definition, would be more understandable if grammar and a missing word were corrected.
R9-7-404, R9-7-405	Subsection (B) of R9-7-404 and subsection (D) of R9-7-405 appear to be duplicative. However, the rules are compatibility category A, meaning they must be word-for-word the same as the federal requirements.
R9-7-407	Subsection (A) should read "this Article" rather than "Article 4." It is unclear who determines "sound radiation protection principles" in subsection (B). However, the subsection is written to be identical to 10 CFR 20.1101 and the rules of other Agreement States.
R9-7-408	Subsection (A) would be clearer if the cross-reference to R9-7-413 stated "planned special exposures as specified in R9-7-413" since the rules do not require planned special exposures, only specify what is required if a special exposure is planned. Subsection (B) would be clearer if constructed in the active voice, and if "lens dose equivalent" in subsection (C)(1) and "effective dose equivalent" in subsection (C)(2) were included in the lead-in in subsection (C).
R9-7-412	Subsection (B) appears to duplicate the content of R9-7-413(A)(4). In subsection (D), the phrase "this subsection" should be "this Section."

R9-7-413	Subsection (A)(4) duplicates R9-7-412 (B), which is more specific and should be moved to this rule. However, per the NRC, they need to both be present. The portion of subsection (A)(6) requiring submission of a written report appears to duplicate the requirement in subsection (C). It is unclear what is meant by the requirement in subsection (B)(1)(c) and whether the requirement to retain records in subsection (B)(2) refers to the records in subsection (B)(1).
R9-7-417	The requirements in subsections (B) would be clearer if connected with "or" rather than "and" because, as the rule now reads, a reader could conclude that the listed sealed sources would have to be tested unless all conditions were met. The rule would also be clearer if the second sentence in subsection (B)(6) were a separate subsection.
R9-7-419	The first sentence in subsection (D)(3) duplicates requirements in R9-7-408(C)(2)(a). In subsection (E)(1), it is unclear what units were in effect before January 1, 1994. Subsection (E)(1)(d) should not cite to "R9-7-419," since this is that Section.
R9-7-420	Subsection (F) should not cite to "Article 4", since this is that Article. Subsection (G) would be clearer if the specific Sections in Articles 5, 6, and 9 were cited, rather than just the Articles.
R9-7-421	The rule would be clearer if the last sentence in subsection (A) were incorporated into subsection (B). The terms "non-self-shielded irradiators" and "self-shielded irradiators" are not defined, but are described under R9-7-422. Subsection (B) would be clearer if the specific Sections in Articles 5, 6, and 9 were cited, rather than just the Articles. Subsection (C) cites to R9-7-422(B)(9), which cites back to R9-7-421, creating a circular reference.
R9-7-422	The rule would be clearer if subsection (B) specified that requirements in the subsection may not apply if the conditions in subsection (C) are met. Subsection (B) would also be clearer if the subsections were re-ordered and re-worded. While the content of the second and third sentences in subsection (B)(2)(b) is important, it does not fit in the subsection and should be moved or reworded. The formatting/wording of several subsections under subsection (B), such as subsections (B)(3), (4), and (6), are not consistent with the lead-in. The second sentence of subsection (B)(3)(b) does not fit in the subsection and should be moved. Subsection (E) duplicates R9-7-421(C).
R9-7-424	The rule would be clearer if some additional specificity were added or the rule were combined with R9-7-423.
R9-7-425	In subsection (A)(2), it is unclear to what subsections the phrase "except as otherwise provided in this Section" refers. It is also unclear what constitutes "reliable test information." Subsection (B) would also be clearer if it specified which "Appendix A" is meant, since there is an Appendix A in Articles 2, 5, 6, 9, 11, 14, and 19, as well as in this Article.
R9-7-428	In subsection (A), the rule states a "cross-hatched area," while the picture is in color. The picture should match the description in rule.
R9-7-438	Subsection (C) cites to R9-7-434, which cites back to R9-7-438, creating a circular reference.
R9-7-443	It is unclear from subsection (D) when the names of the individuals should be made known to the Department. The rule would be clearer if the content of subsection (D) were included in the list of information to be included in the report by telephone under subsection (A), as well as the written report required under subsection (B).
R9-7-444	In subsection (A), it is unclear to whom the "written report" is sent. Subsection (B)(2) would be clearer if it read: "Each report filed according to subsection (A) shall include, in a separate and detachable part of the report, for each occupationally overexposed

	individual: name, Social Security number, and date of birth." However, the wording and content is identical to the NRC and other Agreement States' order/content.
R9-7-448	The requirements in subsections (D) ("shall submit to the Department a written follow-up report within 30 days of the initial report.") and (E) ("shall submit a written follow-up report to the Department within 30 days after the initial report.) appear duplicative.
R9-7-450	Subsection (A), stating that "The license to manufacture and distribute a sealed source shall be issued by the Department, the U.S. Nuclear Regulatory Commission, a Licensing State, or another Agreement State," should be reworded to make clear that the Department is not requiring the issuance of the license, but requiring that any license issued be through one of the listed entities. Subsection (D) would be clearer if the relevant Sections of Article 7 were referenced.
Appendix C	The Note cites to "Appendix B to Article 4," but Appendix C is also part of Article 4 and should cite to "Appendix B of this Article."

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

If yes, please fill out the table below:

Rule	Explanation

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

Arizona is an Agreement State by the agreement negotiated between the United States Atomic Energy Commission (now U.S. Nuclear Regulatory Commission (NRC)) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656 (Agreement). In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations, as required in A.R.S. § 30-654(B)(6). When the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency in 2018, the rules in Article 4 were recodified from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though all but two of the rulemakings were in 12 A.A.C. 1.

The rules in Article 4 were variously last revised in 1994, 2001, 2003, July 2004, December 2004, 2006, 2007, 2009, 2014, 2016, 2018, and 2022. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking. No economic impact statements are available to the Department for some of these rulemakings, but the Department is estimating the economic effect of the rulemaking from available records and information. The rules in Article 4 are currently used by approximately 5,800 licensees and registrants.

R9-7-414 and Appendices D and E were last amended in 1994, and no economic impact statement is available. Since the Appendices are provided by the NRC and must be used without change according to the Agreement, the Agreement rather than the rules impose any burden caused by the content of the Appendices. Requirements in R9-7-414 relate to the federal restriction for radiation workers under the age of 18 years of age to have a dose limit of 10% of the adult dose limit. Currently, Arizona does not have any licensed or registered radiation workers under the age of 18, so the rule has no effect on radiation workers or their employers and no

burden on the Department to monitor compliance with the requirement. The Department believes that these rules have no economic effect on an agency, business, or the public.

In the 2001 rulemaking, 16 of the rules in Article 4 were last revised, but no economic impact statement is available. In R9-7-401, R9-7-402, R9-7-404, R9-7-409, R9-7-410, R9-7-411, R9-7-420, R9-7-421, R9-7-426, R9-7-427, R9-7-428, R9-7-429, R9-7-436, R9-7-437, and R9-7-442, technical wording changes were made to improve the understandability of the rules. Situations in which radiation is allowed to exceed standards for protection (such as for medical treatment or in medical research) were moved from R9-7-402 into R9-7-401. In R9-7-404 referencing organ dose, "eye" dose was changed to "lens" dose to ensure compatibility with NRC regulations. In R9-7-406, obsolete requirements were removed. These changes were thought to provide a benefit to stakeholders. The Department believes the economic impact was as estimated.

Two rules, R9-7-423 and Appendix A, were last revised effective May 2003 to match federal requirements. In R9-7-423, the rule was clarified to specify that process or other engineering controls were to be used to the extent practicable. A new Appendix A was provided by the NRC, in which federal requirements were simplified and put into a Table format. No costs were anticipated to be imposed by these changes. The Department believes the economic impact was as estimated.

Five rules (R9-7-407, R9-7-416, R9-7-444, R9-7-450, and Table 1) were last amended in a rulemaking effective July 3, 2004. An economic impact statement is available for the rulemaking. R9-7-407 was amended to clarify ALARA programs for users of radioactive gases. R9-7-416 was amended to take into account the radiation emitted from patients treated under R9-7-719. Amendments were made to R9-7-444 so that Arizona's rules would be compatible with NRC standards. R9-7-450 was amended to include a device or equipment in the rule's required inventory if the device or equipment contained a sealed source. Table 1 was added. The newly required ALARA level for airborne radioactive material in R9-7-407 was estimated to impose an unknown increase in cost to the regulated community. The affect was believed to be small because the affected licensees were already required to calculate the concentration levels in the restricted and unrestricted areas impacted by the discharge of radioactive material. The amendment to R9-7-416 was thought to result in a small administrative cost due to the need for an additional calculation for those medical licensees that release patients under R9-7-719. The cost of this calculation was believed to be minimal to nonexistent. The minor changes being made to the standards in R9-7-444 were thought to have little economic impact, because the standards are established by the NRC and must be adopted by Arizona under the Agreement. The change to R9-7-450 and the addition of Table 1 were only a clarification of existing requirements, with no to minimal additional economic burden resulting from the change. The Department believes the economic impact was as estimated.

Two other rules, R9-7-424 and R9-7-425, were part of a rulemaking, effective December 4, 2004, to include new NRC standards for persons using respiratory protection when handling or working with forms of radioactive material that are inhalable. No economic impact statement is available, but no significant economic impact was believed to result from the implementation of the changes, and the benefits from the amendments would increase

public safety from the safe use, transport, storage, and disposal of radiation sources. The Department believes the economic impact was as estimated.

Six rules (R9-7-405, R9-7-412, R9-7-413, R9-7-430, R9-7-441, and R9-7-453) were last amended in a 2006 rulemaking, and no economic impact statement is available. In this rulemaking, numerous clarifications were made in Article 4 to maintain standards compatible to those in NRC regulations. For example, requirements in R9-7-430 were changed to permit a teletherapy licensee to be exempted from the posting requirements in R9-7-429, if the newly listed conditional controls were met. A new rule, R9-7-453, was added that required a licensee or registrant to notify an individual who had been exposed to radiation and to provide the same report that is required to be sent to the Agency/Department to the individual who was exposed to radiation. The changes made to Article 4 were estimated to result in no new economic impact to the affected radiation users and members of the public, since most rules were just updated to remain compatible with NRC requirements. The new rule affected a group of radiation users that were very familiar with the newly required practice and believed the change to be part of the cost of doing business. The Department believes the economic impact was as estimated.

R9-7-455 was added as a new rule in a rulemaking in 2007, for which no economic impact statement is available. The rule established a higher level of security for portable gauging devices that contain sealed sources of radioactive material. The new standard included two levels of security during the time when a gauge is in storage at the licensee's facility, in transit to a job-site, and stored at temporary locations, including motels and job-site work trailers. The new regulation was believed to result in some cost to the portable gauge user, who might have to expend some resources to strengthen the security measures used to prevent loss or theft of the gauges while they were stored or transported. These new or strengthened measures could include putting in a security system, adding locks to doors, putting in a fence, hiring a security service, or installing a 16 gauge box bolted to the interior of a transport vehicle. The cost of security methods had not been determined, but the security methods were believed to be readily available and not expensive. The Department believes the economic impact was as estimated.

Eight rules (R9-7-403, R9-7-422, R9-7-431, R9-7-432, R9-7-435, R9-7-440, R9-7-447, and R9-7-449) were last amended in a rulemaking effective August 1, 2009. An economic impact statement is available for this rulemaking and specifies "minimal" as $1,000 or less, "moderate" as between $1,000 and $10,000, and "substantial" as greater than $10.000. As part of the rulemaking, a definition of "nationally tracked source" was added to R9-7-403, and the incorporation by reference was updated in R9-7-432. Clarifying changes to existing requirements were made to R9-7-422, R9-7-431, R9-7-435, R9-7-440, R9-7-447, and R9-7-449. The costs for these changes was estimated to be at most minimal and associated with the administrative changes presented in the affected rules. The regulated community was thought to already be familiar with the need for a source tracking system, instituted as a result of the NRC Agreement. The Department believes the economic impact was as estimated.

Six rules (R9-7-434, R9-7-438, R9-7-438.01, R9-7-439, R9-7-446, and Appendix B) were last amended in a 2014 rulemaking to ensure that Arizona's radiation compliance remains compatible with NRC requirements. An

economic impact statement is available for the rulemaking and specifies "minimal" as $1,000 or less, "moderate" as between $1,000 and $10,000, and "substantial" as greater than $10.000. These changes were thought to have little or minimal economic impact on regulated entities, since the changes would not markedly change the way businesses operate with radiation safety concerns in mind. The Department believes the economic impact was as estimated.

Effective February 2, 2016, R9-7-452 was last amended in a rulemaking for which an economic impact statement is available, which specifies "minimal" as $1,000 or less, "moderate" as between $1,000 and $10,000, and "substantial" as greater than $10.000. In the rulemaking, R9-7-452 was revised to provide more structure to requirements for the provision of financial assurance related to license termination. Minimal or no economic impact was anticipated due to these changes. The Department believes the economic impact was as estimated.

Seven rules (R9-7-408, R9-7-415, R9-7-417, R9-7-418, R9-7-419, R9-7-451, and Appendix C) were last amended in an expedited rulemaking in 2018 to ensure that Arizona's radiation compliance remains compatible with NRC requirements. No economic impact statement was required as part of this rulemaking. In keeping with the requirements for expedited rulemaking, these changes did not increase the cost of regulatory compliance, did not increase a fee or reduce a procedural right of regulated persons, and either adopted or incorporated by reference, without material change, federal statutes and regulations, or clarified language of a rule without changing its effect. The Department believes these considerations are still true.

Five rules (R9-7-443, R9-7-443, R9-7-445, R9-7-448, and R9-7-454) were last amended in an expedited rulemaking to again ensure that Arizona's radiation compliance remains compatible with NRC requirements, with the effective date of the rules being November 2, 2022. Requirements for what telephone notification of a final delivery carrier and the Department must include were added to R9-7-433. In the rulemaking, R9-7-443 and R9-7-445 were clarified by adding cross-references and reworded to eliminate parenthetical phrases. In R9-7-448, cross-references were added, grammar was corrected, and a telephone number for the Department was added. In R9-7-454, incorporations by reference were updated. The Department believes that these changes are still consistent with the purpose for A.R.S. § 41-1027.

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

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

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

In the 2019 five-year-review report, the Department stated that the Department planned to review the rules in the entire Chapter after completing the five-year-review reports on all Articles in the Chapter, the last of which was due to the Council in December 2021. During this review, the Department determined that extensive changes were required throughout the entire Chapter and planned a rulemaking to be completed in stages. Pursuant to A.R.S. § 41-1039(A), the Department was granted approval to conduct rulemaking in the Chapter in May 2023.

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

The Department believes that the substantive content of the rules are the minimum necessary to protect health and safety and comply with requirements of the Agreement. Other issues identified in this report may impose a regulatory burden.

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

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

10 CFR 20.1001, 10 CFR 20.1002, 10 CFR 20.1003, 10 CFR 20.1004, 10 CFR 20.1005, 10 CFR 20.1007, 10 CFR 20.1009, 10 CFR 20.1101, 10 CFR 20.1201, 10 CFR 20.1202, 10 CFR 20.1203, 10 CFR 20.1204, 10 CFR 20.1206, 10 CFR 20.1207, 10 CFR 20.1208, 10 CFR 20.1301, 10 CFR 20.1302, 10 CFR 20.1401, 10 CFR 20.1402, 10 CFR 20.1403, 10 CFR 20.1404, 10 CFR 20.1405, 10 CFR 20.1406, 10 CFR 20.1501, 10 CFR 20.1502, 10 CFR 20.1601, 10 CFR 20.1602, 10 CFR 20.1701, 10 CFR 20.1702, 10 CFR 20.1703, 10 CFR 20.1704, 10 CFR 20.1705, 10 CFR 20.1801, 10 CFR 20.1802, 10 CFR 20.1901, 10 CFR 20.1902, 10 CFR 20.1903, 10 CFR 20.1904, 10 CFR 20.1905, 10 CFR 20.1906, 10 CFR 20.2001, 10 CFR 20.2002, 10 CFR 20.2003, 10 CFR 20.2004, 10 CFR 20.2005, 10 CFR 20.2006, 10 CFR 20.2007, 10 CFR 20.2008, 10 CFR 20.2101, 10 CFR 20.2102, 10 CFR 20.2103, 10 CFR 20.2104, 10 CFR 20.2105, 10 CFR 20.2106, 10 CFR 20.2107, 10 CFR 20.2108, 10 CFR 20.2110, 10 CFR 20.2201, 10 CFR 20.2202, 10 CFR 20.2203, 10 CFR 20.2204, 10 CFR 20.2205, 10 CFR 20.2206, 10 CFR 20.2207, 10 CFR 20.2301, 10 CFR 20.2401, 10 CFR Appendix A to Part 20, 10 CFR Appendix B to Part 20, 10 CFR Appendix C to Part 20, 10 CFR Appendix G to Part 20, 10 CFR 30.19, 10 CFR 30.20, 10 CFR 30.22, and 10 CFR 30.35

Requirements are consistent with, and not more stringent than, federal requirements.

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

The Department believes the rules are exempt from A.R.S. §§ 41-1037 due to paragraph (A)(3) as the issuance of a general permit would not meet the statutory requirement of A.R.S. § 30-656, which allows Arizona to be an Agreement State, since compatibility of licensing is one of the requirements of the Agreement.

14. **Proposed course of action**

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

Since the rules in Article 4 must comply with requirements of the Agreement, possible changes must be discussed with and, in some cases, approved by the NRC before they can be proposed. As discussed with the Council, the Department is planning to extensively revise and reorganize the Chapter and is completing the rulemaking in

stages. Given the complex and technical nature of the content of the Chapter and the need to coordinate and collaborate with the NRC in drafting revisions to the Chapter, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025, as stated in previous five-year-review reports approved by the Council.

CURRENT RULES IN 9 A.A.C. 7, ARTICLE 4

ARTICLE 4. STANDARDS FOR PROTECTION AGAINST IONIZING RADIATION

R9-7-401. Purpose

A. Article 4 establishes standards for protection against ionizing radiation resulting from activities conducted according to licenses or registrations issued by the Department. These rules are issued according to A.R.S. Title 30, Chapter 4, as amended.

B. The requirements of Article 4 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose equivalent to an individual, including radiation exposure resulting from all sources of radiation other than radiation prescribed by a physician in the practice of medicine, radiation received while voluntarily participating in a medical research program, and background radiation, does not exceed the standards for protection against radiation prescribed in this Article. However, this Article does not limit actions that may be necessary to protect health and safety.

Historical Note

New Section R9-7-401 recodified from R12-1-401, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-402. Scope

Except as specifically provided in other Articles, Article 4 applies to persons licensed or registered by the Department to receive, possess, use, transfer, or dispose of sources of ionizing radiation.

Historical Note

New Section R9-7-402 recodified from R12-1-402, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-403. Definitions

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

"Air-purifying respirator" means respiratory protective equipment with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"ALI" means annual limit on intake, the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the Reference Man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Appendix B, Table I, Columns 1 and 2.

"Assigned protection factor" or "APF" means the expected workplace level of respirator protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means respiratory protective equipment that supplies the equipment user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Class" means a classification scheme for inhaled material according to the material's rate of clearance from the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, days, of less than 10 days, for Class W, weeks, from 10 to 100 days, and for Class Y, years, of greater than 100 days (see Introduction, Appendix B). For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint" or "dose constraint" means a value above which specified licensee or registrant actions are required.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"DAC" means derived air concentration, the concentration of a given radionuclide in air which, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Appendix B, Table I, Column 3.

"DAC-hour" means derived air concentration-hour, the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

“Declared pregnant woman” means a woman who has voluntarily informed the licensee or registrant in writing of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

“Decommission” means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release of the property under restricted conditions and the termination of the license.

“Demand respirator” means an atmosphere-supplying respiratory protective equipment that admits breathing air to the face piece only when a negative pressure is created inside the face piece by inhalation.

“Deterministic effect” (See “Nonstochastic effect”)

“Disposable respirator” means respiratory protective equipment for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent depletion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of device include a disposable half-mask respirator or a disposable, escape-only, self-contained breathing apparatus (SCBA).

“Distinguishable from background” means that the detectable concentration of a radionuclide is statistically greater than the background concentration of that radionuclide in the vicinity of a site or, in the case of structures, in similar materials using accepted measurement, survey, and statistical techniques.

“Dosimetry processor” means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

“Filtering face piece (dust mask)” means a particulate respirator that operates under a negative pressure with a filter as an integral part of the face piece or with the entire face piece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

“Fit factor” means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

“Fit test” means the use of protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

“Helmet” means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

“Hood” means a respiratory inlet covering that completely covers the head, neck, and may also cover portions of the shoulders and torso.

“Inhalation class” (See “Class”)

“Loose-fitting face piece” means a respiratory inlet covering that is designed to form a partial seal with the face.

“Lung class” (See “Class”)

“Nationally tracked source” means a sealed source that contains a quantity equal to or greater than Category 1 or Category 2 levels of radioactive material listed in 10 CFR 20, Appendix E, revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. In this context sealed source does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

“Negative pressure respirator (tight fitting)” means respiratory protective equipment in which the air pressure inside the face piece is negative during inhalation with respect to the ambient air pressure outside the respirator.

“Nonstochastic effect” means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, “deterministic effect” is an equivalent term and “threshold” means that which if not exceeded, poses no risk or likelihood of an effect to occur.

“Planned special exposure” means an infrequent exposure to radiation received while employed, but separate from and in addition to the annual occupational dose limits.

“Positive pressure respirator” means respiratory protective equipment in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

“Powered air-purifying respirator” or “PAPR” means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

“Pressure demand respirator” means a positive pressure, atmosphere-supplying respirator that admits breathing air to the face piece when the positive pressure is reduced inside the face piece by inhalation.

“Probabilistic effect” (See “Stochastic effect”)

“Qualitative fit test” or “QLFT” means a pass or fail fit test to assess the adequacy of respirator fit that relies on the individual’s response to the test agent.

“Quantitative fit test” or “QNFT” means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

“Reference Man” means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, “Report of the Task Group on Reference Man,” published in 1975 by Pergammon Press, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Residual radioactivity” means radioactivity in structures, materials, soils, groundwater, or other media at a site, resulting from activities under a licensee’s control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials that remain at the site because of routine or accidental release of radioactive material at the site or a previous burial at the site, even if the licensee complied with reagent provisions of 9 A.A.C. 7.

“Respiratory protective equipment” means an apparatus, such as a respirator, used to reduce an individual’s intake of airborne radioactive materials.

“Sanitary sewerage” means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

“Self-contained breathing apparatus” or “SCBA” means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

“Stochastic effect” means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without a threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, “probabilistic effect” is an equivalent term.

“Supplied-air respirator” or “SAR” or “airline respirator” means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

“Tight-fitting face piece” means a respiratory inlet covering that forms a complete seal with the face.

“User seal check” or “fit check” means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

“Very-high radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to an individual’s body could result in the individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates. (At very high doses received at high dose rates, units of absorbed dose, the gray and rad should be used, rather than units of dose equivalent, the sievert and rem).

“Weighting factor” wT for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of wT are:

ORGAN DOSE WEIGHTING FACTORS	
Organ or Tissue	**w_T**
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03

Bone surfaces	0.03
Remainder	0.30[a]
Whole Body	1.00[b]
[a] 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.	
[b] For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved by the Department on a case-by-case basis.	

Historical Note

New Section R9-7-403 recodified from R12-1-403, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-404. Units and Quantities

A. Each licensee or registrant shall use the Standard International (SI) units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this Article.

B. The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this Article, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

Historical Note

New Section R9-7-404 recodified from R12-1-404, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-405. Form of Records

A. A licensee or registrant shall ensure that each record required by this Article is legible throughout the specified retention period. The record shall be the original, a reproduced copy, or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. As an alternative the record may be stored in electronic media capable of producing legible records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. A licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

B. In the records required by this Article, a licensee or registrant may record quantities in SI units in parentheses following each of the required units, curie, rad, and rem, and include multiples and subdivisions.

C. Notwithstanding subsection (B), the licensee or registrant shall ensure that information is recorded in the International System of Units (SI) or in SI and the units specified in subsection (B) on each shipment manifest as required in R9-7-439(A).

D. A licensee or registrant shall make a clear distinction among the quantities entered on the records required by this Section (e.g., total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, committed effective dose equivalent).

Historical Note

New Section R9-7-405 recodified from R12-1-405, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-406. Implementation

Any existing license or registration condition that is more restrictive than this Article remains in force until amendment or renewal of the license or registration.

Historical Note

New Section R9-7-406 recodified from R12-1-406, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-407. Radiation Protection Programs

A. Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Article 4.

B. The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

C. The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

D. To implement the ALARA requirements in subsection (B), and notwithstanding the requirements in R9-7-416, each licensee or registrant governed by 9 A.A.C. 7, Article 3 shall limit air emissions of radioactive material to the environment so that individual members of the public likely to receive the highest dose will not receive a total effective dose equivalent in excess of 0.1mSv (10 mrem) per year from the emissions. If a licensee or registrant subject to this requirement exceeds this limit, the licensee or registrant shall report the incident to the Department, in accordance with R9-7-444, and take prompt corrective action to prevent additional violations.

E. Records.

1. Each licensee or registrant shall maintain records of the radiation protection program, including:
   a. The provisions of the program; and
   b. Audits and other reviews of program content and implementation.
2. A licensee or registrant shall retain the records required by subsection (E)(1)(a) for three years after the termination of the license or registration. The licensee or registrant shall retain the records required by subsection (E)(1)(b) for three years after the record is made.
3. The following licensees and registrants are exempt from the record requirements contained in this subsection:
   a. B6-General Medical,
   b. C9-Gas Chromatograph,
   c. C10-General Industrial,
   d. D15-Possession Only,
   e. E2-X-ray Machine class B , and
   f. E3-X-ray Machine class C

Historical Note

New Section R9-7-407 recodified from R12-1-407, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-408. Occupational Dose Limits for Adults

A. Each licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures required in R9-7-413, to the following dose limits:

1. An annual limit, which is the more limiting of:
   a. The total effective dose equivalent being equal to 0.05 Sv (5 rem): or
   b. The sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.5 Sv (50 rem).
2. The annual limits to the lens of the eye, to the skin, and to the extremities which are:
   a. A lens dose equivalent of 0.15 Sv (15 rem), and
   b. A shallow dose equivalent of 0.5 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

B. Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See R9-7-413.

C. The assigned deep-dose equivalent and shallow-dose equivalent are, for the portion of the body receiving the highest exposure, determined as follows:

1. The deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.
2. If a protective apron is worn and monitoring is conducted as specified in R9-7-419(B), the effective dose equivalent for external radiation shall be determined as follows:
   a. If only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25% of the limit specified in subsection (A), the reported deep-dose equivalent value multiplied by 0.3 is the effective dose equivalent for external radiation; or
   b. When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation is assigned the value of the sum of the deep-dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep-dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.
3. When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the Department. The assigned deep-dose equivalent shall be determined for the part of the body that receives the highest exposure. The assigned shallow-dose equivalent is the dose averaged over the

contiguous 10 square centimeters of skin that receives the highest exposure. The deep-dose equivalent, lens-dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

D. Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in Table I of Appendix B and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

E. Notwithstanding the annual dose limits, the licensee shall limit the soluble Uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. See footnote 3 of Appendix B.

F. The licensee or registrant shall reduce the dose that an individual may receive in the current year by the amount of occupational dose received while employed occupationally as a radiation worker by all previous employers. See R9-7-412.

Historical Note

New Section R9-7-408 recodified from R12-1-408, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-409. Summation of External and Internal Doses

A. If a licensee or registrant is required to monitor according to both R9-7-419(B) and (C), the licensee or registrant shall add external and internal doses, and use the sum to demonstrate compliance with dose limits. If the licensee or registrant is required to monitor only according to R9-7-419(B) or only according to R9-7-419(C), summation is not required to demonstrate compliance with dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses according to subsections (B), (C), and (D). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation but are subject to separate limits (See R9-7-408(A)(2)).

B. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity (1):

1. The sum of the fractions of the inhalation ALI for each radionuclide, or
2. The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or
3. The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using applicable biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, W_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

C. If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than 10% of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

D. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for Hydrogen-3 and does not need to be evaluated or accounted for according to this subsection.

Historical Note

New Section R9-7-409 recodified from R12-1-409, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-410. Determination of External Dose from Airborne Radioactive Material

A. Each licensee shall, when determining the dose from airborne radioactive material, include the contribution to the deep-dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See Appendix B, footnotes 1 and 2.

B. Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep-dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep-dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

Historical Note

New Section R9-7-410 recodified from R12-1-410, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-411. Determination of Internal Exposure

A. For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, each licensee or registrant shall, when required according to R9-7-419, take suitable and timely measurements of:

1. Concentrations of radioactive materials in air in work areas,
2. Quantities of radionuclides in the body,
3. Quantities of radionuclides excreted from the body, or
4. Combinations of these measurements,

B. Unless respiratory protective equipment is used, as provided in R9-7-425, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

C. When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

1. Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record;
2. Upon prior approval of the Department, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and
3. Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B.

D. If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in subsection (A)(2) or (3), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by R9-7-444 or R9-7-445. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

E. If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours is either:

1. The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y from Appendix B for each radionuclide in the mixture; or
2. The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

F. If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture is the most restrictive DAC of any radionuclide in the mixture.

G. If a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

1. The licensee uses the total activity of the mixture to demonstrate compliance with the dose limits in R9-7-408 and complies with the monitoring requirements in R9-7-419;
2. The concentration of any radionuclide disregarded is less than 10% of its DAC; and
3. The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30%.

H. When determining the committed effective dose equivalent, the following information may be considered:

1. In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.
2. For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.5 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee shall also demonstrate that the limit in R9-7-408(A)(1)(b) is met.

Historical Note

New Section R9-7-411 recodified from R12-1-411, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-412. Determination of Prior Occupational Dose

A. For each individual who is likely to receive in a year an occupational dose that requires monitoring according to R9-7-419 the licensee shall:

1. Determine the occupational radiation dose received during the current year, and
2. Attempt to obtain the records of lifetime cumulative occupational radiation dose.

B. Before permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

1. The internal and external doses from all previous planned special exposures; and
2. All doses in excess of the limits received during the lifetime of the individual, including doses received during accidents and emergencies; and
3. All lifetime, cumulative, occupational radiation doses.

C. In complying with the requirements of subsection (A), a licensee or registrant shall:

1. Accept, as a record of the occupational dose that the individual received during the current year, a written and signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and
2. Accept, as the record of lifetime cumulative radiation dose, an up-to-date Department Form Y (available from the Department) or equivalent, signed by the individual and countersigned by an appropriate official of the most recent

employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

3. Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

D. Records.

1. The licensee or registrant shall record the exposure history, as required by subsection (A), on Department Form Y (available from the Department) or a similar clear and legible record of all the information required by this subsection. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report for preparing Department Form Y or its equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on Department Form Y or its equivalent indicating each period of time for which there is no data.
2. The licensee or registrant is not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed according to the rules in Article 4 in effect before January 1, 1994. Occupational exposure histories obtained and recorded on Department Form Y or its equivalent before January 1, 1994, would not have included effective dose equivalent but may be used in the absence of specific information on the intake of radionuclides by the individual.
3. If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall:
   a. In establishing administrative controls under R9-7-408(F) for the current year, reduce the allowable dose limit for the individual by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and
   b. Not subject the individual to planned special exposures.
4. The licensee or registrant shall retain current and prior records on Department Form Y or its equivalent for three years after the Department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing Department Form Y or its equivalent for three years after the record is made.

Historical Note

New Section R9-7-412 recodified from R12-1-412, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-413. Planned Special Exposures

A. A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in R9-7-408, provided that each of the following conditions is satisfied:

1. The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated from the planned special exposure are unavailable or impractical.
2. The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.
3. Before a planned special exposure, the licensee or registrant ensures that each individual involved is:
   a. Informed in writing of the purpose of the planned special exposure;
   b. Informed in writing of the estimated doses, associated potential risks, and specific radiation levels or other conditions that might be involved in performing the task; and
   c. Instructed in the measures to be taken to keep the dose ALARA, considering other risks that may be present.
4. Before permitting an individual to participate in a planned special exposure, the licensee or registrant shall ascertain prior doses as required by R9-7-412(B) for each individual involved.
5. Subject to R9-7-408(B), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses that exceed:
   a. The numerical value of any of the dose limits in R9-7-408(A) in any year, and
   b. Five times the annual dose limits in R9-7-408(A) during the individual's lifetime.
6. The licensee or registrant shall maintain records of a planned special exposure in accordance with subsections (B) and (C) and submit a written report to the Department within 30 days after the date of any planned special exposure conducted in accordance with this Section, informing the Department that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by subsection (B).
7. The licensee or registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and inform the individual, in writing, of the dose within 30 days after the date of the planned special exposure. The dose from a planned special exposure shall not be considered in controlling future occupational dose of the individual according to R9-7-408(A) but shall be included in evaluations required by subsections (A)(4) and (A)(5).

B. Records.

1. For each planned special exposure, the licensee or registrant shall maintain records that describe:
    a. The exceptional circumstances requiring the use of a planned special exposure,
    b. The name of the management official who authorized the planned special exposure and a copy of the signed authorization,
    c. What actions were necessary,
    d. Why the actions were necessary,
    e. What precautions were taken to assure that doses were minimized in accordance with R9-7-407(B),
    f. What individual and collective doses were expected,
    g. The doses actually received in the planned special exposure, and
    h. The process through which the employee involved in the planned special exposure has been informed in writing of the information contained in subsection (A)(3).
2. The licensee or registrant shall retain the records for three years after the Department terminates each pertinent license or registration.

C. A licensee shall submit a report to the Department no later than 30 days after a planned special exposure conducted in accordance with subsection (A). The report shall contain the date of the planned exposure and the information required by subsection (B).

Historical Note

New Section R9-7-413 recodified from R12-1-413, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-414. Occupational Dose Limits for Minors

The annual occupational dose limits for minors are 10% of the annual occupational dose limits specified for adult workers in R9-7-408.

Historical Note

New Section R9-7-414 recodified from R12-1-414, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-415. Dose Equivalent to an Embryo or Fetus

A. A licensee or registrant shall ensure that the dose equivalent to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem). Records shall be maintained according to R9-7-419(E)(4) and (5).

B. The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman to satisfy the limit in subsection (A).

C. For purposes of this Section, the dose equivalent to the embryo or fetus is the sum of:

1. The deep-dose equivalent to the declared pregnant woman; and
2. The dose equivalent to the embryo or fetus resulting from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman.

D. If the dose equivalent to the embryo or fetus is found to have exceeded 5 mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with subsection (A) if the additional dose equivalent to the embryo or fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.

Historical Note

New Section R9-7-415 recodified from R12-1-415, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-416. Dose Limits for Individual Members of the Public

A. Each licensee or registrant shall conduct operations so that:

1. The total effective dose equivalent to any individual member of the public from the licensed or registered operation does not exceed 1 mSv (0.1 rem) in a year, excluding the dose contribution from background radiation, medical administration of radiation, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-719, voluntary participation in a medical research program, and the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with R9-7-436; and
2. The dose in any unrestricted area from an external source excluding the dose contribution from an individual who has been administered radioactive material and released in accordance with R9-7-719, does not exceed 0.02 mSv (0.002 rem) in any one hour.

B. Registrants possessing radiation machines in operation before August 10, 1994, are exempt from the requirement in subsection (A)(1). Operation of these machines shall be conducted so that the total effective dose equivalent to any individual member of the public does not exceed 5 mSv (0.5 rem) in a year.

C. A licensee, registrant, or an applicant for a license or registration may apply for Department authorization to operate with an annual dose limit of 5 mSv (0.5 rem) for an individual member of the public. The application shall include the following information:

1. An explanation of the need for and the expected duration of operations in excess of the limit in subsection (A), and
2. The licensee's or registrant's program to assess and control dose within the 5 mSv (0.5 rem) annual limit; and
3. The procedures to be followed to maintain the dose in accordance with R9-7-407(B).

D. A licensee or registrant shall comply with the U.S. Environmental Protection Agency's applicable environmental radiation standards in 40 CFR 190, 2003 edition, published July 1, 2003, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, which are incorporated by reference, on file with the Department and contain no future editions or amendments.

E. The Department may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

F. Each licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted areas and radioactive materials contained in effluents released to unrestricted areas.

G. Each licensee or registrant shall:

1. Demonstrate by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or
2. Demonstrate that:
   a. The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Appendix B, Table II; and
   b. If an individual were continually present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.5 mSv (0.05 rem) in a year.

H. Upon approval from the Department, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

I. Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public and shall retain the records for three years after the Department terminates each pertinent license or registration.

Historical Note

New Section R9-7-416 recodified from R12-1-416, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-417. Testing for Leakage or Contamination of Sealed Sources

A. A licensee in possession of any sealed source shall ensure that:

1. Each sealed source, except as specified in subsection (B), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.
2. Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Department, after evaluation of information specified by R9-7-311(D)(2) or equivalent information specified by an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.
3. Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Department, after evaluation of information specified by R9-7-311(D)(2) or equivalent information specified by an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.
4. Each sealed source suspected of damage or leakage is tested for leakage or contamination before further use.
5. Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, are capable of detecting the presence of 185 Bq (0.005 μCi) of radioactive material on a test sample. The person conducting the test shall take test samples from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which contamination could accumulate. For a sealed source contained in a device, the person conducting the test shall obtain test samples when the source is in the "off" position.
6. The test for leakage from brachytherapy sources containing radium is capable of detecting an absolute leakage rate of 37 Bq (0.001 μCi) of Radon-222 in a 24-hour period when the collection efficiency for Radon-222 and its daughters has been determined with respect to collection method, volume, and time.
7. Tests for contamination from radium daughters are taken on the interior surface of brachytherapy source storage containers and are capable of detecting the presence of 185 Bq (0.005 μCi) of a radium daughter which has a half-life greater than four days.

B. A licensee need not perform tests for leakage or contamination on the following sealed sources:
1. Sealed sources containing only radioactive material with a half-life of less than 30 days;
2. Sealed sources containing only radioactive material as a gas;
3. Sealed sources containing 3.7 MBq (100 µCi) or less of beta or photon-emitting material or 370 kBq (10 µCi) or less of alpha-emitting material;
4. Sealed sources containing only Hydrogen-3;
5. Seeds of Iridium-192 encased in nylon ribbon; and
6. Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used, and identified as in storage. The licensee shall test each sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

C. Persons specifically authorized by the Department, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission shall perform tests for leakage or contamination from sealed sources.

D. A licensee shall maintain for Department inspection test results in units of becquerel or microcurie.

E. The following is considered evidence that a sealed source is leaking:
1. The presence of 185 Bq (0.005 µCi) or more of removable contamination on any test sample.
2. Leakage of 37 Bq (0.001 µCi) of Radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.
3. The presence of removable contamination resulting from the decay of 185 Bq (0.005 µCi) or more of radium.

F. A licensee shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with this Article.

G. A licensee shall file a report with the Department within five days if the test for leakage or contamination indicates a sealed source is leaking or contaminated. The report shall include the equipment involved, the test results, and the corrective action taken.

H. A licensee shall maintain records of the tests for leakage required in subsection (A) for three years after the records are made.

Historical Note

New Section R9-7-417 recodified from R12-1-417, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-418. Surveys and Monitoring

A. Each licensee or registrant shall make, or cause to be made, surveys if surveys are:
1. Necessary for the licensee or registrant to comply with Article 4, and
2. Reasonable under the circumstances to evaluate:
   a. The magnitude and extent of radiation levels, and
   b. Concentrations or quantities of residual radioactivity, and
   c. The potential radiological hazards of the radiation levels and residual radioactivity detected.

B. All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with R9-7-408, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:
1. Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology, according to NVLAP procedures published March 1994 as NIST Handbook 150, and NIST Handbook 150-4, published August 1994, which is incorporated by reference, published by the U.S. Government Printing Office, Washington D.C. 20402-9325, and on file with the Department. The material incorporated by reference contains no future editions or amendments;
2. Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored; and
3. Film badges must be replaced at periods not to exceed one month; other personnel dosimeters processed and evaluated by an accredited NVLAP processor must be replaced at periods not to exceed three months.

C. The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device and that personnel monitoring devices are issued to, and used by only the individual to whom the monitoring device has been first issued during any reporting period.

D. A licensee shall ensure that survey instruments and personnel dosimeters that are used to make quantitative measurements are calibrated in accordance with R9-7-449.

E. Records.
1. Each licensee or registrant shall maintain records showing the results of surveys required by this Section and R9-7-433(B). The licensee or registrant shall retain these records for three years after the record is made.

2. The licensee or registrant shall retain each of the following records for three years after the Department terminates the license or registration:
    a. Records of the survey results used to determine the dose from external sources of radiation, in the absence of or in combination with individual monitoring data, and provide an assessment of individual dose equivalents;
    b. Records of the results of measurements and calculations used to determine individual intakes of radioactive material and to assess an internal dose;
    c. Records showing the results of air sampling, surveys, and bioassays required according to R9-7-425(A)(3)(a) and (b);
    d. Records of the measurement and calculation results used to evaluate the release of radioactive effluents to the environment; and
    e. Notwithstanding subsection (A) of this part, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with R9-7-323, as applicable.

Historical Note

New Section R9-7-418 recodified from R12-1-418, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-419. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose

A. Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this Article.

B. At minimum each licensee or registrant shall supply and require the use of individual monitoring devices by the following personnel:
1. Adults likely to receive, in one year, an intake in excess of 10% of the applicable ALI in Table I, Columns 1 and 2, of Appendix B;
2. Minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.5 mSv (0.05 rem);
3. Adults likely to receive, in one year from radiation sources external to the body, a dose in excess of 10 percent of the limits in R9-7-408(A);
4. Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of 5 mSv (0.5 rem);
5. Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem) (Note: All of the occupational doses in R9-7-408 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.);
6. Individuals entering a high or very high radiation area;
7. Individuals operating mobile x-ray equipment as described in R9-7-608;
8. Individuals holding animals for diagnostic x-ray procedures, as described in R9-7-613;
9 Individuals servicing enclosed beam x-ray systems with bypassed interlocks, as described in R9-7-803;
10. Individuals operating open beam fluoroscopic systems and ancillary personnel working in the room when the fluoroscopic system is in use, except when relieved of this requirement by registration condition;
11. Individuals performing well logging, as described in Article 17;
12. Individuals, wearing a finger or wrist individual monitoring device, during the operation of an open-beam or hand held analytical x-ray system or equipment with no safety devices as described in R9-7-806(C) and (F); and
13. Individuals, wearing a finger or wrist individual monitoring device, performing repairs that require the presence of a primary beam of the analytical x-ray system or equipment, as described in R9-7-806(C) and (F).

C. Each licensee shall monitor the occupational intake of radioactive material by and assess the committed effective dose equivalent to:
1. Adults likely to receive, in one year, an intake in excess of 10 percent of the applicable ALI in Table 1, Columns 1 and 2, of Appendix B;
2. Minors likely to receive, in one year, a committed effective dose equivalent in excess of 1 mSv (0.1 rem); and
3. Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 1 mSv (0.1 rem).

D. Each licensee or registrant shall require that all individual monitoring devices be located on individuals according to the following requirements:
1. An individual monitoring device, used to obtain the dose equivalent to an embryo or fetus of a declared pregnant woman according to R9-7-415, shall be located under the protective apron at the waist. A qualified expert shall be consulted to determine the dose equivalent to the embryo or fetus if this individual monitoring device has a monthly reported dose equivalent value that exceeds 0.5 millisieverts (50 millirem). For purposes of this subsection, the value

for determining the dose equivalent to an embryo or fetus under R9-7-415(C), for occupational exposure to radiation from medical fluoroscopic equipment, is the value reported by the individual monitoring device worn at the waist underneath the protective apron, which has been corrected for the particular individual and the work environment by a qualified expert.

2. An individual monitoring device used for lens dose equivalent shall be located at the neck or an unshielded location closer to the eye, outside the protective apron.
3. If only one individual monitoring device is used to determine the effective dose equivalent for external radiation, according to R9-7-408(C)(2)(a), the device shall be located at the neck outside the protective apron. If a second individual monitoring device is used for the same purpose, it shall be located under the protective apron at the waist. A second individual monitoring device is required for a declared pregnant woman.
4. An individual, wearing an extremity personnel monitoring device, during the operation of an open-beam or hand-held analytical x-ray system with no safety devices or an individual performing repairs in the presence of a primary beam of the analytical x-ray system or equipment, as described in R9-7-806(C) and (F), shall wear the device on the individual's finger or wrist.

E. Records.

1. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring is required according to this Section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:
   a. The deep-dose equivalent to the whole body, lens dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities;
   b. The estimated intake of radionuclides;
   c. The committed effective dose equivalent assigned to the intake of radionuclides;
   d. The specific information used to assess the committed effective dose equivalent according to R9-7-411(A) and (C), and when required R9-7-419;
   e. The total effective dose equivalent when required by R9-7-409; and
   f. The total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose;
2. The licensee or registrant shall make entries of the records specified in subsection (D)(1), at intervals not to exceed one year;
3. The licensee or registrant shall maintain at the inspection site the records specified in subsection (D)(1) in a clear and legible method that contains all the information required by this subsection;
4. The licensee or registrant shall maintain the records of dose to an embryo or fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file but may be maintained separately from the dose records; and
5. The licensee or registrant shall retain each required form or record for three years after the Department terminates each pertinent license or registration requiring the record.

Historical Note

New Section R9-7-419 recodified from R12-1-419, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-420. Control of Access to High Radiation Areas

A. A licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

1. A control device that, upon entry into the area, causes the level of radiation to be reduced below the level at which an individual might receive a deep-dose equivalent of 1 mSv (0.1 rem) in one hour at 30 centimeters from the source from any surface that the radiation penetrates;
2. A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or
3. Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entity.

B. In place of the controls required by subsection (A) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

C. The licensee or registrant may apply to the Department for approval of alternative methods for controlling access to high radiation areas.

D. The licensee or registrant shall establish the controls required by subsections (A) and (C) in a way that does not prevent individuals from leaving a high radiation area.

E. The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the U.S. Department of Transportation, provided that:
1. The packages do not remain in the area longer than three days, and
2. The dose rate at 1 meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

F. The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Article 4 and operate in accordance with R9-7-407(B) and the provisions of the licensee's or registrant's radiation protection program.

G. The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area if the registrant has met all the specific requirements for access and control specified in other applicable Articles, such as Article 5 for industrial radiography, Article 6 for x-rays in the healing arts, and Article 9 for particle accelerators.

Historical Note

New Section R9-7-420 recodified from R12-1-420, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-421. Control of Access to Very-high Radiation Areas

A. In addition to the requirements in R9-7-420, a licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 5 Gy (500 rad) or more in one hour at 1 meter from a source or from any surface that the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation or non-self-shielded irradiators.

B. The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area, described in subsection (A), if the registrant has met all requirements for access and control specified in other applicable Articles, such as Article 5 for industrial radiography, Article 6 for x-rays in the healing arts, and Article 9 for particle accelerators.

C. Each licensee or registrant shall maintain records of tests made according to R9-7-422(B)(9) on entry control devices for very-high radiation areas. These records shall include the date, time, and results of each test of function.

D. The licensee or registrant shall retain the records required by this Section for three years after the record is made.

Historical Note

New Section R9-7-421 recodified from R12-1-421, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-422. Control of Access to Irradiators (Very-high Radiation Areas)

A. This Section applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. This Section does not apply to sources of radiation that are used in teletherapy, industrial radiography, or completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.

B. A licensee or registrant shall ensure that each area in which radiation levels may exceed 5 Gy (500 rad) in one hour at 1 meter from a source that is used to irradiate materials meets the following requirements:
1. Each entrance or access point shall be equipped with entry control devices that:
   a. Function automatically to prevent any individual from inadvertently entering a very high radiation area;
   b. Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in one hour; and
   c. Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep-dose equivalent to an individual in excess of 1 mSv (0.1 rem) in one hour.
2. If the control devices required in subsection (B)(1) fail to function, additional control devices shall be provided so that:
   a. The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in one hour; and
   b. Conspicuous visible and audible alarm signals are generated so that an individual entering the area is aware of the hazard. The individual who enters the very-high radiation area after an alarm signals shall be familiar with the process and equipment. Before entering, the individual shall ensure that a second individual is present and aware of the first person's actions.
3. The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:
   a. The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in one hour, and

b. Conspicuous visible and audible alarm signals are generated so that potentially affected individuals are aware of the hazard. Potentially affected individuals shall notify the licensee or registrant of the failure or removal of the physical barriers.

4. When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.
5. Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of subsections (B)(3) and (4).
6. The licensee or registrant shall equip each area with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, installed in the area, and which can prevent the source of radiation from being put into operation.
7. The licensee or registrant shall control each area by use of administrative procedures and devices necessary to ensure that the area is cleared of personnel before each use of the source of radiation.
8. The licensee or registrant shall check each area by radiation measurement to ensure that, before the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area will not expose an individual to a deep-dose equivalent in excess of 1 millisievert (0.1 rem) in one hour.
9. The licensee or registrant shall test the entry control devices required in subsection (B)(1) for proper functioning and keep records according to R9-7-421.
   a. Testing shall be conducted before initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day;
   b. Testing shall be conducted before resumption of operation of the source of radiation after any unintentional interruption;
   c. The licensee or registrant shall submit to the Department a schedule of testing; and
   d. The licensee or registrant shall include in the schedule a listing of the periodic testing that will be followed.
10. The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in a safe condition or effect repairs on controls, unless control devices are functioning properly.
11. The licensee or registrant shall control entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by personnel, with devices and administrative procedures necessary to physically protect and warn against inadvertent entry by an individual through one of the portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any uncontained radioactive material that is carried toward an exit and automatically prevent contained radioactive material from being carried out of the area.

C. A licensee, registrant, or applicant seeking a license or registration for a source of radiation within the purview of subsection (B) that will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of subsection (B) may apply to the Department for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to that specified in subsection (B). At least one of the alternative measures shall be an entry-preventing interlock control, based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where the sources of radiation are used.

D. A licensee or registrant shall provide the entry control devices required by subsections (B) and (C) in such a way that no individual will be prevented from leaving the area.

E. Records.

1. Each licensee or registrant shall maintain records of tests made according to subsection (B)(9) on entry control devices for very-high radiation areas. These records shall include the date and results of each test of function.
2. The licensee or registrant shall retain the records for three years from the date the record is made.

Historical Note

New Section R9-7-422 recodified from R12-1-422, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-423. Use of Process or Other Engineering Controls

A licensee shall use, to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentration of radioactive material in air.

Historical Note

New Section R9-7-423 recodified from R12-1-423, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-424. Use of Other Controls

A. If it is not practical to apply process or other engineering controls to control concentrations of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total

effective dose equivalent according to R9-7-407(B), increase monitoring and limit intakes by one or more of the following means:

1. Control access,
2. Limit exposure times,
3. Use respiratory protection equipment, or
4. Use other controls.

B. If the licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee shall also consider the impact of respirator use on workers' industrial health and safety.

Historical Note

New Section R9-7-424 recodified from R12-1-424, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-425. Use of Individual Respiratory Protection Equipment

A. If a licensee assigns or permits the use of respiratory protection equipment to limit the intake of radioactive material,

1. Except as provided in subsection (A)(2), the licensee shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health (NIOSH).
2. If the licensee wishes to use equipment that has not been tested or certified by NIOSH, or for which there is no schedule for testing or certification, the licensee shall submit an application to the Department and request authorization for use of this equipment, except as otherwise provided in this Section. The licensee shall provide evidence with the application that the material and performance characteristics of the equipment provide the asserted degree of protection under anticipated conditions of use. The licensee shall demonstrate the degree of protection by providing reliable test information.
3. The licensee shall implement and maintain a respiratory protection program that includes:
   a. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;
   b. Surveys and bioassays, as necessary, to evaluate actual intakes;
   c. Testing of respirators for operability (user seal check for face sealing devices and functional check for other devices) immediately before each use;
   d. Written procedures regarding:
      i. Monitoring, including air sampling and bioassays;
      ii. Supervision and training of respirator users;
      iii. Fit testing;
      iv. Respirator selection;
      v. Breathing air quality;
      vi. Inventory and control;
      vii. Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;
      viii. Recordkeeping; and
      ix. Limitations on periods of respirator use and relief from respirator use;
   e. Determination by a physician that each individual user is able to use respiratory protection equipment:
      i. Before the initial fitting of a face-sealing respirator;
      ii. Before the first field use of a non-face-sealing respirator, and
      iii. Every 12 months after initial fitting or first use, or periodically at a frequency determined by a physician; and
   f. Fit testing, with a fit factor $\geq$ 10 times the APF for a negative pressure device and a fit factor $\geq$ 500 for any positive pressure, continuous flow, and pressure-demand device, before the first field use of tight-fitting, face-sealing respirators and periodically after first use at least yearly. The licensee shall perform fit testing with the face piece operating in the negative pressure mode.
4. The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use, in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other condition that might require relief.
5. The licensee shall consider manufacturer limitations regarding respirator type and mode of use. When selecting a respiratory device, the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in a manner that does not interfere with the proper operation of the respirator.
6. The licensee shall provide standby rescue persons whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The licensee shall equip standby rescue persons with respiratory protection devices or other apparatus designed for potential hazards and anticipated conditions of use. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of

the air supply or for any other reason that requires relief from distress. The licensee shall provide at least one standby rescue person for every five workers, who is immediately available to assist any worker using this type of equipment and provide effective emergency rescue if needed.

7. The licensee shall supply atmosphere-supplying respirators with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of OSHA (29 CFR 1910.134(i)(1)(ii)(A) through (E), July 1, 2003, incorporated by reference and on file with the Department, containing no future editions or amendments). Grade D quality air criteria include:
   a. Oxygen content (v/v) of 19.5-23.5%;
   b. Hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
   c. Carbon monoxide (CO) content of 10 ppm or less;
   d. Carbon dioxide content of 1,000 ppm or less; and
   e. Lack of noticeable odor.
8. The licensee shall ensure that no objects, materials, or substances, such as facial hair, or any conditions that interfere with the face-to-face piece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator face piece.
9. In estimating the dose to individuals from intake of airborne radioactive materials, the licensee shall use the concentration of radioactive material in the air that is inhaled when respirators are worn, which is determined by dividing the ambient concentration in air without respiratory protection by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the licensee shall modify the calculation using the corrected value. If the dose is later found to be less than the estimated dose, the licensee may modify the calculation using the corrected value.

B. The licensee shall use Appendix A to select equipment and associated assigned protection factors.

C. A licensee shall apply to the Department for authorization to use assigned protection factors in excess of those specified in Appendix A. To apply for authorization the licensee shall:
1. State the reason for the higher protection factors; and
2. Demonstrate that the requested respiratory protective equipment provides the higher protection factors under the proposed conditions of use.

D. The licensee shall notify the Department in writing at least 30 days before the date that respiratory protective equipment is first used according to subsection (A) or (C).

Historical Note

New Section R9-7-425 recodified from R12-1-425, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-426. Security of Stored Sources of Radiation

A licensee or registrant shall secure from unauthorized removal or access licensed or registered sources of radiation that are stored in unrestricted areas.

Historical Note

New Section R9-7-426 recodified from R12-1-426, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-427. Control of Sources of Radiation Not in Storage

A. A licensee shall control and maintain constant surveillance of licensed radioactive material that is in an unrestricted area and is not in storage or in a patient.

B. A registrant shall maintain control of radiation machines that are in an unrestricted area and not in storage.

Historical Note

New Section R9-7-427 recodified from R12-1-427, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-428. Caution Signs

A. Unless otherwise authorized by the Department, a licensee or registrant shall use the symbol prescribed by this Section with the colors magenta, or purple, or black on yellow background as the standard radiation symbol. The symbol prescribed is the three-bladed design as follows:

RADIATION SYMBOL

1. Cross-hatched area is to be magenta, purple, or black; and
2. The background is to be yellow.

B. Notwithstanding the requirements of subsection (A), licensees or registrants are authorized to label sources of radiation, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols that lack the color scheme required in subsection A.

C. In addition to the contents of signs and labels prescribed in this Article, the licensee or registrant shall provide, on or near the required signs and labels, additional information to make individuals aware of potential radiation exposures and to minimize the exposures.

Historical Note

New Section R9-7-428 recodified from R12-1-428, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-429. Posting

A. A licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

B. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

C. The licensee or registrant shall post each very-high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "GRAVE DANGER, VERY HIGH RADIATION AREA."

D. The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

E. The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of licensed material specified in Appendix C with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

Historical Note

New Section R9-7-429 recodified from R12-1-429, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-430. Exceptions to Posting Requirements

A. A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

1. The sources of radiation are constantly attended during these periods by an individual who takes precautions necessary to prevent exposure of individuals to sources of radiation in excess of limits established in this Article; and
2. The area or room is subject to the licensee's or registrant's control.

B. A licensee or registrant is not required to post a caution sign in a room or other area in a hospital that is occupied by an individual who has been administered radioactive material, if the individual meets the criteria for release in R9-7-719.

C. A licensee or registrant is not required to post a caution sign in a room or area because of the presence of a sealed source, provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

D. A hospital or clinic licensee is exempt from the posting requirements in R9-7-429 for a teletherapy room if:

1. Access to the room is controlled according to R9-7-731; and
2. Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation that exceeds the limits established in this Chapter.

E. A registrant is not required to post a caution sign in a room or area because of the presence of radiation machines used solely for diagnosis in the healing arts.

Historical Note

New Section R9-7-430 recodified from R12-1-430, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-431. Labeling Containers and Radiation Machines

A. A licensee shall ensure that each container of licensed material is labeled with a durable, clearly visible radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the radioactivity is estimated, radiation level, kind of material, and mass enrichment, to permit an individual handling or using a container, or working in the vicinity of a container, to take precautions to avoid or minimize exposure.

B. Before removal or disposal of an empty, uncontaminated container to an unrestricted area, each licensee shall remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

C. Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner to caution an individual that radiation is produced when it is energized.

D. A licensee shall label each syringe and vial that contains a radiopharmaceutical used in the practice of medicine with the radiopharmaceutical content. Each syringe shield and vial shield shall be labeled, unless the label on the syringe or vial is visible when shielded. The label shall contain the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the name of the person being administered the radiopharmaceutical. Color-coding syringe shields and vial shields does not meet the labeling requirement.

Historical Note

New Section R9-7-431 recodified from R12-1-431, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-432. Labeling Exemptions

A licensee is not required to label:

1. Containers holding licensed material in quantities less than the quantities listed in Appendix C;
2. Containers holding licensed material in concentrations less than those specified in Table III of Appendix B;
3. Containers attended by an individual who takes precautions necessary to prevent exposure of individuals to radiation in excess of the limits established in this Article;
4. Containers holding radioactive material that do not exceed the limits for excepted quantity or article as defined and limited in 49 CFR 173.403, and 173.421 through 173.424, and are transported, packaged, and labeled in accordance with 49 CFR 172.436 through 172.440 (Revised October 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.);
5. Containers that are accessible only to individuals authorized to handle, use, or work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record, retained as long as the container is in use for the purpose indicated on the record. (Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells.); or
6. Installed manufacturing or process equipment, such as piping and tanks.

Historical Note

New Section R9-7-432 recodified from R12-1-432, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-433. Procedures for Receiving and Opening Packages

A. Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in 10 CFR 71.4, January 1, 2005, which is incorporated by reference, published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. The material incorporated by reference contains no future editions or amendments. The licensee shall make arrangements to receive:

1. The package when the carrier offers it for delivery; or
2. The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

B. Each licensee shall:

1. Monitor the external surfaces of a package, labeled with a Radioactive White I, Yellow II, or Yellow III as specified in 49 CFR 172.403 and 172.436 through 172.440, October 1, 2004, which are 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. The material incorporated by reference contains no future editions or amendments. The licensee shall test the package for radioactive contamination, unless the package contains only radioactive material in the form of gas or in special form, as defined in R9-7-102; and
2. Monitor the external surfaces of a package, labeled with a Radioactive White I, Yellow II, or Yellow III as specified in subsection (B)(1), for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, defined in 10 CFR 71, and referenced in subsection (A); and
3. Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

C. The licensee shall perform the monitoring required by subsection (B) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than three hours from the beginning of the next working day if it is received after working hours.

D. The licensee shall immediately notify by telephone the final delivery carrier and the Department at 480-202-4982:

1. When:

a. Removable radioactive surface contamination exceeds 22 dpm/cm2 for beta-gamma emitting radionuclides or 2.2 dpm/cm2 for alpha-emitting radionuclides, wiping a minimum surface area of 300 square centimeters (46 square inches), or the entire surface if less than 300 square centimeters (46 square inches); or
b. External radiation levels exceed the limits of 2 millisieverts (200 millirem) per hour; and

2. Include in the notification the following information:
a. The caller's name, official title, and call back telephone number;
b. The date and time of monitoring;
c. A description of how the limits in subsection (D)(1) were exceeded, including the amount of radiation detected;
d. The isotopes, quantities, and chemical and physical form of the licensed material in the package; and
e. Any personnel radiation exposure data available.

E. Each licensee shall:
1. Establish, maintain, and retain written procedures for safely opening packages that contain radioactive material, and
2. Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

F. Licensees transferring special form sources in vehicles owned or operated by the licensee to and from a work site are exempt from the contamination monitoring requirements of subsection (B) but are not exempt from the monitoring requirement in subsection (B) for measuring radiation levels that ensures that the source of radiation is still properly lodged in its shield.

Historical Note

New Section R9-7-433 recodified from R12-1-433, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 28 A.A.R. 3533 (November 18, 2022), with an immediate effective date of November 2, 2022 (Supp. 22-4).

R9-7-434. General Requirements for Waste Disposal

A. A licensee shall dispose of licensed material only:
1. By transfer to an authorized recipient as provided in R9-7-439 or in Article 3, or to the U.S. Department of Energy;
2. By decay in storage, according to R9-7-438(C);
3. By release in effluents within the limits in R9-7-416; or
4. As authorized according to R9-7-435, R9-7-436, R9-7-437, R9-7-438, or R9-7-438.01;

B. To receive waste that contains licensed material from other persons, a person shall be specifically licensed for:
1. Treatment prior to disposal,
2. Treatment or disposal by incineration,
3. Decay in storage,
4. Disposal at a land disposal facility licensed according to Article 3, or
5. Storage until transferred to a storage or disposal facility authorized to receive the waste.

Historical Note

New Section R9-7-434 recodified from R12-1-434, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-435. Method for Obtaining Approval of Proposed Disposal Procedures

For disposal of licensed material generated in the licensee's operations, a licensee or applicant for a license may apply to the Department for approval of proposed disposal procedures, not otherwise authorized in this Chapter. Each application shall include:
1. A description of the waste containing licensed material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation;
2. The proposed manner and conditions of waste disposal;
3. An analysis and evaluation of pertinent information on the nature of the environment;
4. The nature and location of other potentially affected facilities; and
5. An analysis and procedure to ensure that doses comply with R9-7-407(B), and are within the dose limits in this Article.

Historical Note

New Section R9-7-435 recodified from R12-1-435, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-436. Disposal by Release into Sanitary Sewerage System

A. A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:
1. The material is readily soluble or is readily dispersible biological material, in water;
2. The quantity of licensed radioactive material that the licensee releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Appendix B, Table III; and

3. If more than one radionuclide is released, the following conditions shall also be satisfied:
    a. The licensee shall determine the fraction of the limit in Appendix B, Table III represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Appendix B, Table III;
    b. The sum of the fractions for each radionuclide required by subsection (A)(3)(a) does not exceed unity; and
    c. The total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 185 GBq (5 Ci) of Hydrogen-3, 37 GBq (1 Ci) of Carbon-14, and 37 GBq (1 Ci) of all other radioactive materials combined.

B. Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in subsection (A).

Historical Note

New Section R9-7-436 recodified from R12-1-436, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-437. Treatment or Disposal by Incineration

A licensee shall treat or dispose of licensed material by incineration only in the amounts and forms specified in R9-7-438 or as specifically approved by the Department according to R9-7-435.

Historical Note

New Section R9-7-436 recodified from R12-1-436, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-438. Disposal of Specific Wastes

A. A licensee may dispose of the following licensed material as if it were not radioactive:
1. 1.85 kBq (0.05 µCi), or less, of Hydrogen-3 or Carbon-14 per gram of medium used for liquid scintillation counting; and
2. 1.85 kBq (0. 05 µCi), or less, of Hydrogen-3 or Carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.
3. 1.85 kBq (0.05 µCi), or less, of Iodine-125 per gram of medium used in analyzing in vitro laboratory samples and associated sample holders contaminated during the laboratory procedure.

B. A licensee shall not dispose of tissue, contaminated with radioactive material, according to subsection (A)(2) in a manner that would permit its use either as food for humans or as animal feed.

C. A licensee may hold radioactive material with a physical half-life of less than or equal to 120 days for decay in storage before disposal without regard to its radioactivity, and is exempt from the requirements of R9-7-434, provided:
1. The licensee monitors the radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and
2. The licensee removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

D. The licensee shall maintain records in accordance with R9-7-441.

Historical Note

New Section R9-7-438 recodified from R12-1-438, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-438.01. Disposal of Certain Radioactive Material

A. Licensed material as defined in the definition of radioactive material in R9-7-102 may be disposed of in accordance with this Article, even though it is not defined as low-level radioactive waste. Therefore, any licensed radioactive material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed by the Department, must meet the requirements of R9-7-439.

B. A licensee may dispose of radioactive material, as defined in the definition of radioactive material in R9-7-102, at a disposal facility authorized to dispose of such material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

Historical Note

New Section R9-7-438.01 recodified from R12-1-438.01, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-439. Transfer for Disposal and Manifests

A. Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility (for purposes of this rule “land disposal facility” means the land, buildings, structures, and equipment that are intended to be used for the disposal of radioactive waste. A geologic repository is not a land disposal facility) shall comply with 10 CFR 20.2006 and

10 CFR 20 Appendix G, published January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

B. An authorized representative of the waste generator shall provide the certification required in 10 CFR 20, Appendix G, Section II, which is incorporated by reference in subsection (A).

Historical Note

New Section R9-7-439 recodified from R12-1-439, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-440. Compliance with Environmental and Health Protection Regulations

Nothing in R9-7-434, R9-7-435, R9-7-436, R9-7-437, R9-7-438, or R9-7-439 relieves the licensee from complying with other applicable federal, state, and local rules or regulations governing any other toxic or hazardous properties of materials that may be disposed of according to the rules listed in Article 4 of this Chapter.

Historical Note

New Section R9-7-440 recodified from R12-1-440, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-441. Records of Waste Disposal

A. Each licensee shall maintain records of the disposal of licensed materials made in accordance with R9-7-435, R9-7-436, R9-7-437, R9-7-438, and disposal by burial in soil, including burials authorized before February 25, 1985.

B. The licensee shall retain the records required by subsection (A) until the Department terminates each pertinent license requiring the record. The licensee shall provide for the disposition of these records prior to license termination.

Historical Note

New Section R9-7-441 recodified from R12-1-441, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-442. Department Inspection of Shipments of Waste

Each shipment of waste to a disposal facility, licensed under R9-7-1302(D)(11), is subject to inspection by the Department before shipment or transportation. The waste shipper shall notify the Department not less than five working days before the scheduled shipment or transportation of waste to a licensed disposal facility.

Historical Note

New Section R9-7-442 recodified from R12-1-442, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-443. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation

A. Each licensee or registrant shall report to the Department by telephone, as specified in R9-7-448(C), as follows:

1. Immediately after it becomes known to the licensee that licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C is stolen, lost, or missing under circumstances that indicate to the licensee that an exposure could result to individuals in unrestricted areas;
2. Within 30 days after it becomes known to the licensee that licensed radioactive material in an aggregate quantity greater than 10 times the quantity specified in Appendix C is stolen, lost, or missing, and is still missing; and
3. Immediately after it becomes known to the registrant that a radiation machine is stolen, lost, or missing.

B. Each licensee or registrant required to make a report according to subsection (A) shall, within 30 days after making the telephone report, make a written report to the Department that contains the following information:

1. A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model, serial number, type, and maximum energy of radiation emitted;
2. A description of the circumstances under which the loss or theft occurred;
3. A statement of disposition, or probable disposition, of the licensed or registered source of radiation;
4. Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;
5. Actions that have been taken, or will be taken, to recover the source of radiation; and
6. Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

C. After filing the written report required in subsection (B), the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of the information.

D. The licensee or registrant shall provide the Department with the names of individuals who may have received an exposure to radiation as a result of an incident reported to the Department under subsection (B).

Historical Note

New Section R9-7-443 recodified from R12-1-443, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 28 A.A.R. 3533 (November 18, 2022), with an immediate effective date of November 2, 2022 (Supp. 22-4).

R9-7-444. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits

A. In addition to the notification required by R9-7-445, each licensee or registrant shall submit a written report within 30 days after learning of any of the following:

1. Incidents for which notification is required by R9-7-445;
2. Doses in excess of any of the following:
   a. The occupational dose limits for adults in R9-7-408;
   b. The occupational dose limits for a minor in R9-7-414;
   c. The limits for an embryo or fetus of a declared pregnant woman in R9-7-415;
   d. The limits for an individual member of the public in R9-7-416;
   e. Any applicable limit in the license or registration; or
   f. The ALARA limit on air emissions in R9-7-407;
3. Levels of radiation or concentrations of radioactive material in:
   a. A restricted area in excess of applicable limits in the license or registration, or
   b. An unrestricted area in excess of 10 times the applicable limit in this Article or in the license or registration, whether or not this involves an exposure of any individual to a dose in excess of the limits in R9-7-416;
4. Radiation levels or concentrations of radioactive material in excess of the standards in 40 CFR 190, 2003 edition, published July 1, 2003, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 which is incorporated by reference and on file with the Department, if the licensee is subject to these federal standards, or there is a license condition referencing the 40 CFR 190 standards. This incorporation by reference contains no future editions or amendments.

B. Contents of reports.

1. Each report shall contain a description of each individual's exposure to radiation and radioactive material, including as applicable:
   a. Estimates of each individual's dose;
   b. The levels of radiation and concentrations of radioactive material involved;
   c. The cause of the elevated exposures, dose rates, or concentrations; and
   d. Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, and associated license or registration conditions.
2. Each report filed according to subsection (A) shall include for each occupationally overexposed individual: name, Social Security number, and date of birth. With respect to the limit for an embryo or fetus in R9-7-415, the identifiers in the report should be those of the declared pregnant woman. The report shall be prepared so that information regarding each overexposed individual is stated in a separate and detachable part of the report.

C. All licensees or registrants who make reports according to subsection (A) shall submit the report in writing to the Department.

Historical Note

New Section R9-7-444 recodified from R12-1-444, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-445. Notification of Incidents

A. Immediate notification: Each licensee or registrant shall immediately report to the Department, as specified in R9-7-448(C), any event involving a radiation source that may have caused or threatens to cause any of the following conditions:

1. An individual to receive:
   a. A total effective dose equivalent of 0.25 Sv (25 rem) or more;
   b. A lens dose equivalent of 0.75 Sv (75 rem) or more; or
   c. A shallow-dose equivalent to the skin or extremities of 2.5 Gy (250 rads) or more; or
2. The release of radioactive material, inside or outside of a restricted area but not including a location where personnel are not normally stationed during routine operations, such as a hot-cell or process enclosure, so if an individual had been present for 24 hours, the individual could have received five times the annual limit on intake.

B. Twenty-four hour notification: Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Department, as specified in R9-7-448(C), any event involving loss of control of a radiation source possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

1. An individual to receive, in a period of 24 hours:
   a. A total effective dose equivalent exceeding 0.05 Sv (5 rem);
   b. A lens dose equivalent exceeding 0.15 Sv (15 rem); or
   c. A shallow-dose equivalent to the skin or extremities exceeding 0.5 Gy (50 rads); or
2. The release of radioactive material, inside or outside of a restricted area but not including a location where personnel are not normally stationed during routine operations, such as a hot-cell or process enclosure, so, if an individual had

been present for 24 hours, the individual could have received an intake in excess of one occupational annual limit of intake.

C. A licensee or registrant shall prepare any report filed with the Department according to this Section so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.

D. If the Department does not respond to the initial telephone call made according to subsection (A) or (B) and R9-7-448(C), the licensee or registrant shall report to the Department of Public Safety and continue with reasonable efforts to contact the Department Duty Officer until contact is made.

E. The provisions of this Section do not apply to a dose that results from a planned special exposure, if the dose is within the limits for planned special exposures and reported according to R9-7-413(C).

Historical Note

New Section R9-7-445 recodified from R12-1-445, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 28 A.A.R. 3533 (November 18, 2022), with an immediate effective date of November 2, 2022 (Supp. 22-4).

R9-7-446. Notifications and Reports to Individuals

A. Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in R9-7-1004.

B. In addition to the reporting requirements in R9-7-444 and R9-7-445, each licensee or registrant shall notify the individual exposed to radiation or radioactive material. The notice to the exposed individual shall be provided no later than the date the report is submitted to the Department and shall comply with R9-7-1004(A).

Historical Note

New Section R9-7-446 recodified from R12-1-446, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-447. Vacating Premises

A. If a facility has been used for activities involving radioactive material a licensee shall notify the Department in writing of the intent to vacate the facility no less than 45 days before relinquishing possession or control of the facility.

B. If a facility is contaminated with radioactive material, a licensee vacating the facility shall decontaminate it using Department-approved procedures.

C. The Department shall inspect a vacated facility to determine whether it is contaminated with radioactive material.

Historical Note

New Section R9-7-447 recodified from R12-1-447, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-448. Additional Reporting

A. Each licensee shall notify the Department, according to subsection (C), as soon as possible, but not later than four hours after the discovery of an event, and take immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed the limits specified in this Chapter or releases of licensed material that could exceed the limits specified in this Chapter. For purposes of this Section, event means a radiation accident involving a fire, explosion, gas release, or similar occurrence.

B. Each licensee shall notify the Department, according to subsection (C), within 24 hours after discovering any of the following events involving licensed material:

1. A contamination event that:
   a. Requires that anyone having access to the contaminated area be restricted for more than 24 hours by the imposition of additional radiological controls to prohibit entry into the area;
   b. Involves a quantity of radioactive material greater than five times the lowest annual limit on intake specified in Appendix B of this Article; and
   c. Results in access to the contaminated area being restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination.
2. An event in which equipment is disabled or fails to function as designed when:
   a. The equipment is part of a system designed to prevent releases exceeding the limits specified in this Chapter, to prevent exposures to radiation and radioactive materials exceeding limits specified in this Chapter, or to mitigate the consequences of an accident;
   b. The equipment performs a safety function; and
   c. No redundant equipment is available and operable to perform the required safety function.
3. An event that requires urgent medical treatment of an individual with radioactive contamination on the individual's clothing or body.

4. A fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:
    a. The quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of this Article, and
    b. The damage affects the integrity of the licensed material or its container.

C. Each licensee shall make reports by telephone to the Department at 480-202-4982 and, to the extent that the information is available at the time of notification, include the following information:
1. The caller's name, official title, and call back telephone number;
2. A description of the event, including date and time;
3. The exact location of the event;
4. The isotopes, quantities, and chemical and physical form of the licensed material involved; and
5. Any personnel radiation exposure data available.

D. Each licensee who makes a report required by subsection (A) or (B) shall submit to the Department a written follow-up report within 30 days of the initial report. Written reports prepared as required by other rules may be submitted to fulfill this requirement if the reports contain all of the required information in this subsection. The report shall include the following:
1. A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;
2. The exact location of the event;
3. The isotopes, quantities, and chemical and physical form of the licensed material involved;
4. Date and time of the event;
5. Corrective actions taken or planned and the results of any evaluations or assessments; and
6. The extent of personnel exposure to radiation or to radioactive materials without identification of each exposed individual by name.

E. Each licensee that makes a report required by subsection (A) or (B) shall submit a written follow-up report to the Department within 30 days after the initial report.

Historical Note

New Section R9-7-448 recodified from R12-1-448, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3). Amended by final expedited rulemaking at 26 A.A.R. 1067, with an immediate effective date of May 6, 2020 (Supp. 20-2). Amended by final expedited rulemaking at 28 A.A.R. 3533 (November 18, 2022), with an immediate effective date of November 2, 2022 (Supp. 22-4).

R9-7-449. Survey Instruments and Pocket Dosimeters

A. Each licensee or registrant shall ensure that survey instruments used to show compliance with this Article have been calibrated before first use, annually, and following repair, unless otherwise specified in this Chapter.

B. To satisfy the requirements of subsection (A), the licensee or registrant shall:
1. For each scale to be calibrated, calibrate two readings separated by at least 50 percent of scale rating; and
2. Conspicuously note on the instrument the apparent radiation level, in appropriate units for the type of survey instrument being used and the date of calibration.

C. Each licensee or registrant shall check each survey instrument for proper operation with the dedicated check source after calibration and before each use.

D. The licensee or registrant shall retain a record of each calibration required in subsection (A) for three years. The record shall include:
1. A description of the calibration procedure; and
2. A description of the source used, the certified dose rates from the source, the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

E. To meet the requirements of subsections (A), (B), and (C), the licensee or registrant may obtain the services of persons licensed or registered by the Department, the NRC, an Agreement State, or a Licensing State to perform calibrations of survey instruments. Licensing records of the service person authorization shall be maintained for three years by the licensee or registrant obtaining the service.

F. Each licensee or registrant shall ensure that pocket dosimeters used to show compliance with this Article:
1. Have been evaluated for proper operation annually and following repair, using a procedure acceptable to the Department, unless a more frequent evaluation is required by license condition (Unless the dosimeter is electronic, the evaluation of the dosimeter shall include a drift test over a 24-hour period.); and
2. Meet the performance criteria listed in R9-7-523(C) and R9-7-1130(C).

G. Records of personnel dosimeter operational checks shall be maintained for three years.

Historical Note

New Section R9-7-449 recodified from R12-1-449, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-450. Sealed Sources

A. A licensee shall only receive, possess, and use radioactive materials contained in a sealed source that has been manufactured, labeled, packaged, and distributed in accordance with a specific license for its manufacture and distribution. The license to manufacture and distribute a sealed source shall be issued by the Department, the U.S. Nuclear Regulatory Commission, a Licensing State, or another Agreement State.

B. A licensee who possesses and uses a sealed source, or any device or equipment that contains a sealed source, shall follow the radiation safety and handling instructions approved by the Department or follow the radiation safety and handling instructions furnished by the manufacturer on the label attached to the source, on the permanent container of the source, or in a leaflet or brochure that accompanies the source, and maintain the instructions in a legible and conveniently available form. If the handling instructions, leaflet, or brochure is no longer available and a copy cannot be obtained from the manufacturer, the licensee shall notify the Department that the source handling information is no longer available.

C. Inventories:

1. An inventory shall be conducted at intervals not to exceed six months, unless a shorter interval is specified by license condition.
2. The records of the inventory shall be maintained for three years from the date of the inventory, and shall be available for inspection by the Department.
3. The information recorded shall include:
   a. The kind and quantity of radioactive material,
   b. The model and serial number of the source or the device in which it is mounted,
   c. The location of the sealed source,
   d. The date of the inventory, and
   e. The signature of the person performing the inventory.

D. Any licensee who possesses and uses sealed sources in the practice of medicine shall conduct a physical inventory according to the requirements in 9 A.A.C. 7, Article 7.

E. Sealed sources, containing radioactive material, shall not be opened unless authorized by license condition.

F. Sealed sources and machines, devices, or equipment containing sealed sources shall be used in accordance with procedures described in the manufacturer's instructions and the safety precautions described in the Nuclear Regulatory Commission Sealed Sources and Device Registry, unless the instructions or precautions conflict with these rules or license condition.

Historical Note

New Section R9-7-450 recodified from R12-1-450, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-451. Termination of a Radioactive Material License or a Licensed Activity

A. As the final step before terminating a radioactive material use program licensed under R9-7-312, the licensee shall:

1. Certify to the Department the disposition of all licensed material, including accumulated wastes, by submitting a complete description of a disposal plan with signed receipts from all licensed persons receiving the licensed material; and
2. Conduct a radiation survey of the premises where the licensed activities were carried out to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in R9-7-452 and submit to the Department a report of the results of this survey, unless the licensee demonstrates in some other manner acceptable to the Department that the premises are suitable for release in accordance with the criteria for decommissioning in R9-7-452.

B. Before terminating a licensed program, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in any unsealed form, shall forward the following records to the Department:

1. Records of disposal of the licensed material required by R9-7-435, R9-7-436, R9-7-437, and R9-7-438; and
2. Records required by R9-7-418.

C. If a licensed activity is transferred or assigned in accordance with subsection (E), each licensee authorized to possess radioactive material with a half-life greater than 120 days, in any unsealed form, shall transfer the following records to the new licensee and the new licensee shall maintain these records until the license is terminated:

1. Records of disposal of licensed material required by R9-7-435, R9-7-436, R9-7-437, and R9-7-438; and
2. Records required by R9-7-418.

D. Before the Department terminates a license, each licensee shall forward the records required by subsection (E) to the Department.

E. A person licensed under R9-7-312 shall maintain required records regarding decommissioning of a facility in a location identified on the license until the Department releases the site for unrestricted use. Before transfer or assignment of licensed activities, a licensee shall transfer all records required by this Section to the transferee. If records relating to facility

decommissioning are kept for other purposes, the transferee shall refer to these records and provide their location on the transferee's application for a license. The transferee shall maintain the records until the Department terminates the transferee's new license. The new licensee shall maintain the following decommissioning records for Department review:

1. Records of spills or other occurrences involving the spread of contamination in and around the facility, equipment, or site. The licensee shall maintain a record of any instance when contamination remains after cleanup procedures or there is a reasonable likelihood that a contaminant has spread to an inaccessible area, as in the case of possible seepage into porous material such as concrete. These records shall include any known information that identifies any radionuclide involved and its quantity, form, and concentration.
2. As-built drawings showing modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and locations of possible inaccessible contamination, such as buried pipes. If as-built drawings are referenced, the licensee need not index each relevant document individually. If drawings are not available, the licensee shall provide records with known information concerning these areas and locations, as prescribed in subsection (E)(1).
3. Except for areas that contain depleted uranium used only for shielding or as penetrators in unused munitions, a list, contained in a single document and updated every two years, of the following:
    a. Any area designated or formerly designated as a restricted area as defined under R9-7-102;
    b. Any area outside of a restricted area for which documentation is required under subsection (B)(1);
    c. Any area outside of a restricted area where wastes have been buried;
    d. Any area outside of a restricted area that contains regulated radioactive material that will require the licensee to either decontaminate the area for decommissioning under R9-7-452 or obtain disposal approval under R9-7-435; and
    e. Any restricted area where wastes have been buried.
4. Records of the cost estimate performed for the decommissioning funding plan or the amount certified by the Department for decommissioning and the method for assuring funding, if either a funding plan or certification is used.

Historical Note

New Section R9-7-451 recodified from R12-1-451, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-452. Radiological Criteria for License Termination

A. General provisions and scope:

1. The criteria in this Section apply to the decommissioning of facilities licensed under Article 3 of this Chapter. The criteria do not apply to uranium and thorium recovery facilities already subject to 10 CFR 40, Appendix A, or to uranium solution extraction facilities.
2. The criteria in this Section do not apply to sites that:
    a. Have been decommissioned before the effective date of this Section; or
    b. Have previously submitted and received Department approval of a license termination plan (LTP) or decommissioning plan.
3. If a site has been decommissioned and the license terminated in accordance with the criteria in this Section, the Department shall not require additional cleanup unless, based on new information, the Department determines that the criteria of this Section were not met and residual radioactivity at the site is a threat to public health and safety.
4. When calculating the TEDE for the average member of the critical group, a licensee shall use the peak annual dose expected within the first 1000 years after decommissioning.

B. Radiological criteria for unrestricted use. The Department considers a site acceptable for unrestricted use if the licensee reduces residual radioactivity, distinguishable from background radiation, to a TEDE for an average member of the critical group that does not exceed 0.15 mSv (15 mrem) per year, including radiation from groundwater sources of drinking water, and the residual radioactivity is as low as reasonably achievable (ALARA). To determine the level that is ALARA, the Department and the licensee shall take into account any detriment, such as deaths from transportation accidents, that is likely to result from decontamination and waste disposal.

C. Criteria for license termination under restrictive conditions. The Department considers a site acceptable for license termination if the licensee meets all of the following restrictive conditions:

1. The licensee demonstrates that a reduction in residual radioactivity, necessary to comply with subsection (B), will result in net public or environmental harm or is not being made because the residual level of radioactivity is ALARA. To determine the level that is ALARA, the Department and the licensee shall take into account any detriment, such as deaths from transportation accidents, that is likely to result from decontamination and waste disposal;
2. The licensee establishes one or more legally enforceable institutional controls that reduce residual radioactivity, distinguishable from background radiation, to a TEDE for the average member of the critical group that does not exceed (0.15 mSv) 15 mrem per year, including radiation from groundwater sources of drinking water;
3. The licensee demonstrates financial assurance that complies with R9-7-323(C), which enables an independent third party, including a governmental custodian of the site, to assume and carry out responsibilities for control and

maintenance of the site and funds placed into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual 1 percent real rate of return on investment;

4. The licensee submits a decommissioning plan or License Termination Plan (LTP) to the Department, indicating the licensee's intent to decommission in accordance with R9-7-323 and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the LTP or decommissioning plan how comments from individuals and institutions in the community, who may be affected by the decommissioning, have been sought and addressed after analysis.
    a. If a licensee is restricting use of the site, the licensee shall seek comments from the public concerning the proposed decommissioning, regarding all of the following matters:
        i. Whether the institutional controls proposed by the licensee will reduce residual radioactivity, distinguishable from background radiation, to a TEDE for the average member of the critical group that does not exceed 0.15 mSv (15 mrem) per year; are enforceable; and do not impose an unreasonable burden on the local community or other affected parties; and
        ii. Whether the licensee has provided financial assurance that complies with R9-7-323(C), which enables an independent third party, including a governmental custodian of the site, to assume and carry out responsibilities for control and maintenance of the site;
    b. In seeking comments on the issues identified in subsection (C)(4)(a), the licensee shall provide for:
        i. Participation by representatives of a broad cross section of community interests that may be affected by the decommissioning;
        ii. An opportunity for a comprehensive discussion of the issues by all of the community representatives; and
        iii. A publicly available document that contains or access to each oral and written comment that reflects the viewpoints of community representatives on each issue and the extent of agreement or disagreement among representatives on each issue; and
5. The licensee reduces residual radioactivity, distinguishable from background radiation, at the site so that if the institutional controls are no longer in effect, the TEDE for the average member of the critical group is as low as reasonably achievable and does not exceed 1 mSv (100 mrem) per year; unless the licensee:
    a. Demonstrates that a further reduction in residual radioactivity necessary to comply with subsection (C)(5) is not technically achievable or economically feasible, or will result in net public or environmental harm;
    b. Provides for durable institutional controls; and
    c. Provides financial assurance that complies with R9-7-323(C), which enables an independent third party, including a governmental custodian of the site, to carry out periodic rechecks of the site, no less frequently than every five years; assures that each institutional control remains in place according to subsection (C)(3); and assumes and carries out responsibilities for maintenance of the institutional control.

D. Alternate criteria for license termination:

1. Based on circumstances that relate to a specific license, the Department may terminate the license using the following alternate criteria for subsections (B) or (C)(2), if the licensee demonstrates that the TEDE from residual radioactivity, distinguishable from background radiation, for an average member of the critical group does not exceed 0.15 mSv (15 mrem) per year, and if the licensee:
    a. Ensures that public health and safety is protected by submitting an analysis of possible sources of exposure, prepared by a independent qualified expert, which indicates whether it is likely that the dose from all human-made sources combined, other than medical sources, is more than the 1 mSv/y (100 mrem/y) limit in R9-7-416;
    b. Employs to the extent practicable, restrictions on site use, according to the provisions of subsection (C) to minimize exposures at the site;
    c. Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; d. Submits a decommissioning plan or License Termination Plan (LTP) to the Department that indicates the licensee's intent to decommission in accordance with R9-7-323, and specifies that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or LTP how comments from individuals and institutions in the community, who may be affected by the decommissioning, have been sought and addressed after analysis. In seeking comments, the licensee shall provide for:
        i. Participation by representatives of a broad cross section of community interests that may be affected by the decommissioning;
        ii. An opportunity for a comprehensive discussion of the issues by all of the community representatives; and
        iii. A publicly available document that contains or access to each oral and written comment that reflects viewpoints of community representatives on each issue and the extent of agreement and disagreement among the representatives on each issue; and

e. Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

2. The use of alternate criteria to terminate a license requires approval by the Department after consideration of any comments provided by the U.S. Environmental Protection Agency and any public comments submitted under subsection (E).

E. Public notification and public participation:

1. Upon the receipt of an LTP or decommissioning plan from a licensee, or a proposal by a licensee for release of a site under subsection (C) or (D), or whenever the Department determines that notice will serve the public interest, the Department shall notify and solicit comments from:
   a. Local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and
   b. The U.S. Environmental Protection Agency.
2. To comply with subsection(E)(1) the Department shall publish a notice in a local newspaper, send letters to state or local organizations on its mailing list, hold a public hearing that is readily accessible to individuals in the vicinity of the site, and solicit comments from the public.

F. Minimization of contamination. After the effective date of this Section, an applicant for a license, other than a renewal, shall describe in the application how facility design and procedures for operation will facilitate eventual decommissioning and minimize, to the extent practicable, the generation of radioactive waste and contamination of the facility and the environment.

1. Applicants for standard design certifications, standard design approvals, and manufacturing licenses shall describe in the application how facility design will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.
2. Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in this Article and radiological criteria for license termination in this Article.

G. The Department considers a site acceptable for unrestricted use if the residual radioactivity, distinguishable from background radiation, is equal to or less than the values in Table 1.

Historical Note

New Section R9-7-452 recodified from R12-1-452, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Table 1. Acceptable Surface Contamination 1 Levels

Radionuclide[1]	Average[2,3]	Maximum[2,4]	Removable[2,5]
U-nat, U-235, U-238, and associated decay products	5,000 dpm/100 cm^2	15,000 dpm/100cm^2	1,000 dpm/100 cm^2
Transuranics, Ra-226, Ra-228, Th-230, Pa-231, Ac-227, I-125, I-129	100dpm/100cm^2	300 dpm/100cm^2	20dpm/100cm^2
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	1000 dpm/100cm^2	3000 dpm/100cm^2	200 dpm/100cm^2
Beta-gamma (Exceptions noted above)	5,000 dpm/100 cm^2	15,000 dpm/100cm^2	1,000 dpm/100 cm^2

[1] Where surface contamination by both alpha-and beta-gamma- emitting radionuclides exists, the limits established for alpha-and beta-gamma-emitting radionuclides apply independently.

[2] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed on an instrument calibrated for background, efficiency, and geometric factors associated with the instrumentation, in accordance with R9-7-449.

[3] Measurements of average contamination level shall not be averaged over more than one square meter. For objects of less surface area, the average shall be derived for each object.

[4] The maximum contamination level applies to an area of not more than 100 cm^2.

[5] The amount of removable radioactive material per 100 cm^2 of surface area shall be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an instrument calibrated in accordance with R9-7-449. When removable contamination on objects of surface area A (where A is less than 100 sq. cm) is determined, the entire surface shall be wiped and the contamination level multiplied by 100/A to convert to a "per 100 sq. cm" basis.

Historical Note

New Article 4, Table 1 recodified from 12 A.A.C. 1, Article 4, Table 1, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-453. Reports to Individuals of Exceeding Dose Limits

Any licensee or registrant that reports a personnel exposure to the Department in accordance with R9-7-413(A)(6), R9-7-444, or R9-7-452 shall:

1. Notify the exposed individual of the exposure addressed in the report; and
2. Transmit the report to the exposed individual at the same time the Department is notified of the exposure.

Historical Note

New Section R9-7-453 recodified from R12-1-453, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-454. Nationally Tracked Sources

A. A licensee who manufactures, receives, transfers, disassembles, or disposes of a nationally tracked source shall complete and submit to the Nuclear Regulatory Commission's National Source Tracking System and the Department, a National Source Tracking Transaction Report that contains the information required in 10 CFR 20.2207(a) through (e), revised August 9, 2021, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The report shall be submitted by the close of the next business day after the transaction using a reporting method specified in 10 CFR 20.2207(f), revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

B. The initial National Source Tracking Transaction Report shall contain the information required in subsection (A), be submitted using a method specified in 10 CFR 20.2207(f), revised August 9, 2021, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

C. A licensee shall correct any error in previously filed National Source Tracking Transaction Reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction in accordance with 10 CFR 20.2207(g), revised August 9, 2021, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

D. A licensee who receives a nationally tracked sealed source shall not disassemble the source unless specifically authorized to do so by the Department.

Historical Note

New Section R9-7-454 recodified from R12-1-454, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 28 A.A.R. 3533 (November 18, 2022), with an immediate effective date of November 2, 2022 (Supp. 22-4).

R9-7-455. Security Requirements for Portable Gauges

A. A licensee that uses a portable gauge shall use a minimum of two independent controls to maintain security while:

1. Transporting a portable gauge; and
2. Storing a portable gauge.

B. Each control shall form a tangible barrier that will prevent unauthorized removal whenever a portable gauge is not under the control and constant surveillance of the licensee.

C. A licensee shall employ controls approved by the Department.

Historical Note

New Section R9-7-455 recodified from R12-1-455, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Appendix A. Assigned Protection Factors for Respirators[a]

	Operating mode	Assigned Protection Factors
I. Air Purifying Respirators [Particulate [b] only] [c]:		
Filtering face piece disposable [d]	Negative	([d])
Face piece, half [e]	Negative Pressure	10
Face piece, full	Negative Pressure	100
Face piece, half	Powered Air-purifying Respirators	50
Face piece, full	Powered Air-purifying Respirators	1000
Helmet/hood	Powered Air-purifying Respirators	1000
Face piece, loose-fitting	Powered Air-purifying Respirators	25
II. Atmosphere supplying respirators [particulate, gases and vapors[f]]:		
1. Air-line respirator:		
Face piece, half	Demand	10
Face piece, half	Continuous Flow	50
Face piece, half	Pressure Demand	50
Face piece, full	Demand	100
Face piece, full	Continuous Flow	1000
Face piece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Face piece, loose-fitting	Continuous Flow	25
Suit	Continuous Flow	([g])
2. Self-contained breathing Apparatus (SCBA):		
Face piece, full	Demand	[h]100
Face piece, full	Pressure Demand	[i]10,000
Face piece, full	Demand, Recirculating	[h]100
Face piece, full	Positive Pressure Recirculating	[i]10,000
III. Combination Respirators:		
Any combination of air-purifying and atmosphere-supplying respirators	Assigned protection factor for type and mode of operation as listed above	

[a] These assigned protection factors apply only in a respiratory protection program that meets the requirements of this Article. They are applicable only to airborne radiological hazards and may not be appropriate if chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. A licensee shall comply with Department of Labor regulations, regarding selection and use of respirators for those circumstances.

Radioactive contaminants for which the concentration values in Table 1, Column 3 of Appendix B are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

[b] A licensee shall equip air purifying respirators of APF<100 with particulate filters that are at least 95 percent efficient. The licensee shall equip air purifying respirators of APF=100 with particulate filters that are at least 99 percent efficient. The licensee shall equip air purifying respirators of APF>100 with particulate filters that are at least 99.97 percent efficient.

[c] A licensee may apply to the Commission for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors, similar to radioiodine.

[d] A Licensee may permit an individual to use this type of respirator if the individual has not been medically screened or fit tested on the device, provided that no credit is taken for use of these respirators in estimation of intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in 10 CFR 20.1703, January 2000 Edition, and published January 1, 2000, apply and are incorporated by reference and available for review at the Department and Secretary of State. This incorporation by reference contains no future editions or amendments. There is no assigned protection factor for these devices. However, a licensee may use an APF equal to 10 if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

[e] Under-chin type only. No distinction is made in this appendix between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the face piece (disposable or reusable disposable). Both types are acceptable as long as the seal area of the latter contains some substantial type of seal-enhancing material, such as rubber or plastic, two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient, and all other requirements of this Article are met.

[f] The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard and protective actions for these contaminants should be based on external (submersion) dose considerations.

[g] No NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met. The minimum program requirements are provided in 10 CFR 20.1703.

[h] The licensee shall implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).

[i] This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

Historical Note

New Appendix A recodified from 12 A.A.C. 1, Article 4, Appendix A, effective March 22, 2018 (Supp. 18-1).

Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage

Introduction

For each radionuclide, Table I indicates the chemical form which is to be used for selecting the appropriate ALI or DAC value.

The ALls and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 μm, micron, and for three classes (D,W,Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days. Table II provides concentration limits for airborne and liquid effluents released to the general environment. Table III provides concentration limits for discharges to sanitary sewerage.

Note:

The values in Tables I, II, and III are presented in the computer “E” notation. In this notation a value of 6E-02 represents a value

of
6×10^{-2} or 0.06, 6E+2 represents 6×10^{2} or 600, and 6E+0 represents 6×10^{0} or 6.

Table I "Occupational Values"
Note that the columns in Table I of this Appendix captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC" are applicable to occupational exposure to radioactive material.

The ALIs in this Appendix are the annual intakes of given radionuclide by "Reference Man" which would result in either (1) a committed effective dose equivalent of 0.05 Sv (5 rem), stochastic ALI, or (2) a committed dose equivalent of 0.5 Sv (50 rem) to an organ or tissue, nonstochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep-dose equivalent to the whole body of 0.05 Sv (5 rem). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, W_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of W_T are listed under the definition of weighting factor in R9-7-403. The nonstochastic ALIs were derived to avoid nonstochastic effects, such as prompt damage to tissue or reduction in organ function.

A value of $W_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the GI tract -- stomach, small intestine, upper large intestine, and lower large intestine -- are to be treated as four separate organs.

Note that the dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent but are subject to limits that shall be met separately.

When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the nonstochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used:

LLI wall	=	lower large intestine wall,
St. wall	=	stomach wall,
Blad wall	=	bladder wall, and
Bone surf	=	Bone surface.

The use of the ALIs listed first, the more limiting of the stochastic and nonstochastic ALIs, will ensure that nonstochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the nonstochastic ALI is limiting, use of that nonstochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 0.5 Sv (50 rem) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep-dose equivalent plus the internal committed dose equivalent to that organ, not the effective dose. For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the nonstochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed unity, that is, Σ (intake (in μCi) of each radionuclide/ALI_{ns}) ≤ 1.0. If there is an external deep dose equivalent contribution of H_d, then this sum must be less than $1 - (H_d/50)$, instead of ≤ 1.0.

> Note that the dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent but are subject to limits that must be met separately.

The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:

> DAC = ALI(in μCi)/(2000 hours per working year x 60 minutes/hour x 2 x 10^4 ml per minute) = [ALI/2.4 x 10^9] μCi/ml,

where 2 x 10^4 ml is the volume of air breathed per minute at work by Reference Man under working conditions of light work.

The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides shall be treated by the general method appropriate for mixtures.

The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation. See R9-7-407. When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as Class D, Class W, or Class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

Table II "Effluent Concentrations"

The columns in Table II of this Appendix captioned "Effluents," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of R9-7-415. The concentration values given in Columns 1 and 2 of Table II are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.5 mSv (0.05 rem).

Consideration of nonstochastic limits has not been included in deriving the air and water effluent concentration limits because nonstochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the nonstochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table II. For this reason, the DAC and airborne effluent limits are not always proportional as they were in earlier versions of Appendix A of Article 4.

The air concentration values listed in Table II, Column 1 were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 0.05 Sv (5 rem) annual occupational dose limit to the 0.1 rem limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in Table I, Column 3 was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7. The factor of 7.3×10^7 (ml) includes the following components: the factors of 50 and 2 described above and a factor of 7.3×10^5 (ml) which is the annual water intake of Reference Man.

Note 2 of this Appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACS, air and water effluent concentrations, and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

Table III "Releases to Sewers"

The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in R9-7-435. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) is composed of a factor of 7.3×10^5 (ml), the annual water intake by Reference Man, and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a Reference Man during a year, would result in a committed effective dose equivalent of 0.5 rem.

LIST OF ELEMENTS

Name	Symbol	Atomic Number
Actinium	Ac	89
Aluminum	Al	13
Americium	Am	95
Antimony	Sb	51
Argon	Ar	18
Arsenic	As	33
Astatine	At	85
Barium	Ba	56
Berkelium	Bk	97
Beryllium	Be	4
Bismuth	Bi	83
Bromine	Br	35
Cadmium	Cd	48
Calcium	Ca	20
Californium	Cf	98
Carbon	C	6
Cerium	Ce	58
Cesium	Cs	55
Chlorine	Cl	17
Chromium	Cr	24
Cobalt	Co	27
Copper	Cu	29
Curium	Cm	96
Dysprosium	Dy	66
Einsteinium	Es	99
Erbium	Er	68
Europium	Eu	63
Fermium	Fm	100
Fluorine	F	9
Francium	Fr	87
Gadolinium	Gd	64
Gallium	Ga	31
Germanium	Ge	32
Gold	Au	79
Hafnium	Hf	72
Holmium	Ho	67
Hydrogen	H	1
Indium	In	49
Iodine	I	53
Iridium	Ir	77
Iron	Fe	26

Krypton	Kr	36
Lanthanum	La	57
Lead	Pb	82
Lutetium	Lu	71
Magnesium	Mg	12
Manganese	Mn	25
Mendelevium	Md	101
Mercury	Hg	80

Name	**Symbol**	**Atomic Number**
Molybdenum	Mo	42
Neodymium	Nd	60
Neptunium	Np	93
Nickel	Ni	28
Niobium	Nb	41
Nitrogen	N	7
Osmium	Os	76
Oxygen	O	8
Palladium	Pd	46
Phosphorus	P	15
Platinum	Pt	78
Plutonium	Pu	94
Polonium	Po	84
Potassium	K	19
Praseodymium	Pr	59
Promethium	Pm	61
Protactinium	Pa	91
Radium	Ra	88
Radon	Rn	86
Rhenium	Re	75
Rhodium	Rh	45
Rubidium	Rb	37
Ruthenium	Ru	44
Samarium	Sm	62
Scandium	Sc	21
Selenium	Se	34
Silicon	Si	14
Silver	Ag	47
Sodium	Na	11
Strontium	Sr	38
Sulfur	S	16
Tantalum	Ta	73
Technetium	Tc	43

Tellurium	Te	52
Terbium	Tb	65
Thallium	Tl	81
Thorium	Th	90
Thulium	Tm	69
Tin	Sn	50
Titanium	Ti	22
Tungsten	W	74
Uranium	U	92
Vanadium	V	23
Xenon	Xe	54
Ytterbium	Yb	70
Yttrium	Y	39
Zinc	Zn	30
Zirconium	Zr	40

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC (μCi/ml)	Table II Effluent Concentrations Col. 1 Air (μCi/ml)	Col. 2 Water (μCi/ml)	Table III Releases to Sewers Monthly Average Concentration (μCi/ml)

1	Hydrogen-3	Water, DAC includes skin absorption	8E+4	8E+4	2E-5	1E-7	1E-3	1E-2
		Gas (HT or T_2) Submersion[1]: Use above values as HT and T_2 oxidize in air and in the body to HTO.						
4	Beryllium-7	W, all compounds except those given for Y	4E+4	2E+4	9E-6	3E-8	6E-4	6E-3
		Y, oxides, halides, and nitrates	-	2E+4	8E-6	3E-8	-	-
4	Beryllium-10	W, see ^{7}Be	1E+3	2E+2	6E-8	2E-10	-	- -
		LLI wall	(1E+3)	-	-	-	2E-5	2E-4
		Y, see ^{7}Be	-	1E+1	6E-9	2E-11	-	-
6	Carbon-11[2]	Monoxide	-	1E+6	5E-4	2E-6	-	-
		Dioxide	-	6E+5	3E-4	9E-7	-	-
		Compounds	4E+5	4E+ 5	2E-4	6E-7	6E-3	6E-2
6	Carbon-14	Monoxide	-	2E+6	7E-4	2E-6	-	-
		Dioxide	-	2E+5	9E-5	3E-7	-	-
		Compounds	2E+3	2E+3	1E-6	3E-9	3E-5	3E-4
7	Nitrogen-13[2]	Submersion[1]	-	-	4E-6	2E-8	-	-
8	Oxygen-15[2]	Submersion[1]	-	-	4E-6	2E-8	-	-
9	Fluorine-18[2]	D, fluorides of H, Li, Na, K, Rb, Cs, and Fr	5E+4	7E+4	3E-5	1E-7	-	-
		St wall	(5E+4)	-	- 7E-3	-	7E-4	
		W, fluorides of Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, As, Sb, Bi, Fe, Ru, Os, Co, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, V, Nb, Ta, Mn, Tc, and Re	-	9E+4	4E-5	1E-7	-	-
		Y, Lanthanum fluoride	-	8E+-4	3E-5	1E-7	-	-
11	Sodium-22	D, all compounds	4E+2	6E+2	3E-7	9E-10	6E-6	6E-5
11	Sodium-24	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5	5E-4
12	Magnesium-28	D, all compounds except those given for W	7E+2	2E+3	7E-7	2E-9	9E-6	9E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	1E+3	5E-7	2E-9	-	-

13	Aluminum-26	D, all compounds except those given for W	4E+2	6E+1	3E-8	9E-11	6E-6	6E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	9E+1	4E-8	1E-10	-	-
14	Silicon-31	D, all compounds except those given for W and Y		9E+3	3E+4	1E-5	4E-8	1E-4
		1E-3						
		W, oxides, hydroxides, carbides, and nitrates	-	3E+4	1E-5	5E-8	-	-
		Y, aluminosilicate glass	-	3E+4	1E-5	4E-8	-	-
14	Silicon-32	D. see ^{31}Si	2E+3	2E+2	1E-7	3E-10	-	-
		LLI wall	(3E+3)	-	-	-	4E-5	4E-4
		W, see ^{31}Si	-	1E+2	5E-8	2E-10	-	-
		Y, see ^{31}Si	-	5E+0	2E-9	7E-12	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

15	Phosphorus-32	D, all compounds except phosphates given for W	6E+2	9E+2	4E-7	1E-9	9E-6	9E-5
		W, phosphates of Zn^{2+}, S^{3+}, Mg^{2+}, Fe^{3+}, Bi^{3+}, and Lanthanides	-	4E+2	2E-7	5E-10	-	-
15	Phosphorus-33	D, see ^{32}P	6E+3	8E+3	4E-6	1E-8		8E-5 8E-4
		W, see ^{32}P	-	3E+3	1E-6	4E-9		- -
16	Sulfur-35	Vapor	1E+4	6E-6	2E-8	-		-
		D, sulfides and sulfates except those given for W	1E+4	2E+4	7E-6	2E-8	-	-
			LLI wall (8E+3)	-	-	-		1E-4 1E-3
		W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, W, and Mo. Sulfates of Ca, Sr, Ba, Ra, As, Sb, and Bi	6E+3	-	2E+3	9E-7	3E-9	- -
17	Chlorine-36	D, chlorides of H, Li, Na, K, Rb, Cs, and Fr	2E+3	2E+3	1E-6	3E-9	2E-5	2E-4
		W, chlorides of Lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Cr, Mo, W, Mn, Tc, and Re	-	2E+2	1E-7	3E-10	-	-
17	Chlorine-38[2]	D, see ^{36}Cl	2E+4	4E+4	2E-5	6E-8	-	-
			St wall (3E+4)	-	-	-	3E-4	3E-3
		W, see ^{36}Cl	-	5E+4	2E-5	6E-8	-	-
17	Chlorine-39[2]	D, see ^{36}Cl	2E+4	5E+4	2E-5	7E-8	-	-
			St wall (4E+4)	-	-	-	5E-4	5E-3
		W, see ^{36}Cl	-	6E+4	2E-5	8E-8	-	-
18	Argon-37	Submersion[1]	-	-	1E+0	6E-3	-	-
18	Argon-39	Submersion[1]	-	-	2E-4	8E-7	-	-
18	Argon-41	Submersion[1]	-	-	3E-6	1E-8	-	-
19	Potassium-40	D, all compounds	3E+2	4E+2	2E-7	6E-10		4E-6 4E-5
19	Potassium-42	D, all compounds	5E+3	5E+3	2E-6	7E-9		6E-5 6E-4
19	Potassium-43	D, all compounds	6E+3	9E+3	4E-6	1E-8		9E-5 9E-4
19	Potassium-44[2]	D, all compounds	2E+4	7E+4	3E-5	9E-8		- -
			St wall (4E+4)	-	-	-		5E-4 5E-3

19	Potassium-45[2]	D, all compounds	3E+4	1E+5	5E-5	2E-7	-	-
			St watt (5E+4)	-	-	-	7E-4	7E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

20	Calcium-41	W, all compounds	3E+3	4E+3	2E-6	-		-
-								
			Bone surf (4E+3)	Bone surf (4E+3)	-	5E-9		6E-5
6E-4								
20	Calcium-45	W, all compounds	2E+3	8E+2	4E-7	1E-9		2E-5
2E-4								
20	Calcium-47	W, all compounds	8E+2	9E+2	4E-7	1E-9		1E-5
1E-4								
21	Scandium-43	Y, all compounds	7E+3	2E+4	9E-6	3E-8		1E-4
1E-3								
21	Scandium-44m	Y, all compounds	5E+2	7E+2	3E-7	1E-9		7E-6
7E-5								
21	Scandium-44	Y, all compounds	4E+3	1E+4	5E-6	2E-8		5E-5
5E-4								
21	Scandium-46	Y, all compounds	9E+2	2E+2	1E-7	3E-10		1E-5
1E-4								
21	Scandium-47	Y, all compounds	2E+3	3E+3	1E-6	4E-9		-
-								
			LLI wall (3E+3)	-	-	-		4E-5
4E-4								
21	Scandium-48	Y, all compounds	8E+2	1E+3	6E-7	2E-9		1E-5
1E-4								
21	Scandium-49[2]	Y, all compounds	2E+4	5E+4	2E-5	8E-8		3E-4
3E-3								
22	Titanium-44	D, all compounds except those given for W and Y			3E+2	1E+1	5E-9	2E-11
	4E-6	4E-5						
		W, oxides, hydroxides, carbides, halides, and nitrates	-	3E+1	1E-8	4E-11		-
-								
		Y, SrTiO	-	6E+0	2E-9	8E-12		-
-								
22	Titanium-45	D, see ^{44}Ti	9E+3	3E+4	1E-5	3E-8		1E-4
1E-3								
		W, see ^{44}Ti	-	4E+4	1E-5	5E-8		-
-								
		Y, see ^{44}Ti	-	3E+4	1E-5	4E-8		-
-								
23	Vanadium-47[2]	D, all compounds except those given for W	3E+4	8E+4	3E-5	1E-7		-
-								
			St wall (3E+4)	-	-	-		4E-4
4E-3								
		W, oxides, hydroxides, carbides, and halides	-	1E+5	4E-5	1E-7		-
-								
23	Vanadium-48	D, see ^{47}V	6E+2	1E+3	5E-7	2E-9		9E-6
9E-5								
		W, see ^{47}V	-	6E+2	3E-7	9E-10		-
-								
23	Vanadium-49	D, see ^{47}V	7E+4	3E+4	1E-5	-		-
-								
			LLI wall (9E+4)	Bone surf (3E+4)	-	5E-8		1E-3
1E-2								

		W, see ^{47}V	-	2E+4	8E-6	2E-8		-
-								
24	Chromium-48	D, all compounds except those given for W and Y		6E+3	1E+4	5E-6		2E-8
	8E-5	8E-4						
		W, halides and nitrates	-	7E+3	3E-6	1E-8		-
-								
		Y, oxides and hydroxides	-	7E+3	3E-6	1E-8		-
-								
24	Chromium-49[2]	D, see ^{48}Cr	3E+4	8E+4	4E-5	1E-7		4E-4
4E-3								
		W, see ^{48}Cr	-	1E+5	4E-5	1E-7		-
-								
		Y, see ^{48}Cr	-	9E+4	4E-5	1E-7		-
-								
24	Chromium-51	D, see ^{48}Cr	4E+4	5E+4	2E-5	6E-8		5E-4
5E-3								
		W, see ^{48}Cr	-	2E+4	1E-5	3E-8		-
-								
		Y, see ^{48}Cr	-	2E+4	8E-6	3E-8		-
-								
25	Manganese-51[2]	D, all compounds except those given for W	2E+4	5E+4	2E-5	7E-8		3E-4
3E-3								
		W, oxides, hydroxides, halides, and nitrates	-	6E+4	3E-5	8E-8		-
-								

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

25	Manganese-52m[2]	D, see [51]Mn	3E+4	9E+4	4E-5	1E-7			-
-									
			St wall (4E+4)	-	-	-			5E-4
5E-3									
		W, see [51]Mn	-	1E+5	4E-5	1E-7			-
-									
25	Manganese-52	D, see [51]Mn	7E+2	1E+3	5E-7	2E-9			1E-5
1E-4									
		W, see [51]Mn	-	9E+2	4E-7	1E-9			-
-									
25	Manganese-53	D, see [51]Mn	5E+4	1E+4	5E-6	-			7E-4
7E-3									
			-	Bone surf (2E+4)	-	3E-8			-
-									
		W, see [51]Mn	-	1E+4	5E-6	2E-8			-
-									
25	Manganese-54	D, see [51]Mn	2E+3	9E+2	4E-7	1E-9			3E-5
3E-4									
		W, see [51]Mn	-	8E+2	3E-7	1E-9			-
-									
25	Manganese-56	D, see [51]Mn	5E+3	2E+4	6E-6	2E-8			7E-5
7E-4									
		W, see [51]Mn	-	2E+4	9E-6	3E-8			-
-									
26	Iron-52	D, all compounds except those given for W		9E+2	3E+3	1E-6	4E-9		1E-5
1E-4									
		W, oxides, hydroxides, and halides		-	2E+3	1E-6	3E-9		-
-									
26	Iron-55	D, see [52]Fe	9E+3	2E+3	8E-7	3E-9			1E-4
1E-3									
		W, see [52]Fe	-	4E+3	2E-6	6E-9			-
-									
26	Iron-59	D, see [52]Fe	8E+2	3E+2	1E-7	5E-10			1E-5
1E-4									
		W, see [52]Fe	-	5E+2	2E-7	7E-10			-
-									
26	Iron-60	D, see [52]Fe	3E+1	6E+0	3E-9	9E-12			4E-7
4E-6									
		W, see [52]Fe	-	2E+1	8E-9	3E-11			-
-									
27	Cob9alt-55	W, all compounds except those given for Y		1E+3	3E+3	1E-6	4E-9		2E-5
2E-4									
		Y, oxides, hydroxides, halides, and nitrates		-	3E+3	1E-6	4E-9		-
-									
27	Cobalt-56	W, see [55]Co	5E+2	3E+2	1E-7	4E-10			6E-6
6E-5									
		Y, see [55]Co	4E+2	2E+2	8E-8	3E-10			-
-									
27	Cobalt-57	W, see [55]Co	8E+3	3E+3	1E-6	4E-9			6E-5
6E-4									

		Y, see ^{55}Co	4E+3	7E+2	3E-7	9E-10	-
-							
27	Cobalt-58m	W, see ^{55}Co	6E+4	9E+4	4E-5	1E-7	8E-4
8E-3							
		Y, see ^{55}Co	-	6E+4	3E-5	9E-8	-
-							
27	Cobalt-58	W, see ^{55}Co	2E+3	1E+3	5E-7	2E-9	2E-5
2E-4							
		Y, see ^{55}Co	1E+3	7E+2	3E-7	1E-9	-
-							
27	Cobalt-60m[2]	W, see ^{55}Co	1E+6	4E+6	2E-3	6E-6	-
-							
			St wall (1E+6)	-	-	-	2E-2
2E-1							
		Y, see ^{55}Co	-	3E+6	1E-3	4E-6	-
-							
27	Cobalt-60	W, see ^{55}Co	5E+2	2E+2	7E-8	2E-10	3E-6
3E-5							
		Y, see ^{55}Co	2E+2	3E+1	1E-8	5E-11	-
-							
27	Cobalt-61[2]	W, see ^{55}Co	2E+4	6E+4	3E-5	9E-8	3E-4
3E-3							
		Y, see ^{55}Co	2E+4	6E+4	2E-5	8E-8	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

27	Cobalt-62m[2]	W, see ^{55}Co	4E+4	2E+5	7E-5	2E-7		-	-
		St wall	(5E+4)	-	-	-		7E-4	7E-3
		Y, see ^{55}Co	-	2E+5	6E-5	2E-7		-	-
28	Nickel-56	D, all compounds except those given for W	1E+3	2E+3	8E-7	3E-9		2E-5	2E-4
		W, oxides, hydroxides, and carbides	-	1E+3	5E-7	2E-9		-	-
		Vapor	-	1E+3	5E-7	2E-9		-	-
28	Nickel-57	D, see ^{56}Ni	2E+3	5E+3	2E-6	7E-9		2E-5	2E-4
		W, see ^{56}Ni	-	3E+3	1E-6	4E-9		-	-
		Vapor	-	6E+3	3E-6	9E-		-	-
28	Nickel-59	D, see ^{56}Ni	2E+4	4E+3	2E-6	5E-9		3E-4	3E-3
		W, see ^{56}Ni	-	7E+3	3E-6	1E-8		-	-
		Vapor	-	2E+3	8E-7	3E-9		-	-
28	Nickel-63	D, see ^{56}Ni	9E+3	2E+3	7E-7	2E-9		1E-4	1E-3
		W, see ^{56}Ni	-	3E+3	1E-6	4E-9		-	-
		Vapor	-	8E+2	3E-7	1E-9		-	-
28	Nickel-65	D, see ^{56}Ni	8E+3	2E+4	1E-5	3E-8		1E-4	1E-3
		W, see ^{56}Ni	-	3E+4	1E-5	4E-8		-	-
		Vapor	-	2E+4	7E-6	2E-8		-	-
28	Nickel-66	D, see ^{56}Ni	4E+2	2E+3	7E-7	2E-9		-	-
		LLI wall	(5E+2)	-	-	-		6E-6	6E-5
		W, see ^{56}Ni	-	6E+2	3E-7	9E-10		-	-
		Vapor	-	3E+3	1E-6	4E-9		-	-
29	Copper-60[2]	D, all compounds except those given for W and Y	3E+4	9E+4	4E-5	1E-7		-	-
		St wall	(3E+4)	-	-	-		4E-4	4E-3
		W, sulfides, halides, and nitrates	-	1E+5	5E-5	2E-7		-	-

		Y, oxides and hydroxides	-	1E+5	4E-5	1E-7	-
-							
29	Copper-61	D, see ^{60}Cu	1E+4	3E+4	1E-5	4E-8	2E-4
2E-3							
		W, see ^{60}Cu	-	4E+4	2E-5	6E-8	-
-							
		Y, see ^{60}Cu	-	4E+4	1E-5	5E-8	-
-							
29	Copper-64	D, see ^{60}Cu	1E+4	3E+4	1E-5	4E-8	2E-4
2E-3							
		W, see ^{60}Cu	-	2E+4	1E-5	3E-8	-
-							
		Y, see ^{60}Cu	-	2E+4	9E-6	3E-8	-
-							
29	Copper-67	D, see ^{60}Cu	5E+3	8E+3	3E-6	1E-8	6E-5
6E-4							
		W, see ^{60}Cu	-	5E+3	2E-6	7E-9	-
-							
		Y, see ^{60}Cu	-	5E+3	2E-6	6E-9	-
-							
30	Zinc-62	Y, all compounds	1E+3	3E+3	1E-6	4E-9	2E-5
2E-4							
30	Zinc-63[2]	Y, all compounds	2E+4	7E+4	3E-5	9E-8	-
-							
		St wall					
			(3E+4)	-	-	-	3E-4
3E-3							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

30	Zinc-65	Y, all compounds	4E+2	3E+2	1E-7	4E-10		5E-6 5E-5
30	Zinc-69m	Y, all compounds	4E+3	7E+3	3E-6	1E-8		6E-5 6E-4
30	Zinc-69[2]	Y, all compounds	6E+4	1E+5	6E-5	2E-7		8E-4 8E-3
30	Zinc-71m	Y, all compounds	6E+3	2E+4	7E-6	2E-8		8E-4 8E-4
30	Zinc-72	Y, all compounds	1E+3	1E+3	5E-7	2E-9		1E-5 1E-4
31	Gallium-65[2]	D, all compounds except those given for W	5E+4	2E+5	7E-5	2E-7		- -
		St wall	(6E+4),	-	-	-		9E-4 9E-3
		W, oxides, hydroxides, carbides, halides, and nitrates	-	2E+5	8E-5	3E-7		- -
31	Gallium-66	D, see ^{65}Ga	1E+3	4E+3	1E-6	5E-9		1E-5 1E-4
		W, see ^{65}Ga	-	3E+3	1E-6	4E-9		- -
31	Gallium-67	D, see ^{65}Ga	7E+3	1E+4	6E-6	2E-8		1E-4 1E-3
		W, see ^{65}Ga	-	1E+4	4E-6	1E-8		- -
31	Gallium-68[2]	D, see ^{65}Ga	2E+4	4E+4	2E-5	6E-8		2E-4 2E-3
		W, see ^{65}Ga	-	5E+4	2E-5	7E-8		- -
31	Gallium-70[2]	D, see ^{65}Ga	5E+4	2E+5	7E-5	2E-7		- -
		St wall	(7E+4)	-	-	-		1E-3 1E-2
		W, see ^{65}Ga	-	2E+5	8E-5	3E-7		- -
31	Gallium-72	D, see ^{65}Ga	1E+3	4E+3	1E-6	5E-9		2E-5 2E-4
		W, see ^{65}Ga	-	3E+3	1E-6	4E-9		- -
31	Gallium-73	D, see ^{65}Ga	5E+3	2E+4	6E-6	2E-8		7E-5 7E-4
		W, see ^{65}Ga	-	2E+4	6E-6	2E-8		- -
32	Germanium-66	D, all compounds except those given for W	2E+4	3E+4	1E-5	4E-8		3E-4 3E-3
		W, oxides, sulfides, and halides	-	2E+4	8E-6	3E-8		- -
32	Germanium-67[2]	D, see ^{66}Ge	3E+4	9E+4	4E-5	1E-7		- -
		St wait	(4E+4)	-	-	-		6E-4 6E-3

		W, see ^{66}Ge	-	1E+5	4E-5	1E-7	-
-							
32	Germanium-68	D, see ^{66}Ge	5E+3	4E+3	2E-6	5E-9	6E-5
6E-4							
		W, see ^{66}Ge	-	1E+2	4E-8	1E-10	-
-							
32	Germanium-69	D, see ^{66}Ge	1E+4	2E+4	6E-6	2E-8	2E-4
2E-3							
		W, see ^{66}Ge	-	8E+3	3E-6	1E-8	-
-							
32	Germanium-71	D, see ^{66}Ge	5E+5	4E+5	2E-4	6E-7	7E-3
7E-2							
		W, see ^{66}Ge	-	4E+4	2E-5	6E-8	-
-							
32	Germanium-75[2]	D, see ^{66}Ge	4E+4	8E+4	3E-5	1E-7	-
-							
			St wall (7E+4)	-	-	-	9E-4
9E-3							
		W, see ^{66}Ge	-	8E+4	4E-5	1E-7	-
-							
32	Germanium-77	D, see ^{66}Ge	9E+3	1E+4	4E-6	1E-8	1E-4
1E-3							
		W, see ^{66}Ge	-	6E+3	2E-6	8E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

32	Germanium-78[2]	D, see ^{66}Ge	2E+4	2E+4	9E-6	3E-8		-
-								
			St wall (2E+4)	-	-	-		3E-4
3E-3								
		W, see ^{66}Ge	-	2E+4	9E-6	3E-8		-
-								
33	Arsenic-69[2]	W, all compounds	3E+4	1E+5	5E-5	2E-7		-
-								
			St wall (4E+4)	-	-	-		6E-4
6E-3								
33	Arsenic-70[2]	W, all compounds	1E+4	5E+4	2E-5	7E-8		2E-4
2E-3								
33	Arsenic-71	W, all compounds	4E+3	5E+3	2E-6	6E-9		5E-5
5E-4								
33	Arsenic-72	W, all compounds	9E+2	1E+3	6E-7	2E-9		1E-5
1E-4								
33	Arsenic-73	W, all compounds	8E+3	2E+3	7E-7	2E-9		1E-4
1E-3								
33	Arsenic-74	W, all compounds	1E+3	8E+2	3E-7	1E-9		2E-5
2E-4								
33	Arsenic-76	W, all compounds	1E+3	1E+3	6E-7	2E-9		1E-5
1E-4								
33	Arsenic-77	W, all compounds	4E+3	5E+3	2E-6	7E-9		-
-								
			LLI wall (5E+3)	-	-	-		6E-5
6E-4								
33	Arsenic-78[2]	W, all compounds	8E+3	2E+4	9E-6	3E-8		1E-4
1E-3								
34	Selenium-70[2]	D, all compounds except						
			those given for W	2E+4	4E+4	2E-5	5E-8	1E-4
1E-3								
		W, oxides, hydroxides,						
			carbides, and elemental Se	1E+4	4E+4	2E-5	6E-8	-
-								
34	Selenium-73m[2]	D, see ^{70}Se	6E+4	2E+5	6E-5	2E-7		4E-4
4E-3								
		W, see ^{70}Se	3E+4	1E+5	6E-5	2E-7		-
-								
34	Selenium-73	D, see ^{70}Se	3E+3	1E+4	5E-6	2E-8		4E-5
4E-4								
		W, see ^{70}Se	-	2E+4	7E-6	2E-8		-
-								
34	Selenium-75	D, see ^{70}Se	5E+2	7E+2	3E-7	1E-9		7E-6
7E-5								
		W, see ^{70}Se	-	6E+2	3E-7	8E-10		-
-								
34	Selenium-79	D, see ^{70}Se	6E+2	8E+2	3E-7	1E-9		8E-6
8E-5								
		W, see ^{70}Se	-	6E+2	2E-7	8E-10		-
-								
34	Selenium-81m[2]	D, see ^{70}Se	4E+4	7E+4	3E-5	9E-8		3E-4
3E-3								
		W, see ^{70}Se	2E+4	7E+4	3E-5	1E-7		-
-								

34	Selenium-81[2]	D, see ^{70}Se	6E+4	2E+5	9E-5	3E-7		-
-								
			St wall (8E+4)	-	-	-		1E-3
1E-2								
		W, see ^{70}Se	-	2E+5	1E-4	3E-7		-
-								
34	Selenium-83[2]	D, see ^{70}Se	4E+4	1E+5	5E-5	2E-7		4E-4
4E-3								
		W, see ^{70}Se	3E+4	1E+5	5E-5	2E-7		-
-								
35	Bromine-74m[2]	D, bromides of H, Li, Na, K, Rb, Cs, and Fr	1E+4	4E+4	2E-5	5E-8		-
-								
			St wall (2E+4)	-	-	-		3E-4
3E-3								

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

		W, Bromides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Mn, Tc, and Re	-	4E+4	2E-5	6E-8	-
-									
35	Bromine-74[2]	D, see ^{74m}Br	2E+4	7E+4	3E-5	1E-7		-	
-									
			St wall (4E+4)	-	-	-		5E-4	
5E-3									
		W, see ^{74m}Br	-	8E+4	4E-5	1E-7		-	
-									
35	Bromine-75[2]	D, see ^{74m}Br	3E+4	5E+4	2E-5	7E-8		-	
-									
			St wall (4E+4)	-	-	-		5E-4	
5E-3									
		W, see ^{74m}Br	-	5E+4	2E-5	7E-8		-	
-									
35	Bromine-76	D, see ^{74m}Br	4E+3	5E+3	2E-6	7E-9		5E-5	
5E-4									
		W, see ^{74m}Br	-	4E+3	2E-6	6E-9		-	
-									
35	Bromine-77	D, see ^{74m}Br	2E+4	2E+4	1E-5	3E-8		2E-4	
2E-3									
		W, see ^{74m}Br	-	2E+4	8E-6	3E-8		-	
-									
35	Bromine-80m	D, see ^{74m}Br	2E+4	2E+4	7E-6	2E-8		3E-4	
3E-3									
		W, see ^{74m}Br	-	1E+4	6E-6	2E-8		-	
-									
35	Bromine-80[2]	D, see ^{74m}Br	5E+4	2E+5	8E-5	3E-7		-	
-									
			St wall (9E+4)	-	-	-		1E-3	
1E-2									
		W, see ^{74m}Br	-	2E+5	9E-5	3E-7		-	
-									
35	Bromine-82	D, see ^{74m}Br	3E+3	4E+3	2E-6	6E-9		4E-5	
4E-4									
		W, see ^{74m}Br	-	4E+3	2E-6	5E-9		-	
-									
35	Bromine-83	D, see ^{74m}Br	5E+4	6E+4	3E-5	9E-8		-	
-									
			St wall (7E+4)	-	-	-		9E-4	
9E-3									
		W, see ^{74m}Br	-	6E+4	3E-5	9E-8		-	
-									
35	Bromine-84[2]	D, see ^{74m}Br	2E+4	6E+4	2E-5	8E-8		-	
-									
			St wall (3E+4)	-	-	-		4E-4	
4E-3									

		W, see ^{74m}Br	-	6E+4	3E-5	9E-8	-
36	Krypton-74[2]	Submersion[1]	-	-	3E-6	1E-8	-
36	Krypton-76	Submersion[1]	-	-	9E-6	4E-8	-
36	Krypton-77[2]	Submersion[1]	-	-	4E-6	2E-8	-
36	Krypton-79	Submersion[1]	-	-	2E-5	7E-8	-
36	Krypton-81	Submersion[1]	-	-	7E-4	3E-6	-
36	Krypton-83m[2]	Submersion[1]	-	-	1E-2	5E-5	-
36	Krypton-85m	Submersion[1]	-	-	2E-5	1E-7	-
36	Krypton-85	Submersion[1]	-	-	1E-4	7E-7	-
36	Krypton-87[2]	Submersion[1]	-	-	5E-6	2E-8	-
36	Krypton-88	Submersion[1]	-	-	2E-6	9E-9	-

			Table I Occupational Values			Table II Effluent Concentrations		Table III
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation				
Atomic No.	Radionuclide	Class	ALI (µCi)	ALI (µCi)	DAC (µCi/ml)	Air (µCi/ml)	Water (µCi/ml)	Releases to Sewers Monthly Average Concentration (µCi/ml)

37	Rubidium-79[2]	D, all compounds	4E+4	1E+5	5E-5	2E-7	-
-							
			St wall (6E+4)	-	-	-	8E-4
8E-3							
37	Rubidium-81m[2]	D, all compounds	2E+5	3E+5	1E-4	5E-7	-
-							
			St wall (3E+5)	-	-	-	4E-3
4E-2							
37	Rubidium-81	D, all compounds	4E+4	5E+4	2E-5	7E-8	5E-4
5E-3							
37	Rubidium 82m	D, all compounds	1E+4	2E+4	7E-6	2E-8	2E-4
2E-3							
37	Rubidium-83	D, all compounds	6E+2	1E+3	4E-7	1E-9	9E-6
9E-5							
37	Rubidium-84	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6
7E-5							
37	Rubidium-86	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6
7E-5							
37	Rubidium-87	D, all compounds	1E+3	2E+3	6E-7	2E-9	1E-5
1E-4							
37	Rubidium-88[2]	D, all compounds	2E+4	6E+4	3E-5	9E-8	-
-							
			St wall (3E+4)	-	-	-	4E-4
4E-3							
37	Rubidium-89[2]	D, all compounds	4E+4	1E+5	6E-5	2E-7	-
-							
			St wall (6E+4)	-	-	-	9E-4
9E-3							
38	Strontium-80[2]	D, all soluble compounds except SrTi0	4E+3	1E+4	5E-6	2E-8	6E-5
6E-4							
		Y, all insoluble compounds and SrTi0	-	1E+4	5E-6	2E-8	-
-							
38	Strontium-81[2]	D, see ^{80}Sr	3E+4	8E+4	3E-5	1E-7	3E-4
3E-3							
		Y, see ^{80}Sr	2E+4	8E+4	3E-5	1E-7	-
-							
38	Strontium-82	D, see ^{80}Sr	3E+2	4E+2	2E-7	6E-10	-
-							
			LLI wall (2E+2)	-	-	-	3E-6
3E-5							
		Y, see ^{80}Sr	2E+2	9E+1	4E-8	1E-10	-
-							
38	Strontium-83	D, see ^{80}Sr	3E+3	7E+3	3E-6	1E-8	3E-5
3E-4							
		Y, see ^{80}Sr	2E+3	4E+3	1E-6	5E-9	-
-							
38	Strontium-85m[2]	D, see ^{80}Sr	2E+5	6E+5	3E-4	9E-7	3E-3
3E-2							
		Y, see ^{80}Sr	-	8E+5	4E-4	1E-6	-
-							

38	Strontium-85	D, see ^{80}Sr	3E+3	3E+3	1E-6	4E-9	4E-5
4E-4							
		Y, see ^{80}Sr	-	2E+3	6E-7	2E-9	-
-							
38	Strontium-87m	D, see ^{80}Sr	5E+4	1E+5	5E-5	2E-7	6E-4
6E-3							
		Y, see ^{80}Sr	4E+4	2E+5	6E-5	2E-7	-
-							
38	Strontium-89	D, see ^{80}Sr	6E+2	8E+2	4E-7	1E-9	-
-							
			LLI wall (6E+2)	-	-	-	8E-6
8E-5							
		Y, see ^{80}Sr	5E+2	1E+2	6E-8	2E-10	-
-							
38	Strontium-90	D, see ^{80}Sr	3E+1	2E+1	8E-9	-	-
-							
			Bone surf (4E+1)	Bone surf (2E+1)	-	3E-11	5E-7
5E-6							
		Y, see ^{80}Sr	-	4E+0	2E-9	6E-12	-
-							
38	Strontium-91	D, see ^{80}Sr	2E+3	6E+3	2E-6	8E-9	2E-5
2E-4							
		Y, see ^{80}Sr	-	4E+3	1E-6	5E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

38	Strontium-92	D, see ^{80}Sr	3E+3	9E+3	4E-6	1E-8	4E-5
4E-4							
		Y, see ^{80}Sr	-	7E+3	3E-6	9E-9	-
-							
39	Yttrium-86m[2]	W, all compounds except those given for Y	2E+4	6E+4	2E-5	8E-8	3E-4
3E-3							
		Y, oxides and hydroxides	-	5E+4	2E-5	8E-8	-
-							
39	Yttrium-86	W, see ^{86m}Y	1E+3	3E+3	1E-6	5E-9	2E-5
2E-4							
		Y, see ^{86m}Y	-	3E+3	1E-6	5E-9	-
-							
39	Yttrium-87	W, see ^{86m} Y	2E+3	3E+3	1E-6	5E-9	3E-5
3E-4							
		Y, see ^{86m}Y	-	3E+3	1E-6	5E-9	-
-							
39	Yttrium-88	W, see ^{86m}Y	1E+3	3E+2	1E-7	3E-10	1E-5
1E-4							
		Y, see ^{86m}Y	-	2E+2	1E-7	3E-10	-
-							
39	Yttrium-90m	W, see ^{86m}Y	8E+3	1E+4	5E-6	2E-8	1E-4
1E-3							
		Y, see ^{86m}Y	-	1E+4	5E-6	2E-8	-
-							
39	Yttrium-90	W, see ^{86m}Y	4E+2	7E+2	3E-7	9E-10	-
-							
			LLI wall (5E+2)	-	-	-	7E-6
7E-5							
		Y, see ^{86m}Y	-	6E+2	3E-7	9E-10	-
-							
39	Yttrium-91m[2]	W, see ^{86m}Y	1E+5	2E+5	1E-4	3E-7	2E-3
2E-2							
		Y, see ^{86m}Y	-	2E+5	7E-5	2E-7	-
-							
39	Yttrium-91	W, see ^{86m}Y	5E+2	2E+2	7E-8	2E-10	-
-							
			LLI wall (6E+2)	-	-	-	8E-6
8E-5							
		Y, see ^{86m}Y	-	1E+2	5E-8	2E-10	-
-							
39	Yttrium-92	W, see ^{86m}Y	3E+3	9E+3	4E-6	1E-8	4E-5
4E-4							
		Y, see ^{86m}Y	-	8E+3	3E-6	1E-8	-
-							
39	Yttrium-93	W, see ^{86m}Y	1E+3	3E+3	1E-6	4E-9	2E-5
2E-4							
		Y, see ^{86m}Y	-	2E+3	1E-6	3E-9	-
-							
39	Yttrium-94[2]	W, see ^{86m}Y	2E+4	8E+4	3E-5	1E-7	-
-							
			St wall (3E+4)	-	-	-	4E-4
4E-3							

		Y, see ^{86m}Y	-	8E+4	3E-5	1E-7	-
-							
39	Yttrium-95[2]	W, see ^{86m}Y	4E+4	2E+5	6E-5	2E-7	-
-							
			St wall (5E+4)	-	-	-	7E-4
7E-3							
		Y, see ^{86m}Y	-	1E+5	6E-5	2E-7	-
-							
40	Zirconium-86	D, all compounds except those given for W and Y	1E+3	4E+3	2E-6	6E-9	2E-5
2E-4							
		W, oxides, hydroxides, halides, and nitrates	-	3E+3	1E-6	4E-9	-
-							
		Y, carbide	-	2E+3	1E-6	3E-9	-
-							
40	Zirconium-88	D, see ^{86}Zr	4E+3	2E+2	9E-8	3E-10	5E-5
5E-4							
		W, see ^{86}Zr	-	5E+2	2E-7	7E-10	-
-							
		Y, see ^{86}Zr	-	3E+2	1E-7	4E-10	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

40	Zirconium-89	D, see ^{86}Zr	2E+3	4E+3	1E-6	5E-9	2E-5
2E-4							
		W, see ^{86}Zr	-	2E+3	1E-6	3E-9	-
-							
		Y, see ^{86}Zr	-	2E+3	1E--6	3E-9	-
-							
40	Zirconium-93	D, see ^{86}Zr	1E+3	6E+0	3E-9	-	-
-							
			Bone surf (3E+3)	Bone surf (2E+1)	-	2E-11	4E-5
4E-4							
		W, see ^{86}Zr	-	2E+1	1E-8	-	-
-							
			-	Bone surf (6E+1)	-	9E-11	-
-							
		Y, see ^{86}Zr	-	6E+1	2E-8	-	-
-							
			-	Bone surf (7E+1)	-	9E-11	-
-							
40	Zirconium-95	D, see ^{86}Zr	1E+3	1E+2	5E-8	-	2E-5
2E-4							
			-	Bone surf (3E+2)	-	4E-10	-
-							
		W, see ^{86}Zr	-	4E+2	2E-7	5E-10	-
-							
		Y, see ^{86}Zr	-	3E+2	1E-7	4E-10	-
-							
40	Zirconium-97	D, see ^{86}Zr	6E+2	2E+3	8E-7	3E-9	9E-6
9E-5							
		W, see ^{86}Zr	-	1E+3	6E-7	2E-9	-
-							
		Y, see ^{86}Zr	-	1E+3	5E-7	2E-9	-
-							
41	Niobium-88[2]	W, all compounds except those given for Y	5E+4	2E+5	9E-5	3E-7	-
-							
			St wall (7E+4)	-	-	-	1E-3
1E-2							
		Y, oxides and hydroxides	-	2E+5	9E-5	3E-7	-
-							
41	Niobium-89[2] (66 min)	W, see ^{88}Nb	1E+4	4E+4	2E-5	6E-8	1E-4
1E-3							
		Y, see ^{88}Nb	-	4E+4	2E-5	5E-8	-
-							
41	Niobium-89 (122 min)	W, see ^{88}Nb	5E+3	2E+4	8E-6	3E-8	7E-5
7E-4							
		Y, see ^{88}Nb	-	2E+4	6E-6	2E-8	-
-							
41	Niobium-90	W, see ^{88}Nb	1E+3	3E+3	1E-6	4E-9	1E-5
1E-4							

		Y, see ^{88}Nb	-	2E+3	1E-6	3E-9		-
-								
41	Niobium-93m	W, see ^{88}Nb	9E+3	2E+3	8E-7	3E-9		-
-								
			LLI wall (1E+4)	-	-	-		2E-4
2E-3								
		Y, see ^{88}Nb	-	2E+2	7E-8	2E-10		-
-								
41	Niobium-94	W, see ^{88}Nb	9E+2	2E+2	8E-8	3E-10		1E-5
1E-4								
		Y, see ^{88}Nb	-	2E+1	6E-9	2E-11		-
-								
41	Niobium-95m	W, see ^{88}Nb	2E+3	3E+3	1E-6	4E-9		-
-								
			LLI wall (2E+3)	-	-	-		3E-5
3E-4								
		Y, see ^{88}Nb	-	2E+3	9E-7	3E-9	-	-
41	Niobium-95	W, see ^{88}Nb	2E+3	1E+3	5E-7	2E-9		3E-5
3E-4								
		Y, see ^{88}Nb	-	1E+3	5E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

41	Niobium-96	W, see ^{88}Nb	1E+3	3E+3	1E-6	4E-9	2E-5
2E-4							
		Y, see ^{88}Nb	-	2E+3	1E-6	3E-9	-
-							
41	Niobium-97[2]	W, see ^{88}Nb	2E+4	8E+4	3E-5	1E-7	3E-4
3E-3							
		Y, see ^{88}Nb	-	7E+4	3E-5	1E-7	-
-							
41	Niobium-98[2]	W, see ^{88}Nb	1E+4	5E+4	2E-5	8E-8	2E-4
2E-3							
		Y, see ^{88}Nb	-	5E+4	2E-5	7E-8	-
-							
42	Molybdenum-90	D, all compounds except those given for Y	4E+3	7E+3	3E-6	1E-8	3E-5
3E-4							
		Y, oxides, hydroxides, and MoS	2E+3	5E+3	2E-6	6E-9	-
-							
42	Molybdenum-93m	D, see ^{90}Mo	9E+3	2E+4	7E-6	2E-8	6E-5
6E-4							
		Y, see ^{90}Mo	4E+3	1E+4	6E-6	2E-8	-
-							
42	Molybdenum-93	D, see ^{90}Mo	4E+3	5E+3	2E-6	8E-9	5E-5
5E-4							
		Y, see ^{90}Mo	2E+4	2E+2	8E-8	2E-10	-
-							
42	Molybdenum-99	D, see ^{90}Mo	2E+3	3E+3	1E-6	4E-9	-
-							
			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{90}Mo	1E+3	1E+3	6E-7	2E-9	-
-							
42	Molybdenum-101[2]	D, see ^{90}Mo	4E+4	1E+5	6E-5	2E-7	-
-							
			St wall (5E+4)	-	-	-	7E-4
7E-3							
		Y, see ^{90}Mo	-	1E+5	6E-5	2E-7	-
-							
43	Technetium-93m[2]	D, All compounds except those given for W	7E+4	2E+5	6E-5	2E-7	1E-3
1E-2							
		W, oxides, hydroxides, halides, and nitrates	-	3E+5	1E-4	4E-7	-
-							
43	Technetium-93	D, see ^{93m}Tc	3E+4	7E+4	3E-5	1E-7	4E-4
4E-3							
		W, see ^{93m}Tc	-	1E+5	4E-5	1E-7	-
-							
43	Technetium-94m[2]	D, see ^{93m}Tc	2E+4	4E+4	2E-5	6E-8	3E-4
3E-3							
		W, see ^{93m}Tc	-	6E+4	2E-5	8E-8	-
-							
43	Technetium-94	D, see ^{93m}Tc	9E+3	2E+4	8E-6	3E-8	1E-4
1E-3							

		W, see ^{93m}Tc	-	2E+4	1E-5	3E-8	-
-							
43	Technetium-95m	D, see ^{93m}Tc	4E+3	5E+3	2E-6	8E-9	5E-5
5E-4							
		W, see ^{93m}Tc	-	2E+3	8E-7	3E-9	-
-							
43	Technetium-95	D, see ^{93m}Tc	1E+4	2E+4	9E-6	3E-8	1E-4
1E-3							
		W, see ^{93m}Tc	-	2E+4	8E-6	3E-8	-
-							
43	Technetium-96m[2]	D, see ^{93m}Tc	2E+5	3E+5	1E-4	4E-7	2E-3
2E-2							
		W, see ^{93m}Tc	-	2E+5	1E-4	3E-7	-
-							
43	Technetium-96	D, see ^{93m}Tc	2E+3	3E+3	1E-6	5E-9	3E-5
3E-4							
		W, see ^{93m}Tc	-	2E+3	9E-7	3E-9	-
-							
43	Technetium-97m	D, see ^{93m}Tc	5E+3	7E+3	3E-6	-	6E-5
6E-4							
			-	St wall (7E+3)	-	1E-8	-
-							
		W, see ^{93m}Tc	-	1E+3	5E-7	2E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

43	Technetium-97	D, see ^{93m}Tc	4E+4	5E+4	2E-5	7E-8	5E-4
5E-3							
		W, see ^{93m}Tc	-	6E+3	2E-6	8E-9	-
-							
43	Technetium-98	D, see ^{93m}Tc	1E+3	2E+3	7E-7	2E-9	1E-5
1E-4							
		W, see ^{93m}Tc	-	3E+2	1E-7	4E-10	-
-							
43	Technetium-99m	D, see ^{93m}Tc	8E+4	2E+5	6E-5	2E-7	1E-3
1E-2							
		W, see ^{93m}Tc	-	2E+5	1E-4	3E-7	-
-							
43	Technetium-99	D, see ^{93m}Tc	4E+3	5E+3	2E-6	-	6E-5
6E-4							
			-	St wall (6E+3)	-	8E-9	-
-							
		W, see ^{93m}Tc	-	7E+2	3E-7	9E-10	-
-							
43	Technetium-101[2]	D, see ^{93m}Tc	9E+4	3E+5	1E-4	5E-7	-
-							
			St wall (1E+5)	-	-	-	2E-3
2E-2							
		W, see ^{93m}Tc	-	4E+5	2E-4	5E-7	-
-							
43	Technetium-104[2]	D, see ^{93m}Tc	2E+4	7E+4	3E-5	1E-7	-
-							
			St wall (3E+4)	-	-	-	4E-4
4E-3							
		W, see ^{93m}Tc	-	9E+4	4E-5	1E-7	-
-							
44	Ruthenium-94[2]	D, all compounds except those given for W and Y	2E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
		W, halides	-	6E+4	3E-5	9E-8	-
-							
		Y, oxides and hydroxides	-	6E+4	2E-5	8E-8	-
-							
44	Ruthenium-97	D, see ^{94}Ru	8E+3	2E+4	8E-6	3E-8	1E-4
1E-3							
		W, see ^{94}Ru	-	1E+4	5E-6	2E-8	-
-							
		Y, see ^{94}Ru	-	1E+4	5E-6	2E-8	-
-							
44	Ruthenium-103	D, see ^{94}Ru	2E+3	2E+3	7E-7	2E-9	3E-5
3E-4							
		W, see ^{94}Ru	-	1E+3	4E-7	1E-9	-
-							
		Y, see ^{94}Ru	-	6E+2	3E-7	9E-10	-
-							
44	Ruthenium-105	D, see ^{94}Ru	5E+3	1E+4	6E-6	2E-8	7E-5
7E-4							
		W, see ^{94}Ru	-	1E+4	6E-6	2E-8	-
-							

		Y, see ^{94}Ru	-	1E+4	5E-6	2E-8	-
-							
44	Ruthenium-106	D, see ^{94}Ru	2E+2	9E+1	4E-8	1E-10	-
-							
			LLI wall (2E+2)	-	-	-	3E-6
3E-5							
		W, see ^{94}Ru	-	5E+1	2E-8	8E-11	-
-							
		Y, see ^{94}Ru	-	1E+1	5E-9	2E-11	-
-							
45	Rhodium-99m	D, all compounds except those given for W and Y	2E+4	6E+4	2E-5	8E-8	2E-4
2E-3							
		W, halides	-	8E+4	3E-5	1E-7	-
-							
		Y, oxides and hydroxides	-	7E+4	3E-5	9E-8	-
-							
45	Rhodium-99	D, see ^{99m}Rh	2E+3	3E+3	1E-6	4E-9	3E-5
3E-4							
		W, see ^{99m}Rh	-	2E+3	9E-7	3E-9	-
-							
		Y, see ^{99m}Rh	-	2E+3	8E-7	3E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

45	Rhodium-100	D, see ^{99m}Rh	2E+3	5E+3	2E-6	7E-9	2E-5
2E-4							
		W, see ^{99m}Rh	-	4E+3	2E-6	6E-9	-
-							
		Y, see ^{99m}Rh	-	4E+ 3	2E-6	5E-9	-
-							
45	Rhodium-101m	D, see ^{99m}Rh	6E+3	1E+4	5E-6	2E-8	8E-5
8E-4							
		W, see ^{99m}Rh	-	8E+3	4E-6	1E-8	-
-							
		Y, see ^{99m}Rh	-	8E+3	3E-6	1E-8	-
-							
45	Rhodium-101	D, see ^{99m}Rh	2E+3	5E+2	2E-7	7E-10	3E-5
3E-4							
		W, see ^{99m}Rh	-	8E+2	3E-7	1E-9	-
-							
		Y, see ^{99m}Rh	-	2E+2	6E-8	2E-10	-
-							
45	Rhodium-102m	D, see ^{99m}Rh	1E+3	5E+2	2E-7	7E-10	-
-							
			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		W, see ^{99m}Rh	-	4E+2	2E-7	5E-10	-
-							
		Y, see ^{99m}Rh	-	1E+2	5E-8	2E-10	-
-							
45	Rhodium-102	D, see ^{99m}Rh	6E+2	9E+1	4E-8	1E-10	8E-6
8E-5							
		W, see ^{99m}Rh	-	2E+2	7E-8	2E-10	-
-							
		Y, see ^{99m}Rh	-	6E+1	2E-8	8E-11	-
-							
45	Rhodium-103m[2]	D, see ^{99m}Rh	4E+5	1E+6	5E-4	2E-6	6E-3
6E-2							
		W, see ^{99m}Rh	-	1E+6	5E-4	2E-6	-
-							
		Y, see ^{99m}Rh	-	1E+6	5E-4	2E-6	-
-							
45	Rhodium-105	D, see ^{99m}Rh	4E+3	1E+4	5E-6	2E-8	-
-							
			LLI wall (4E+3)	-	-	-	5E-5
5E-4							
		W, see ^{99m}Rh	-	6E+3	3E-6	9E-9	-
-							
		Y, see ^{99m}Rh	-	6E+3	2E-6	8E-9	-
-							
45	Rhodium-106m	D, see ^{99m}Rh	8E+3	3E+4	1E-5	4E-8	1E-4
1E-3							
		W, see ^{99m}Rh	-	4E+4	2E-5	5E-8	-
-							
		Y, see ^{99m}Rh	-	4E+4	1E-5	5E-8	-
-							

45	Rhodium-107[2]	D, see ^{99m}Rh	7E+4	2E+5	1E-4	3E-7	-
-							
			St wall (9E+4)	-	-	-	1E-3
1E-2							
		W, see ^{99m}Rh	-	3E+5	1E-4	4E-7	-
-							
		Y, see ^{99m}Rh	-	3E+5	1E-4	3E-7	-
-							
46	Palladium-100	D, all compounds except those given for W and Y	1E+3	1E+3	6E-7	2E-9	2E-5
2E-4							
		W, nitrates	-	1E+3	5E-7	2E-9	-
-							
		Y, oxides and hydroxides	-	1E+3	6E-7	2E-9	-
-							
46	Palladium-101	D, see ^{100}Pd	1E+4	3E+4	1E-5	5E-8	2E-4
2E-3							
		W, see ^{100}Pd	-	3E+4	1E-5	5E-8	-
-							
		Y, see ^{100}Pd	-	3E+4	1E-5	4E-8	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

46	Palladium-103	D, see ^{100}Pd	6E+3	6E+3	3E-6	9E-9	-
-							
			LLI wall (7E+3)	-	-	-	1E-4
1E-3							
		W, see ^{100}Pd	-	4E+3	2E-6	6E-9	-
-							
		Y, see ^{100}Pd	-	4E+3	1E-6	5E-9	-
-							
46	Palladium-107	D, see ^{100}Pd	3E+4	2E+4	9E-6	-	-
-							
			LLI wall (4E+4)	Kidneys (2E+4)	-	3E-8	5E-4
5E-3							
		W, see ^{100}Pd	-	7E+3	3E-6	1E-8	-
-							
		Y, see ^{100}Pd	-	4E+2	2E-7	6E-10	-
-							
46	Palladium-109	D, see ^{100}Pd	2E+3	6E+3	3E-6	9E-9	3E-5
3E-4							
		W, see ^{100}Pd	-	5E+3	2E-6	8E-9	-
-							
		Y, see,^{100}Pd	-	5E+3	2E-6	6E-9	-
-							
47	Silver-102[2]	D, all compounds except those given for W and Y	5E+4	2E+5	8E-5	2E-7	-
-							
			St wall (6E+4)	-	-	-	9E-4
9E-3							
		W, nitrates and sulfides	-	2E+5	9E-5	3E-7	-
-							
		Y, oxides and hydroxides	-	2E+5	8E-5	3E-7	-
-							
47	Silver-103[2]	D, see ^{102}Ag	4E+4	1E+5	4E-5	1E-7	5E-4
5E-3							
		W, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
-							
		Y, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
-							
47	Silver-104m[2]	D, see ^{102}Ag	3E+4	9E+4	4E-5	1E-7	4E-4
4E-3							
		W, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
-							
		Y, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
-							
47	Silver-104[2]	D, see ^{102}Ag	2E+4	7E+4	3E-5	1E-7	3E-4
3E-3							
		W, see ^{102}Ag	-	1E+5	6E-5	2E-7	-
-							
		Y, see ^{102}Ag	-	1E+5	6E-5	2E-7	-
-							
47	Silver-105	D, see ^{102}Ag	3E+3	1E+3	4E-7	1E-9	4E-5
4E-4							

		W, see ^{102}Ag	-	2E+3	7E-7	2E-9	-
-							
		Y, see ^{102}Ag	-	2E+3	7E-7	2E-9	-
-							
47	Silver-106m	D, see ^{102}Ag	8E+2	7E+2	3E-7	1E-9	1E-5
1E-4							
		W, see ^{102}Ag	-	9E+2	4E-7	1E-9	-
-							
		Y, see ^{102}Ag	-	9E+2	4E-7	1E-9	-
-							
47	Silver-106^{2}	D, see ^{102}Ag	6E+4	2E+5	8E-5	3E-7	-
-							
			St Wall (6E+4)	-	-	-	9E-4
9E-3							
		W, see ^{102}Ag	-	2E+5	9E-5	3E-7	-
-							
		Y, see ^{102}Ag	-	2E+5	8E-5	3E-7	-
-							
47	Silver-108m	D, see ^{102}Ag	6E+2	2E+2	8E-8	3E-10	9E-6
9E-5							
		W, see ^{102}Ag	-	3E+2	1E-7	4E-10	-
-							
		Y, see ^{102}Ag	-	2E+1	1E-8	3E-11	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

47	Silver-110m	D, see ^{102}Ag	5E+2	1E+2	5E-8	2E-10	6E-6
6E-5							
		W, see ^{102}Ag	-	2E+2	8E-8	3E-10	-
-							
		Y, see ^{102}Ag	-	9E+1	4E-8	1E-10	-
-							
47	Silver-111	D, see ^{102}Ag	9E+2	2E+3	6E-7	-	-
-							
			LLI wall (1E+3)	Liver (2E+3)	-	2E-9	2E-5
2E-4							
		W, see ^{102}Ag	-	9E+2	4E-7	1E-9	-
-							
		Y, see ^{102}Ag	-	9E+2	4E-7	1E-9	-
-							
47	Silver-112	D, see ^{102}Ag	3E+3	8E+3	3E-6	1E-8	4E-5
4E-4							
		W, see ^{102}Ag	-	1E+4	4E-6	1E-8	-
-							
		Y, see ^{102}Ag	-	9E+3	4E-6	1E-8	-
-							
47	Silver-115[2]	D, see ^{102}Ag	3E+4	9E+4	4E-5	1E-7	-
-							
			St wall (3E+4)	-	-	-	4E-4
4E-3							
		W, see ^{102}Ag	-	9E+4	4E-5	1E-7	-
-							
		Y, see ^{102}Ag	-	8E+4	3E-5	1E-7	-
-							
48	Cadmium-104[2]	D, all compounds except those given for W and Y	2E+4	7E+4	3E-5	9E-8	3E-4
3E-3							
		W, sulfides, halides, and nitrates	-	1E+5	5E-5	2E-7	-
-							
		Y, oxides and hydroxides	-	1E+5	5E-5	2E-7	-
-							
48	Cadmium-107	D, see ^{104}Cd	2E+4	5E+4	2E-5	8E-8	3E-4
3E-3							
		W, see ^{104}Cd	-	6E+4	2E-5	8E-8	-
-							
		Y, see ^{104}Cd	-	5E+4	2E-5	7E-8	-
-							
48	Cadmium-109	D, see ^{104}Cd	3E+2	4E+1	1E-8	-	-
-							
			Kidneys (4E+2)	Kidneys (5E+1)	-	7E-11	6E-6
6E-5							
		W, see ^{104}Cd	-	1E+2	5E-8	-	-
-							
			-	Kidneys (1E+2)	-	2E-10	-
-							
		Y, see ^{104}Cd	-	1E+2	5E-8	2E-10	-
-							

48	Cadmium-113m	D, see ^{104}Cd	2E+1	2E+0	1E-9	-	-
-							
			Kidneys (4E+1)	Kidneys (4E+0)	-	5E-12	5E-7
5E-6							
		W, see ^{104}Cd	-	8E+0	4E-9	-	-
-							
			-	Kidneys (1E+1)	-	2E-11	-
-							
		Y, see ^{104}Cd	-	1E+1	5E-9	2E-11	-
-							
48	Cadmium-113	D, see ^{104}Cd	2E+1	2E+0	9E-10	-	-
-							
			Kidneys (3E+1)	Kidneys (3E+0)	-	5E-12	4E-7
4E-6							
		W, see ^{104}Cd	-	8E+0	3E-9	-	-
-							
			-	Kidneys (1E+1)	-	2E-11	-
-							
		Y, see ^{104}Cd	-	1E+1	6E-9	2E-11	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

48	Cadmium-115m	D, see ^{104}Cd	3E+2	5E+1	2E-8	-	4E-6
4E-5							
			-	Kidneys (8E+1)	-	1E-10	-
-							
		W, see ^{104}Cd	-	1E+2	5E-8	2E-10	-
-							
		Y, see ^{104}Cd	-	1E+2	6E-8	2E-10	-
-							
48	Cadmium-115	D, see ^{104}Cd	9E+2	1E+3	6E-7	2E-9	-
-							
			LLI wall (1E+3)	-	-	-	1E-5
1E-4							
		W, see ^{104}Cd	-	1E+3	5E-7	2E-9	-
-							
		Y, see ^{104}Cd	-	1E+3	6E-7	2E-9	-
-							
48	Cadmium-117m	D, see ^{104}Cd	5E+3	1E+4	5E-6	2E-8	6E-5
6E-4							
		W, see ^{104}Cd	-	2E+4	7E-6	2E-8	-
-							
		Y, see ^{104}Cd	-	1E+4	6E-6	2E-8	-
-							
48	Cadmium-117	D, see ^{104}Cd	5E+3	1E+4	5E-6	2E-8	6E-5
6E-4							
		W, see ^{104}Cd	-	2E+4	7E-6	2E-8	-
-							
		Y, see ^{104}Cd	-	1E+4	6E-6	2E-8	-
-							
49	Indium-109	D, all compounds except those given for W	2E+4	4E+4	2E-5	6E-8	3E-4
3E-3							
		W, oxides, hydroxides, halides, and nitrates	-	6E+4	3E-5	9E-8	-
-							
49	Indium-110[2]	D, see ^{109}In	2E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
	(69.1 min)	W, see ^{109}In	-	6E+4	2E-5	8E-8	-
-							
49	Indium-110	D, see ^{109}In	5E+3	2E+4	7E-6	2E-8	7E-5
7E-4							
	(4.9 h)	W, see ^{109}In	-	2E+4	8E-6	3E-8	-
-							
49	Indium-111	D, see ^{109}In	4E+3	6E+3	3E-6	9E-9	6E-5
6E-4							
		W, see ^{109}In	-	6E+3	3E-6	9E-9	-
-							
49	Indium-112[2]	D, see ^{109}In	2E+5	6E+5	3E-4	9E-7	2E-3
2E-2							
	-	W, see ^{109}In	-	7E+5	3E-4	1E-6	-
-							
49	Indium-113m[2]	D, see ^{109}In	5E+4	1E+5	6E-5	2E-7	7E-4
7E-3							
	-	W, see ^{109}In	-	2E+5	8E-5	3E-7	-
-							

49	Indium-114m	D, see ^{109}In	3E+2	6E+1	3E-8	9E-11	-
-							
			LLI wall (4E+2)	-	-	-	5E-6
5E-5							
		W, see ^{109}In	-	1E+2	4E-8	1E-10	-
-							
49	Indium-115m	D, see ^{109}In	1E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
	-	W, see ^{109}In	-	5E+4	2E-5	7E-8	-
-							
49	Indium-115	D, see ^{109}In	4E+1	1E+0	6E-10	2E-12	5E-7
5E-6							
	-	W, see ^{109}In	-	5E+0	2E-9	8E-12	-
-							
49	Indium-116m[2]	D, see ^{109}In	2E+4	8E+4	3E-5	1E-7	3E-4
3E-3							
		W, see ^{109}In	-	1E+5	5E-5	2E-7	-
-							
49	Indium-117m[2]	D, see ^{109}In	1E+4	3E+4	1E-5	5E-8	2E-4
2E-3							
	-	W, see ^{109}In	-	4E+4	2E-5	6E-8	-
-							
49	Indium-117[2]	D, see ^{109}In	6E+4	2E+5	7E-5	2E-7	8E-4
8E-3							
		W, see ^{109}In	-	2E+5	9E-5	3E-7	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

49	Indium-119m[2]	D, see ^{109}In	4E+4	1E+5	5E-5	2E-7	-
-							
			St wall (5E+4)	-	-	-	7E-4
7E-3							
		W, see ^{109}In	-	1E+5	6E-5	2E-7	-
-							
50	Tin-110	D, all compounds except those given for W	4E+3	1E+4	5E-6	2E-8	5E-5
5E-4							
		W, sulfides, oxides, hydroxides, halides, nitrates, and stannic phosphate	-	1E+4	5E-6	2E-8	-
-							
50	Tin-111[2]	D, see ^{110}Sn	7E+4	2E+5	9E-5	3E-7	1E-3
1E-2							
		W, see ^{110}Sn	-	3E+5	1E-4	4E-7	-
-							
50	Tin-113	D, see ^{110}Sn	2E+3	1E+3	5E-7	2E-9	-
-							
			LLI wall (2E+3)	-	-	-	3E-5
3E-4							
		W, see ^{110}Sn	-	5E+2	2E-7	8E-10	-
-							
50	Tin-117m	D, see ^{110}Sn	2E+3	1E+3	5E-7	-	-
-							
			LLI wall (2E+3)	Bone surf (2E+3)	-	3E-9	3E-5
3E-4							
		W, see ^{110}Sn	-	1E+3	6E-7	2E-9	-
-							
50	Tin-119m	D, see ^{110}Sn	3E+3	2E+3	1E-6	3E-9	-
-							
			LLI wall (4E+3)	-	-	-	6E-5
6E-4							
		W, see ^{110}Sn	-	1E+3	4E-7	1E-9	-
-							
50	Tin-121m	D, see ^{110}Sn	3E+3	9E+2	4E-7	1E-9	-
-							
			LLI wall (4E+3)	-	-	-	5E-5
5E-4							
		W, see ^{110}Sn	-	5E+2	2E-7	8E-10	-
-							
50	Tin-121	D, see ^{110}Sn	6E+3	2E+4	6E-6	2E-8	-
-							
			LLI wall (6E+3)	-	-	-	8E-5
8E-4							
		W, see ^{110}Sn	-	1E+4	5E-6	2E-8	-
-							
50	Tin-123m[2]	D, see ^{110}Sn	5E+4	1E+5	5E-5	2E-7	7E-4
7E-3							

		W, see ^{110}Sn	-	1E+5	6E-5	2E-7	-
-							
50	Tin-123	D, see ^{110}Sn	5E+2	6E+2	3E-7	9E-10	-
-							
			LLI wall (6E+2)	-	-	-	9E-6
9E-5							
		W, see ^{110}Sn	-	2E+2	7E-8	2E-10	-
-							
50	Tin-125	D, see ^{110}Sn	4E+2	9E+2	4E-7	1E-9	-
-							
			LLI wall (5E+2)	-	-	-	6E-6
6E-5							
		W, see ^{110}Sn	-	4E+2	1E-7	5E-10	-
-							
50	Tin-126	D, see ^{110}Sn	3E+2	6E+1	2E-8	8E-11	4E-6
4E-5							
		W, see ^{110}Sn	-	7E+1	3E-8	9E-11	-
-							
50	Tin-127	D, see ^{110}Sn	7E+3	2E+4	8E-6	3E-8	9E-5
9E-4							
		W, see ^{110}Sn	-	2E+4	8E-6	3E-8	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

50	Tin-128[2]	D, see ^{110}Sn	9E+3	3E+4	1E-5	4E-8	1E-4
1E-3							
		W, see ^{110}Sn	-	4E+4	1E-5	5E-8	-
-							
51	Antimony-115[2]	D, all compounds except those given for W	8E+4	2E+5	1E-4	3E-7	1E-3
1E-2							
		W, oxides, hydroxides, halides, sulfides, sulfates, and nitrates	-	3E+5	1E-4	4E-7	-
-							
51	Antimony-116m[2]	D, see ^{115}Sb	2E+4	7E+4	3E-5	1E-7	3E-4
3E-3							
		W, see ^{115}Sb	-	1E+5	6E-5	2E-7	-
-							
51	Antimony-116[2]	D, see ^{115}Sb	7E+4	3E+5	1E-4	4E-7	-
-							
			St wall (9E+4)	-	-	-	1E-3
1E-2							
		W, see ^{115}Sb	-	3E+5	1E-4	5E-7	-
-							
51	Antimony-117	D, see ^{115}Sb	7E+4	2E+5	9E-5	3E-7	9E-4
9E-3							
		W, see ^{115}Sb	-	3E+5	1E-4	4E-7	-
-							
51	Antimony-118m	D, see ^{115}Sb	6E+3	2E+4	8E-6	3E-8	7E-5
7E-4							
		W, see ^{115}Sb	5E+3	2E+4	9E-6	3E-8	-
-							
51	Antimony-119	D, see ^{115}Sb	2E+4	5E+4	2E-5	6E-8	2E-4
2E-3							
		W, see ^{115}Sb	2E+4	3E+4	1E-5	4E-8	-
-							
51	Antimony-120[2]	D, see ^{115}Sb	1E+5	4E+5	2E-4	6E-7	-
-							
	(16 min)		St wall (2E+5)	-	-	-	2E-3
2E-2							
		W, see ^{115}Sb	-	5E+5	2E-4	7E-7	-
-							
51	Antimony-120	D, see ^{115}Sb	1E+3	2E+3	9E-7	3E-9	1E-5
1E-4							
	(5.76 d)	W, see ^{115}Sb	9E+2	1E+3	5E-7	2E-9	-
-							
51	Antimony-122	D, see ^{115}Sb	8E+2	2E+3	1E-6	3E-9	-
-							
			LLI wall (8E+2)	-	-	-	1E-5
1E-4							
		W, see ^{115}Sb	7E+2	1E+3	4E-7	2E-9	-
-							
51	Antimony-124m[2]	D, see ^{115}Sb	3E+5	8E+5	4E-4	1E-6	3E-3
3E-2							
		W, see ^{115}Sb	2E+5	6E+5	2E-4	8E-7	-
-							

51	Antimony-124	D, see ^{115}Sb	6E+2	9E+2	4E-7	1E-9	7E-6
7E-5							
		W, see ^{115}Sb	5E+2	2E+2	1E-7	3E-10	-
-							
51	Antimony-125	D, see ^{115}Sb	2E+3	2E+3	1E-6	3E-9	3E-5
3E-4							
		W, see ^{115}Sb	-	5E+2	2E-7	7E-10	-
-							
51	Antimony-126m^{2}	D, see ^{115}Sb	5E+4	2E+5	8E-5	3E-7	-
-							
			St wall (7E+4)	-	-	-	9E-4
9E-3							
		W, see ^{115}Sb	-	2E+5	8E-5	3E-7	-
-							
51	Antimony-126	D, see ^{115}Sb	6E+2	1E+3	5E-7	2E-9	7E-6
7E-5							
		W, see ^{115}Sb	5E+2	5E+2	2E-7	7E-10	-
-							
51	Antimony-127	D, see ^{115}Sb	8E+2	2E+3	9E-7	3E-9	-
-							
			LLI wall (8E+2)	-	-	-	1E-5
1E-4							
		W, see ^{115}Sb	7E+2	9E+2	4E-7	1E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

51	Antimony-128[2]	D, see ^{115}Sb	8E+4	4E+5	2E-4	5E-7	-
-							
	(10.4 min)		St wall (1E+5)	-	-	-	1E-3
1E-2							
		W, see ^{115}Sb	-	4E+5	2E-4	6E-7	-
-							
51	Antimony-128	D, see ^{115}Sb	1E+3	4E+3	2E-6	6E-9	2E-5
2E-4							
	(9.01 h)	W, see ^{115}Sb	-	3E+3	1E-6	5E-9	-
-							
51	Antimony-129	D, see ^{115}Sb	3E+3	9E+3	4E-6	1E-8	4E-5
4E-4							
		W, see ^{115}Sb	-	9E+3	4E-6	1E-8	-
-							
51	Antimony-130[2]	D, see ^{115}Sb	2E+4	6E+4	3E-5	9E-8	3E-4
3E-3							
		W, see ^{115}Sb	-	8E+4	3E-5	1E-7	-
-							
51	Antimony-131[2]	D, see ^{115}Sb	1E+4	2E+4	1E-5	-	-
-							
			Thyroid (2E+4)	Thyroid (4E+4)	-	6E-8	2E-4
2E-3							
		W, see ^{115}Sb	-	2E+4	1E-5		-
-							
			-	Thyroid (4E+4)	-	6E-8	-
-							
52	Tellurium-116	D, all compounds except those given for W	8E+3	2E+4	9E-6	3E-8	1E-4
1E-3							
		W, oxides, hydroxides, and nitrates	-	3E+4	1E-5	4E-8	-
-							
52	Tellurium-121m	D, see ^{116}Te	5E+2	2E+2	8E-8	-	-
-							
			Bone surf (7E+2)	Bone surf (4E+2)	-	5E-10	1E-5
1E-4							
		W, see ^{116}Te	-	4E+2	2E-7	6E-10	-
-							
52	Tellurium-121	D, see ^{116}Te	3E+3	4E+3	2E-6	6E-9	4E-5
4E-4							
		W, see ^{116}Te	-	3E+3	1E-6	4E-9	-
-							
52	Tellurium-123m	D, see ^{116}Te	6E+2	2E+2	9E-8	-	-
-							
			Bone surf (1E+3)	Bone surf (5E+2)	-	8E-10	1E-5
1E-4							
		W, see ^{116}Te	-	5E+2	2E-7	8E-10	-
-							
52	Tellurium-123	D, see ^{116}Te	5E+2	2E+2	8E-8	-	-
-							
			Bone surf	Bone surf			

			(1E+3)	(5E+2)	-	7E-10	2E-5
2E-4							
		W, see ^{116}Te	-	4E+2	2E-7	-	-
-							
				Bone surf			
			-	(1E+3)	-	2E-9	-
-							
52	Tellurium-125m	D, see ^{116}Te	1E+3	4E+2	2E-7	-	-
-							
			Bone surf	Bone surf			
			(1E+3)	(1E+3)	-	1E-9	2E-5
2E-4							
		W, see ^{116}Te	-	7E+2	3E-7	1E-9	-
-							
52	Tellurium-127m	D, see ^{116}Te	6E+2	3E+2	1E-7	-	9E-6
9E-5							
				Bone surf			
			-	(4E+2)	-	6E-10	-
-							
		W, see ^{116}Te	-	3E+2	1E-7	4E-10	-
-							
52	Tellurium-127	D, see ^{116}Te	7E+3	2E+4	9E-6	3E-8	1E-4
1E-3							
		W, see ^{116}Te	-	2E+4	7E-6	2E-8	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

52	Tellurium-129m	D, see ^{116}Te	5E+2	6E+2	3E-7	9E-10	7E-6
7E-5							
		W, see ^{116}Te	-	2E+2	1E-7	3E-10	-
-							
52	Tellurium-129[2]	D, see ^{116}Te	3E+4	6E+4	3E-5	9E-8	4E-4
4E-3							
		W, see ^{116}Te	-	7E+4	3E-5	1E-7	-
-							
52	Tellurium-131m	D, see ^{116}Te	3E+2	4E+2	2E-7	-	-
-							
			Thyroid (6E+2)	Thyroid (1E+3)	-	2E-9	8E-6
8E-5							
		W, see ^{116}Te	-	4E+2	2E-7	-	-
-							
			-	Thyroid (9E+2)	-	1E-9	-
-							
52	Tellurium-131[2]	D, see ^{116}Te	3E+3	5E+3	2E-6	-	-
-							
			Thyroid (6E+3)	Thyroid (1E+4)	-	2E-8	8E-5
8E-4							
		W, see ^{116}Te	-	5E+3	2E-6	-	-
-							
			-	Thyroid (1E+4)	-	2E-8	-
-							
52	Tellurium-132	D, see ^{116}Te	2E+2	2E+2	9E-8	-	-
-							
			Thyroid (7E+2)	Thyroid (8E+2)	-	1E-9	9E-6
9E-5							
		W, see ^{116}Te	-	2E+2	9E-8	-	-
-							
			-	Thyroid (6E+2)	-	9E-10	-
-							
52	Tellurium-133m[2]	D, see ^{116}Te	3E+3	5E+3	2E-6	-	-
-							
			Thyroid (6E+3)	Thyroid (1E+4)	-	2E-8	9E-5
9E-4							
		W, see ^{116}Te	-	5E+3	2E-6	-	-
-							
			-	Thyroid (1E+4)	-	2E-8	-
-							
52	Tellurium-133[2]	D, see ^{116}Te	1E+4	2E+4	9E-6	-	-
-							
			Thyroid (3E+4)	Thyroid (6E+4)	-	8E-8	4E-4
4E-3							
		W, see ^{116}Te	-	2E+4	9E-6	-	-
-							
			-	Thyroid (6E+4)	-	8E-8	-
-							

52	Tellurium-134[2]	D, see ^{116}Te	2E+4	2E+4	1E-5	-	-
-							
			Thyroid (2E+4)	Thyroid (5E+4)	-	7E-8	3E-4
3E-3							
		W, see ^{116}Te	-	2E+4	1E-5	-	-
-							
			-	Thyroid (5E+4)	-	7E-8	-
-							
53	Iodine-120m[2]	D, all compounds	1E+4	2E+4	9E-6	3E-8	-
-							
			Thyroid (1E+4)	-	-	-	2E-4
2E-3							
53	Iodine-120[2]	D, all compounds	4E+3	9E+3	4E-6	-	-
-							
			Thyroid (8E+3)	Thyroid (1E+4)	-	2E-8	1E-4
1E-3							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

53	Iodine-121	D, all compounds	1E+4	2E+4	8E-6	-	-
-			Thyroid (3E+4)	Thyroid (5E+4)	-	7E-8	4E-4
4E-3							
53	Iodine-123	D, all compounds	3E+3	6E+3	3E-6	-	-
-			Thyroid (1E+4)	Thyroid (2E+4)	-	2E-8	1E-4
1E-3							
53	Iodine-124	D, all compounds	5E+1	8E+1	3E-8	-	-
-			Thyroid (2E+2)	Thyroid (3E+2)	-	4E-10	2E-6
2E-5							
53	Iodine-125	D, all compounds	4E+1	6E+1	3E-8	-	-
-			Thyroid (1E+2)	Thyroid (2E+2)	-	3E-10	2E-6
2E-5							
53	Iodine-126	D, all compounds	2E+1	4E+1	1E-8	-	-
-			Thyroid (7E+1)	Thyroid (1E+2)	-	2E-10	1E-6
1E-5							
53	Iodine-128[2]	D, all compounds	4E+4	1E+5	5E-5	2E-7	-
-			St wall (6E+4)	-	-	-	8E-4
8E-3							
53	Iodine-129	D, all compounds	5E+0	9E+0	4E-9	-	-
-			Thyroid (2E+1)	Thyroid (3E+1)	-	4E-11	2E-7
2E-6							
53	Iodine-130	D, all compounds	4E+2	7E+2	3E-7	-	-
-			Thyroid (1E+3)	Thyroid (2E+3)	-	3E-9	2E-5
2E-4							
53	Iodine-131	D, all compounds	3E+1	5E+1	2E-8	-	-
-			Thyroid (9E+1)	Thyroid (2E+2)	-	2E-10	1E-6
1E-5							
53	Iodine-132m[2]	D, all compounds	4E+3	8E+3	4E-6	-	-
-			Thyroid (1E+4)	Thyroid (2E+4)	-	3E-8	1E-4
1E-3							
53	Iodine-132	D, all compounds	4E+3	8E+3	3E-6	-	-
-			Thyroid (9E+3)	Thyroid (1E+4)	-	2E-8	1E-4
1E-3							
53	Iodine-133	D, all compounds	1E+2	3E+2	1E-7	-	-
-			Thyroid (5E+2)	Thyroid (9E+2)	-	1E-9	7E-6
7E-5							

53	Iodine-134[2]	D, all compounds	2E+4	5E+4	2E-5	6E-8	-
-							
			Thyroid (3E+4)	-	-	-	4E-4
4E-3							
53	Iodine-135	D, all compounds	8E+2	2E+3	7E-7	-	-
-							
			Thyroid (3E+3)	Thyroid (4E+3)	-	6E-9	3E-5
3E-4							
54	Xenon-120[2]	Submersion[1]	-	-	1E-5	4E-8	-
-							
54	Xenon-121[2]	Submersion[1]	-	-	2E-6	1E-8	-
-							
54	Xenon-122	Submersion[1]	-	-	7E-5	3E-7	-
-							
54	Xenon-123	Submersion[1]	-	-	6E-6	3E-8	-
-							
54	Xenon-125	Submersion[1]	-	-	2E-5	7E-8	-
-							
54	Xenon-127	Submersion[1]	-	-	1E-5	6E-8	-
-							
54	Xenon-129m	Submersion[1]	-	-	2E-4	9E-7	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

54	Xenon-131m	Submersion[1]	-	-	4E-4	2E-6	-
-							
54	Xenon-133m	Submersion[1]	-	-	1E-4	6E-7	-
-							
54	Xenon-133	Submersion[1]	-	-	1E-4	5E-7	-
-							
54	Xenon-135m[2]	Submersion[1]	-	-	9E-6	4E-8	-
-							
54	Xenon-135	Submersion[1]	-	-	1E-5	7E-8	-
-							
54	Xenon-138[2]	Submersion[1]	-	-	4E-6	2E-8	-
-							
55	Cesium-125[2]	D, all compounds	5E+4	1E+5	6E-5	2E-7	-
-							
			St wall (9E+4)	-	-	-	1E-3
1E-2							
55	Cesium-127	D, all compounds	6E+4	9E+4	4E-5	1E-7	9E-4
9E-3							
55	Cesium-129	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4
3E-3							
55	Cesium-130[2]	D, all compounds	6E+4	2E+5	8E-5	3E-7	-
-							
			St wall (1E+5)	-	-	-	1E-3
1E-2							
55	Cesium-131	D, all compounds	2E+4	3E+4	1E-5	4E-8	3E-4
3E-3							
55	Cesium-132	D, all compounds	3E+3	4E+3	2E-6	6E-9	4E-5
4E-4							
55	Cesium-134m	D, all compounds	1E+5	1E+5	6E-5	2E-7	-
-							
			St wall (1E+5)	-	-	-	2E-3
2E-2							
55	Cesium-134	D, all compounds	7E+1	1E+2	4E-8	2E-10	9E-7
9E-6							
55	Cesium-135m[2]	D, all compounds	1E+5	2E+5	8E-5	3E-7	1E-3
1E-2							
55	Cesium-135	D, all compounds	7E+2	1E+3	5E-7	2E-9	1E-5
1E-4							
55	Cesium-136	D, all compounds	4E+2	7E+2	3E-7	9E-10	6E-6
6E-5							
55	Cesium-137	D, all compounds	1E+2	2E+2	6E-8	2E-10	1E-6
1E-5							
55	Cesium-138[2]	D, all compounds	2E+4	6E+4	2E-5	8E-8	-
-							
			St wall (3E+4)	-	-	-	4E-4
4E-3							
56	Barium-126[2]	D, all compounds	6E+3	2E+4	6E-6	2E-8	8E-5
8E-4							
56	Barium-128	D, all compounds	5E+2	2E+3	7E-7	2E-9	7E-6
7E-5							
56	Barium-131m[2]	D, all compounds	4E+5	1E+6	6E-4	2E-6	-
-							
			St wall				

			(5E+5)	-	-	-	7E-3
	7E-2						
56	Barium-131	D, all compounds	3E+3	8E+3	3E-6	1E-8	4E-5
	4E-4						
56	Barium-133m	D, all compounds	2E+3	9E+3	4E-6	1E-8	-
	-						
			LLI wall (3E+3)	-	-	-	4E-5
	4E-4						
56	Barium-133	D, all compounds	2E+3	7E+2	3E-7	9E-10	2E-5
	2E-4						
56	Barium-135m	D, all compounds	3E+3	1E+4	5E-6	2E-8	4E-5
	4E-4						
56	Barium-139[2]	D, all compounds	1E+4	3E+4	1E-5	4E-8	2E-4
	2E-3						
56	Barium-140	D, all compounds	5E+2	1E+3	6E-7	2E-9	-
	-						
			LLI wall (6E+2)	-	-	-	8E-6
	8E-5						
56	Barium-141[2]	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4
	3E-3						
56	Barium-142[2]	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4
	7E-3						
57	Lanthanum-131[2]	D, all compounds except those given for W	5E+4	1E+5	5E-5	2E-7	6E-4
	6E-3						
		W, oxides and hydroxides	-	2E+5	7E-5	2E-7	-
	-						

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

57	Lanthanum-132	D, see ^{131}La	3E+3	1E+4	4E-6	1E-8		4E-5
4E-4								
		W, see ^{131}La	-	1E+4	5E-6	2E-8		-
-								
57	Lanthanum-135	D, see ^{131}La	4E+4	1E+5	4E-5	1E-7		5E-4
5E-3								
		W, see ^{131}La	-	9E+4	4E-5	1E-7		-
-								
57	Lanthanum-137	D, see ^{131}La	1E+4	6E+1	3E-8	-		2E-4
2E-3								
			-	Liver (7E+1)	-	1E-10		-
-								
		W, see ^{131}La	-	3E+2	1E-7	-		-
-								
			-	Liver (3E+2)	-	4E-10		-
-								
57	Lanthanum-138	D, see ^{131}La	9E+2	4E+0	1E-9	5E-12		1E-5
1E-4								
		W, see ^{131}La	-	1E+1	6E-9	2E-11		-
-								
57	Lanthanum-140	D, see ^{131}La	6E+2	1E+3	6E-7	2E-9		9E-6
9E-5								
		W, see ^{131}La	-	1E+3	5E-7	2E-9		-
-								
57	Lanthanum-141	D, see ^{131}La	4E+3	9E+3	4E-6	1E-8		5E-5
5E-4								
		W, see ^{131}La	-	1E+4	5E-6	2E-8		-
-								
57	Lanthanum-142[2]	D, see ^{131}La	8E+3	2E+4	9E-6	3E-8		1E-4
1E-3								
		W, see ^{131}La	-	3E+4	1E-5	5E-8		-
-								
57	Lanthanum-143[2]	D, see ^{131}La	4E+4	1E+5	4E-5	1E-7		-
-								
			St wall (4E+4)	-	-	-		5E-4
5E-3								
		W, see ^{131}La	-	9E+4	4E-5	1E-7		-
-								
58	Cerium-134	W, all compounds except those given for Y	5E+2	7E+2	3E-7	1E-9		-
-								
			LLI wall (6E+2)	-	-	-		8E-6
8E-5								
		Y, oxides, hydroxides,	and fluorides	-	7E+2	3E-7	9E-10	-
-								
58	Cerium-135	W, see ^{134}Ce	2E+3	4E+3	2E-6	5E-9		2E-5
2E-4								
		Y, see ^{134}Ce	-	4E+3	1E-6	5E-9		-
-								
58	Cerium-137m	W, see ^{134}Ce	2E+3	4E+3	2E-6	6E-9		-
-								
			LLI wall					

			(2E+3)	-	-	-	3E-5
3E-4							
		Y, see ^{134}Ce	-	4E+3	2E-6	5E-9	-
-							
58	Cerium-137	W, see ^{134}Ce	5E+4	1E+5	6E-5	2E-7	7E-4
7E-3							
		Y, see ^{134}Ce	-	1E+5	5E-5	2E-7	-
-							
58	Cerium-139	W, see ^{134}Ce	5E+3	8E+2	3E-7	1E-9	7E-5
7E-4							
		Y, see ^{134}Ce	-	7E+2	3E-7	9E-10	-
-							
58	Cerium-141	W, see ^{134}Ce	2E+3	7E+2	3E-7	1E-9	-
-							
			LLI wall (2E+3)	-	-	-	3E-5
3E-4							
		Y, see ^{134}Ce	-	6E+2	2E-7	8E-10	-
-							
58	Cerium-143	W, see ^{134}Ce	1E+3	2E+3	8E-7	3E-9	-
-							
			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{134}Ce	-	2E+3	7E-7	2E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

58	Cerium-144	W, see ^{134}Ce	2E+2	3E+1	1E-8	4E-11	-
-							
			LLI wall (3E+2)	-	-	-	3E-6
3E-5							
		Y, see ^{134}Ce	-	1E+1	6E-9	2E-11	-
-							
59	Praseodymium-136[2]	W, all compounds except those given for Y	5E+4	2E+5	1E-4	3E-7	-
-							
			St wall (7E+4)	-	-	-	1E-3
1E-2							
		Y, oxides, hydroxides, carbides, and fluorides	-	2E+5	9E-5	3E-7	-
-							
59	Praseodymium-137[2]	W, see ^{136}Pr	4E+4	2E+5	6E-5	2E-7	5E-4
5E-3							
		Y, see ^{136}Pr	-	1E+5	6E-5	2E-7	-
-							
59	Praseodymium-138m	W, see ^{136}Pr	1E+4	5E+4	2E-5	8E-8	1E-4
1E-3							
		Y, see ^{136}Pr	-	4E+4	2E-5	6E-8	-
-							
59	Praseodymium-139	W, see ^{136}Pr	4E+4	1E+5	5E-5	2E-7	6E-4
6E-3							
		Y, see ^{136}Pr	-	1E+5	5E-5	2E-7	-
-							
59	Praseodymium-142m[2]	W, see ^{136}Pr	8E+4	2E+5	7E-5	2E-7	1E-3
1E-2							
		Y, see ^{136}Pr	-	1E+5	6E-5	2E-7	-
-							
59	Praseodymium-142	W, see ^{136}Pr	1E+3	2E+3	9E-7	3E-9	1E-5
1E-4							
		Y, see ^{136}Pr	-	2E+3	8E-7	3E-9	-
-							
59	Praseodymium-143	W, see ^{136}Pr	9E+2	8E+2	3E-7	1E-9	-
-							
			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{136}Pr	-	7E+2	3E-7	9E-10	-
-							
59	Praseodymium-144[2]	W, see ^{136}Pr	3E+4	1E+5	5E-5	2E-7	-
-							
			St wall (4E+4)	-	-	-	6E-4
6E-3							
		Y, see ^{136}Pr	-	1E+5	5E-5	2E-7	-
-							
59	Praseodymium-145	W, see ^{136}Pr	3E+3	9E+3	4E-6	1E-8	4E-5
4E-4							
		Y, see ^{136}Pr	-	8E+3	3E-6	1E-8	-
-							
59	Praseodymium-147[2]	W, see ^{136}Pr	5E+4	2E+5	8E-5	3E-7	-
-							

			St wall (8E+4)	-	-	-		1E-3 1E-2
		Y, see ^{136}Pr	-	2E+5	8E-5	3E-7		- -
60	Neodymium-136[2]	W, all compounds except those given for Y	1E+4	6E+4	2E-5	8E-8		2E-4 2E-3
		Y, oxides, hydroxides, carbides, and fluorides	-	5E+4	2E-5	8E-8		- -
60	Neodymium-138	W, see ^{136}Nd	2E+3	6E+3	3E-6	9E-9		3E-5 3E-4
		Y, see ^{136}Nd	-	5E+3	2E-6	7E-9		- -
60	Neodymium-139m	W, see ^{136}Nd		5E+3	2E+4	7E-6	2E-8	7E-5 7E-4
		Y, see ^{136}Nd	-	1E+4	6E-6	2E-8		- -
60	Neodymium-139[2]	W, see ^{136}Nd	9E+4	3E+5	1E-4	5E-7		1E-3 1E-2
		Y, see ^{136}Nd	-	3E+5	1E-4	4E-7		- -

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

60	Neodymium-141	W, see ^{136}Nd	2E+5	7E+5	3E-4	1E-6	2E-3
2E-2							
		Y, see ^{136}Nd	-	6E+5	3E-4	9E-7	-
-							
60	Neodymium-147	W, see ^{136}Nd	1E+3	9E+2	4E-7	1E-9	-
-							
			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{136}Nd	-	8E+2	4E-7	1E-9	-
-							
60	Neodymium-149[2]	W, see ^{136}Nd	1E+4	3E+4	1E-5	4E-8	1E-4
1E-3							
		Y, see ^{136}Nd	-	2E+4	1E-5	3E-8	-
-							
60	Neodymium-151[2]	W, see ^{136}Nd	7E+4	2E+5	8E-5	3E-7	9E-4
9E-3							
		Y, see ^{136}Nd	-	2E+5	8E-5	3E-7	-
-							
61	Promethium-141[2]	W, all compounds except those given for Y	5E+4	2E+5	8E-5	3E-7	-
-							
			St wall (6E+4)	-	-	-	8E-4
8E-3							
		Y, oxides, hydroxides, carbides, and fluorides	-	2E+5	7E-5	2E-7	-
-							
61	Promethium-143	W, see ^{141}Pm	5E+3	6E+2	2E-7	8E-10	7E-5
7E-4							
		Y, see ^{141}Pm	-	7E+2	3E-7	1E-9	-
-							
61	Promethium-144	W, see ^{141}Pm	1E+3	1E+2	5E-8	2E-10	2E-5
2E-4							
		Y, see ^{141}Pm	-	1E+2	5E-8	2E-10	-
-							
61	Promethium-145	W, see ^{141}Pm	1E+4	2E+2	7E-8	-	1E-4
1E-3							
			-	Bone surf (2E+2)	-	3E-10	-
-							
		Y, see ^{141}Pm	-	2E+2	8E-8	3E-10	-
-							
61	Promethium-146	W, see ^{141}Pm	2E+3	5E+1	2E-8	7E-11	2E-5
2E-4							
		Y see ^{141}Pm	-	4E+1	2E-8	6E-11	-
-							
61	Promethium-147	W see ^{141}Pm	4E+3	1E+2	5E-8	-	-
-							
			LLI wall (5E+3)	Bone surf (2E+2)	-	3E-10	7E-5
7E-4							
		Y, see ^{141}Pm	-	1E+2	6E-8	2E-10	-
-							
61	Promethium-148m	W, see ^{141}Pm	7E+2	3E+2	1E-7	4E-10	1E-5
1E-4							

		Y, see ^{141}Pm	-	3E+2	1E-7	5E-10	-
-							
61	Promethium-148	W, see ^{141}Pm	4E+2	5E+2	2E-7	8E-10	-
-							
			LLI wall (5E+2)	-	-	-	7E-6
7E-5							
		Y, see ^{141}Pm	-	5E+2	2E-7	7E-10	-
-							
0			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{141}Pm	-	2E+3	8E-7	2E-9	-
-							
61	Promethium-150	W, see ^{141}Pm	5E+3	2E+4	8E-6	3E-8	7E-5
7E-4							
		Y, see ^{141}Pm	-	2E+4	7E-6	2E-8	-
-							
61	Promethium-151	W, see ^{141}Pm	2E+3	4E+3	1E-6	5E-9	2E-5
2E-4							
		Y, see ^{141}Pm	-	3E+3	1E-6	4E-9	-
-							
62	Samarium-141m^{2}	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4
4E-3							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

62	Samarium-141[2]	W, all compounds	5E+4	2E+5	8E-5	2E-7	-
-							
			St wall (6E+4)	-	-	-	8E-4
8E-3							
62	Samarium-142[2]	W, all compounds	8E+3	3E+4	1E-5	4E-8	1E-4
1E-3							
62	Samarium-145	W, all compounds	6E+3	5E+2	2E-7	7E-10	8E-5
8E-4							
62	Samarium-146	W, all compounds	1E+1	4E2	1E-11	-	-
-							
			Bone surf (3E+1)	Bone surf (6E-2)	-	9E-14	3E-7
3E-6							
62	Samarium-147	W, all compounds	2E+1	4E2	2E-11	-	-
-							
			Bone surf (3E+1)	Bone surf (7E-2)	-	1E-13	4E-7
4E-6							
62	Samarium-151	W, all compounds	1E+4	1E+2	4E-8	-	-
-							
			LLI wall (1E+4)	Bone surf (2E+2)	-	2E-10	2E-4
2E-3							
62	Samarium-153	W, all compounds	2E+3	3E+3	1E-6	4E-9	-
-							
			LLI wall (2E+3)	-	-	-	3E-5
3E-4							
62	Samarium-155[2]	W, all compounds	6E+4	2E+5	9E-5	3E-7	-
-							
			St wall (8E+4)	-	-	-	1E-3
1E-2							
62	Samarium-156	W, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5
7E-4							
63	Europium-145	W, all compounds	2E+3	2E+3	8E-7	3E-9	2E-5
2E-4							
63	Europium-146	W, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5
1E-4							
63	Europium-147	W, all compounds	3E+3	2E+3	7E-7	2E-9	4E-5
4E-4							
63	Europium-148	W, all compounds	1E+3	4E+2	1E-7	5E-10	1E-5
1E-4							
63	Europium-149	W, all compounds	1E+4	3E+3	1E-6	4E-9	2E-4
2E-3							
63	Europium-150	W, all compounds	3E+3	8E+3	4E-6	1E-8	4E-5
4E-4	(12.62 h)						
63	Europium-150	W, all compounds	8E+2	2E+1	8E-9	3E-11	1E-5
1E-4	(34.2 y)						
63	Europium-152m	W, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5
4E-4							
63	Europium-152	W, all compounds	8E+2	2E+1	1E-8	3E-11	1E-5
1E-4							
63	Europium-154	W, all compounds	5E+2	2E+1	8E-9	3E-11	7E-6
7E-5							
63	Europium-155	W, all compounds	4E+3	9E+1	4E-8	-	5E-5
5E-4							

			-	Bone surf (1E+2)	-	2E-10	-
-							
63	Europium-156	W, all compounds	6E+2	5E+2	2E-7	6E-10	8E-6
8E-5							
63	Europium-157	W, all compounds	2E+3	5E+3	2E-6	7E-9	3E-5
3E-4							
63	Europium-158[2]	W, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4
3E-3							
64	Gadolinium-145[2]	D, all compounds except those given for W	5E+4	2E+5	6E-5	2E-7	-
-							
			St wall (5E+4)	-	-	-	6E-4
6E-3							
		W, oxides, hydroxides, and fluorides	-	2E+5	7E-5	2E-7	-
-							
64	Gadolinium-146	D, see ^{145}Gd	1E+3	1E+2	5E-8	2E-10	2E-5
2E-4							
		W, see ^{145}Gd	-	3E+2	1E-7	4E-10	-
-							
64	Gadolinium-147	D, see ^{145}Gd	2E+3	4E+3	2E-6	6E-9	3E-5
3E-4							
		W, see ^{145}Gd	-	4E+3	1E-6	5E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

64	Gadolinium-148	D, see ^{145}Gd	1E+1	8E+3	3E-12	-	-
-							
			Bone surf (2E+1)	Bone surf (2E+2)	-	2E-14	3E-7
3E-6							
		W, see ^{145}Gd	-	3E-2	1E-11	-	-
-							
			-	Bone surf (6E-2)	-	8E-14	-
-							
64	Gadolinium-149	D, see ^{145}Gd	3E+3	2E+3	9E-7	3E-9	4E-5
4E-4							
		W, see ^{145}Gd	-	2E+3	1E-6	3E-9	-
-							
64	Gadolinium-151	D, see ^{145}Gd	6E+3	4E+2	2E-7	-	9E-5
9E-4							
			-	Bone surf (6E+2)	-	9E-10	-
-							
		W, see ^{145}Gd	-	1E+3	5E-7	2E-9	-
-							
64	Gadolinium-152	D, see ^{145}Gd	2E+1	1E-2	4E-12	-	-
-							
			Bone surf (3E+1)	Bone surf (2E-2)	-	3E-14	4E-7
4E-6							
		W, see ^{145}Gd	-	4E-2	2E-11	-	-
			-	Bone surf (8E-2)	-	1E-13	-
-							
64	Gadolinium-153	D, see ^{145}Gd	5E+3	1E+2	6E-8	-	6E-5
6E-4							
			-	Bone surf (2E+2)	-	3E-10	-
-							
		W, see ^{145}Gd	-	6E+2	2E-7	8E-10	-
-							
64	Gadolinium-159	D, see ^{145}Gd	3E+3	8E+3	3E-6	1E-8	4E-5
4E-4							
		W, see ^{145}Gd	-	6E+3	2E-6	8E-9	-
-							
65	Terbium-147[2]	W, all compounds	9E+3	3E+4	1E-5	5E-8	1E-4
1E-3							
65	Terbium-149	W, all compounds	5E+3	7E+2	3E-7	1E-9	7E-5
7E-4							
65	Terbium-150	W, all compounds	5E+3	2E+4	9E-6	3E-8	7E-5
7E-4							
65	Terbium-151	W, all compounds	4E+3	9E+3	4E-6	1E-8	5E-5
5E-4							
65	Terbium-153	W, all compounds	5E+3	7E+3	3E-6	1E-8	7E-5
7E-4							
65	Terbium-154	W, all compounds	2E+3	4E+3	2E-6	6E-9	2E-5
2E-4							
65	Terbium-155	W, all compounds	6E+3	8E+3	3E-6	1E-8	8E-5
8E-4							
65	Terbium-156m	W, all compounds	2E+4	3E+4	1E-5	4E-8	2E-4
2E-3							
	(5.0 h)						

65	Terbium-156m (24.4 h)	W, all compounds	7E+3	8E+3	3E-6	1E-8	1E-4 1E-3
65	Terbium-156	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5 1E-4
65	Terbium-157	W, all compounds	5E+4	3E+2	1E-7	-	- -
			LLI wall (5E+4)	Bone surf (6E+2)	-	8E-10	7E-4 7E-3
65	Terbium-158	W, all compounds	1E+3	2E+1	8E-9	3E-11	2E-5 2E-4
65	Terbium-160	W, all compounds	8E+2	2E+2	9E-8	3E-10	1E-5 1E-4
65	Terbium-161	W, all compounds	2E+3	2E+3	7E-7	2E-9	- -
			LLI wall (2E+3)	-	-	-	3E-5 3E-4
66	Dysprosium-155	W, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4 1E-3
66	Dysprosium-157	W, all compounds	2E+4	6E+4	3E-5	9E-8	3E-4 3E-3
66	Dysprosium-159	W, all compounds	1E+4	2E+3	1E-6	3E-9	2E-4 2E-3
66	Dysprosium-165	W, all compounds	1E+4	5E+4	2E-5	6E-8	2E-4 2E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

66	Dysprosium-166	W, all compounds	6E+2	7E+2	3E-7	1E-9	-
-							
			LLI wall (8E+2)	-	-	-	1E-5
1E-4							
67	Holmium-155[2]	W, all compounds	4E+4	2E+5	6E-5	2E-7	6E-4
6E-3							
67	Holmium-157[2]	W, all compounds	3E+5	1E+6	6E-4	2E-6	4E-3
4E-2							
67	Holmium-159[2]	W, all compounds	2E+5	1E+6	4E-4	1E-6	3E-3
3E-2							
67	Holmium-161	W, all compounds	1E+5	4E+5	2E-4	6E-7	1E-3
1E-2							
67	Holmium-162m[2]	W, all compounds	5E+4	3E+5	1E-4	4E-7	7E-4
7E-3							
67	Holmium-162[2]	W, all compounds	5E+5	2E+6	1E-3	3E-6	-
-							
			St wall (8E+5)	-	-	-	1E-2
1E-1							
67	Holmium-164m[2]	W, all compounds	1E+5	3E+5	1E-4	4E-7	1E-3
1E-2							
67	Holmium-164[2]	W, all compounds	2E+5	6E+5	3E-4	9E-7	-
-							
			St wall (2E+5)	-	-	-	3E-3
3E-2							
67	Holmium-166m	W, all compounds	6E+2	7E+0	3E-9	9E-12	9E-6
9E-5							
67	Holmium-166	W, all compounds	9E+2	2E+3	7E-7	2E-9	-
-							
			LLI wall (9E+2)	-	-	-	1E-5
1E-4							
67	Holmium-167	W, all compounds	2E+4	6E+4	2E-5	8E-8	2E-4
2E-3							
68	Erbium-161	W, all compounds	2E+4	6E+4	3E-5	9E-8	2E-4
2E-3							
68	Erbium-165	W, all compounds	6E+4	2E+5	8E-5	3E-7	9E-4
9E-3							
68	Erbium-169	W, all compounds	3E+3	3E+3	1E-6	4E-9	-
-							
			LLI wall (4E+3)	-	-	-	5E-5
5E-4							
68	Erbium-171	W, all compounds	4E+3	1E+4	4E-6	1E-8	5E-5
5E-4							
68	Erbium-172	W, all compounds	1E+3	1E+3	6E-7	2E-9	-
-							
			LLI wall (E+3)	-	-	-	2E-5
2E-4							
69	Thulium-162[2]	W, all compounds	7E+4	3E+5	1E-4	4E-7	-
-							
			St wall (7E+4)	-	-	-	1E-3
1E-2							
69	Thulium-166	W, all compounds	4E+3	1E+4	6E-6	2E-8	6E-5
6E-4							

69	Thulium-167	W, all compounds	2E+3	2E+3	8E-7	3E-9	-
-							
			LLI wall (2E+3)	-	-	-	3E-5
3E-4							
69	Thulium-170	W, all compounds	8E+2	2E+2	9E-8	3E-10	-
-							
			LLI wall (1E+3)	-	-	-	1E-5
1E-4							
69	Thulium-171	W, all compounds	1E+4	3E+2	1E-7	-	-
-							
			LLI wall (1E+4)	Bone surf (6E+2)	-	8E-10	2E-4
2E-3							
69	Thulium-172	W, all compounds	7E+2	1E+3	5E-7	2E-9	-
-							
			LLI wall (8E+2)	-	-	-	1E-5
1E-4							
69	Thulium-173	W, all compounds	4E+3	1E+4	5E-6	2E-8	6E-5
6E-4							
69	Thulium-175[2]	W, all compounds	7E+4	3E+5	1E-4	4E-7	-
-							
			St wall (9E+4)	-	-	-	1E-3
1E-2							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

70	Ytterbium-162[2]	W, all compounds except those given for Y	7E+4	3E+5	1E-4	4E-7	1E-3
1E-2							
		Y, oxides, hydroxides, and fluorides	-	3E+5	1E-4	4E-7	-
-							
70	Ytterbium-166	W, see ^{162}Yb	1E+3	2E+3	8E-7	3E-9	2E-5
2E-4							
		Y, see ^{162}Yb	-	2E+3	8E-7	3E-9	-
-							
70	Ytterbium-167[2]	W, see ^{162}Yb	3E+5	8E+5	3E-4	1E-6	4E-3
4E-2							
		Y, see ^{162}Yb	-	7E+5	3E-4	1E-6	-
-							
70	Ytterbium-169	W, see ^{162}Yb	2E+3	8E+2	4E-7	1E-9	2E-5
2E-4							
		Y, see ^{162}Yb	-	7E+2	3E-7	1E-9	-
-							
70	Ytterbium-175	W, see ^{162}Yb	3E+3	4E+3	1E-6	5E-9	-
-							
			LLI wall (3E+3)	-	-	-	4E-5
4E-4							
		Y, see ^{162}Yb	-	3E+3	1E-6	5E-9	-
-							
70	Ytterbium-177[2]	W, see ^{162}Yb	2E+4	5E+4	2E-5	7E-8	2E-4
2E-3							
		Y, see ^{162}Yb	-	5E+4	2E-5	6E-8	-
-							
70	Ytterbium-178[2]	W, see ^{162}Yb	1E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
		Y, see ^{162}Yb	-	4E+4	2E-5	5E-8	-
-							
71	Lutetium-169	W, all compounds except those given for Y	3E+3	4E+3	2E-6	6E-9	3E-5
3E-4							
		Y, oxides, hydroxides, and fluorides	-	4E+3	2E-6	6E-9	-
-							
71	Lutetium-170	W, see ^{169}Lu	1E+3	2E+3	9E-7	3E-9	2E-5
2E-4							
		Y, see ^{169}Lu	-	2E+3	8E-7	3E-9	-
-							
71	Lutetium-171	W, see ^{169}Lu	2E+3	2E+3	8E-7	3E-9	3E-5
3E-4							
		Y, see ^{169}Lu	-	2E+3	8E-7	3E-9	-
-							
71	Lutetium-172	W, see ^{169}Lu	1E+3	1E+3	5E-7	2E-9	1E-5
1E-4							
		Y, see ^{169}Lu	-	1E+3	5E-7	2E-9	-
-							
71	Lutetium-173	W, see ^{169}Lu	5E+3	3E+2	1E-7	-	7E-5
7E-4							
			-	Bone surf (5E+2)	-	6E-10	-
-							

		Y, see ^{169}Lu	-	3E+2	1E-7	4E-10	-
-							
71	Lutetium-174m	W, see ^{169}Lu	2E+3	2E+2	1E-7	-	-
-							
			LLI wall (3E+3)	Bone surf (3E+2)	-	5E-10	4E-5
4E-4							
		Y, see ^{169}Lu	-	2E+2	9E-8	3E-10	-
-							
71	Lutetium-174	W, see ^{169}Lu	5E+3	1E+2	5E-8	-	7E-5
7E-4							
			-	Bone surf (2E+2)	-	3E-10	-
-							
		Y, see ^{169}Lu	-	2E+2	6E-8	2E-10	-
-							
71	Lutetium-176m	W, see ^{169}Lu	8E+3	3E+4	1E-5	3E-8	1E-4
1E-3							
		Y, see ^{169}Lu	-	2E+4	9E-6	3E-8	-
-							
71	Lutetium-176	W, see ^{169}Lu	7E+2	5E+0	2E-9	-	1E-5
1E-4							
			-	Bone surf (1E+1)	-	2E-11	-
-							
		Y, see ^{169}Lu	-	8E+0	3E-9	1E-1	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

71	Lutetium-177m	W, see ^{169}Lu	7E+2	1E+2	5E-8	-	1E-5
1E-4							
			-	Bone surf (1E+2)	-	2E-10	-
-							
		Y, see ^{169}Lu	-	8E+1	3E-8	1E-10	-
-							
71	Lutetium-177	W, see ^{169}Lu	2E+3	2E+3	9E-7	3E-9	-
-							
			LLI wall (3E+3)	-	-	-	4E-5
4E-4							
		Y, see ^{169}Lu	-	2E+3	9E-7	3E-9	-
-							
71	Lutetium-178m[2]	W, see ^{169}Lu	5E+4	2E+5	8E-5	3E-7	-
-							
			St. wall (6E+4)	-	-	-	8E-4
8E-3							
		Y, see ^{169}Lu	-	2E+5	7E-5	2E-7	-
-							
71	Lutetium-178[2]	W, see ^{169}Lu	4E+4	1E+5	5E-5	2E-7	-
-							
			St wall (4E+4)	-	-	-	6E-4
6E-3							
		Y, see ^{169}Lu	-	1E+5	5E-5	2E-7	-
-							
71	Lutetium-179	W, see ^{169}Lu	6E+3	2E+4	8E-6	3E-8	9E-5
9E-4							
		Y, see ^{169}Lu	-	2E+4	6E-6	3E-8	-
-							
72	Hafnium-170	D, all compounds except those given for W	3E+3	6E+3	2E-6	8E-9	4E-5
4E-4							
		W, oxides, hydroxides, carbides, and nitrates	-	5E+3	2E-6	6E-9	-
-							
72	Hafnium-172	D, see ^{170}Hf	1E+3	9E+0	4E-9	-	2E-5
2E-4							
			-	Bone surf (2E+1)	-	3E-11	-
-							
		W, see ^{170}Hf	-	4E+1	2E-8	-	-
-							
			-	Bone surf (6E+1)	-	8E-11	-
-							
72	Hafnium-173	D, see ^{170}Hf	5E+3	1E+4	5E-6	2E-8	7E-5
7E-4							
		W, see ^{170}Hf	-	1E+4	5E-6	2E-8	-
-							
72	Hafnium-175	D, see ^{170}Hf	3E+3	9E+2	4E-7	-	4E-5
4E-4							
			-	Bone surf (1E+3)	-	1E-9	-
-							

		W, see ^{170}Hf	-	1E+3	5E-7	2E-9	-
-							
72	Hafnium-177m[2]	D, see ^{170}Hf	2E+4	6E+4	2E-5	8E-8	3E-4
3E-3							
		W, see ^{170}Hf	-	9E+4	4E-5	1E-7	-
-							
72	Hafnium-178m	D, see ^{170}Hf	3E+2	1E+0	5E-10	-	3E-6
3E-5							
			-	Bone surf (2E+0)	-	3E-12	-
-							
		W, see ^{170}Hf	-	5E+0	2E-9	-	-
-							
			-	Bone surf (9E+0)	-	1E-11	-
-							
72	Hafnium-179m	D, see ^{170}Hf	1E+3	3E+2	1E-7	-	1E-5
1E-4							
			-	Bone surf (6E+2)	-	8E-10	-
-							
		W, see ^{170}Hf	-	6E+2	3E-7	8E-10	-
-							

			Table I Occupational Values			**Table II Effluent Concentrations**		
			Col. 1	**Col. 2**	**Col. 3**	**Col. 1**	**Col. 2**	**Table III**
			Oral Ingestion	**Inhalation**				**Releases to Sewers**
Atomic No.	**Radionuclide**	**Class**	**ALI (µCi)**	**ALI (µCi)**	**DAC (µCi/ml)**	**Air (µCi/ml)**	**Water (µCi/ml)**	**Monthly Average Concentration (µCi/ml)**

72	Hafnium-180m	D, see ^{170}Hf	7E+3	2E+4	9E-6	3E-8	1E-4
1E-3							
		W, see ^{170}Hf	-	3E+4	1E-5	4E-8	-
-							
72	Hafnium-181	D, see ^{170}Hf	1E+3	2E+2	7E-8	-	2E-5
2E-4							
			-	Bone surf (4E+2)	-	6E-10	-
-							
		W, see ^{170}Hf	-	4E+2	2E-7	6E-10	-
-							
72	Hafnium-182m[2]	D, see ^{170}Hf	4E+4	9E+4	4E-5	1E-7	5E-4
5E-3							
		W, see ^{170}Hf	-	1E+5	6E-5	2E-7	-
-							
72	Hafnium-182	D, see ^{170}Hf	2E+2	8E-1	3E-10	-	-
-							
			Bone surf (4E+2)	Bone surf (2E+0)	-	2E-12	5E-6
5E-5							
		W, see^{170}Hf	-	3E+0	1E-9	-	-
-							
			-	Bone surf (7E+0)	-	1E-11	-
-							
72	Hafnium-183[2]	D, see ^{170}Hf	2E+4	5E+4	2E-5	6E-8	3E-4
3E-3							
		W, see ^{170}Hf	-	6E+4	2E-5	8E-8	-
-							
72	Hafnium-184	D, see ^{170}Hf	2E+3	8E+3	3E-6	1E-8	3E-5
3E-4							
		W, see ^{170}Hf	-	6E+3	3E-6	9E-9	-
-							
73	Tantalum-172[2]	W, all compounds except those given for Y	4E+4	1E+5	5E-5	2E-7	5E-4
5E-3							
		Y, elemental Ta, oxides, hydroxides, halides, carbides, nitrates, and nitrides	-	1E+5	4E-5	1E-7	-
-							
73	Tantalum-173	W, see ^{172}Ta	7E+3	2E+4	8E-6	3E-8	9E-5
9E-4							
		Y, see ^{172}Ta	-	2E+4	7E-6	2E-8	-
-							
73	Tantalum-174[2]	W, see ^{172}Ta	3E+4	1E+5	4E-5	1E-7	4E-4
4E-3							
		Y, see ^{172}Ta	-	9E+4	4E-5	1E-7	-
-							
73	Tantalum-175	W, see ^{172}Ta	6E+3	2E+4	7E-6	2E-8	8E-5
8E-4							
		Y, see ^{172}Ta	-	1E+4	6E-6	2E-8	-
-							
73	Tantalum-176	W, see ^{172}Ta	4E+3	1E+4	5E-6	2E-8	5E-5
5E-4							

		Y, see ^{172}Ta	-	1E+4	5E-6	2E-8	-
-							
73	Tantalum-177	W, see ^{172}Ta	1E+4	2E+4	8E-6	3E-8	2E-4
2E-3							
		Y, see ^{172}Ta	-	2E+4	7E-6	2E-8	-
-							
73	Tantalum-178	W, see ^{172}Ta	2E+4	9E+4	4E-5	1E-7	2E-4
2E-3							
		Y, see ^{172}Ta	-	7E+4	3E-5	1E-7	-
-							
73	Tantalum-179	W, see ^{172}Ta	2E+4	5E+3	2E-6	8E-9	3E-4
3E-3							
		Y, see ^{172}Ta	-	9E+2	4E-7	1E-9	-
-							
73	Tantalum-180m	W, see ^{172}Ta	2E+4	7E+4	3E-5	9E-8	3E-4
3E-3							
		Y, see ^{172}Ta	-	6E+4	2E-5	8E-8	-
-							
73	Tantalum-180	W, see ^{172}Ta	1E+3	4E+2	2E-7	6E-10	2E-5
2E-4							
		Y, see ^{172}Ta	-	2E+1	1E-8	3E-11	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

73	Tantalum-182m[2]	W, see ^{172}Ta	2E+5	5E+5	2E-4	8E-7	-
-							
			St wall (2E+5)	-	-	-	3E-3
3E-2							
		Y, see ^{172}Ta	-	4E+5	2E-4	6E-7	-
-							
73	Tantalum-182	W, see ^{172}Ta	8E+2	3E+2	1E-7	5E-10	1E-5
1E-4							
		Y, see ^{172}Ta	-	1E+2	6E-8	2E-10	-
-							
73	Tantalum-183	W, see ^{172}Ta	9E+2	1E+3	5E-7	2E-9	-
-							
			LLI wall (1E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{172}Ta	-	1E+3	4E-7	1E-9	-
-							
73	Tantalum-184	W, see ^{172}Ta	2E+3	5E+3	2E-6	8E-9	3E-5
3E-4							
		Y, see ^{172}Ta	-	5E+3	2E-6	7E-9	-
-							
73	Tantalum-185[2]	W, see ^{172}Ta	3E+4	7E+4	3E-5	1E-7	4E-4
4E-3							
		Y, see ^{172}Ta	-	6E+4	3E-5	9E-8	-
-							
73	Tantalum-186[2]	W, see ^{172}Ta	5E+4	2E+5	1E-4	3E-7	-
-							
			St wall (7E+4)	-	-	-	1E-3
1E-2							
		Y, see ^{172}Ta	-	2E+5	9E-5	3E-7	-
-							
74	Tungsten-176	D, all compounds	1E+4	5E+4	2E-5	7E-8	1E-4
1E-3							
74	Tungsten-177	D, all compounds	2E+4	9E+4	4E-5	1E-7	3E-4
3E-3							
74	Tungsten-178	D, all compounds	5E+3	2E+4	8E-6	3E-8	7E-5
7E-4							
74	Tungsten-179[2]	D, all compounds	5E+5	2E+6	7E-4	2E-6	7E-3
7E-2							
74	Tungsten-181	D, all compounds	2E+4	3E+4	1E-5	5E-8	2E-4
2E-3							
74	Tungsten-185	D, all compounds	2E+3	7E+3	3E-6	9E-9	-
-							
			LLI wall (3E+3)	-	-	-	4E-5
4E-4							
74	Tungsten-187	D, all compounds	2E+3	9E+3	4E-6	1E-8	3E-5
3E-4							
74	Tungsten-188	D, all compounds	4E+2	1E+3	5E-7	2E-9	-
-							
			LLI wall (5E+2)	-	-	-	7E-6
7E-5							
75	Rhenium-177[2]	D, all compounds except those given for W	9E+4	3E+5	1E-4	4E-7	-
-							

			St wall (1E+5)	-	-	-	2E-3
2E-2							
		W, oxides, hydroxides, and nitrates	-	4E+5	1E-4	5E-7	-
-							
75	Rhenium-178[2]	D, see ^{177}Re	7E+4	3E+5	1E-4	4E-7	-
-							
			St wall (1E+5)	-	-	-	1E-3
1E-2							
		W, see ^{177}Re	-	3E+5	1E-4	4E-7	-
-							
75	Rhenium-181	D, see ^{177}Re	5E+3	9E+3	4E-6	1E-8	7E-5
7E-4							
		W, see ^{177}Re	-	9E+3	4E-6	1E-8	-
-							
75	Rhenium-182	D, see ^{177}Re	7E+3	1E+4	5E-6	2E-8	9E-5
9E-4							
	(12.7 h)	W, see ^{177}Re	-	2E+4	6E-6	2E-8	-
-							
75	Rhenium-182	D, see ^{177}Re	1E+3	2E+3	1E-6	3E-9	2E-5
2E-4							
	(64.0 h)	W, see ^{177}Re	-	2E+3	9E-7	3E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

75	Rhenium-184m	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	3E-5
3E-4							
		W, see ^{177}Re	-	4E+2	2E-7	6E-10	-
-							
75	Rhenium-184	D, see ^{177}Re	2E+3	4E+3	1E-6	5E-9	3E-5
3E-4							
		W, see ^{177}Re	-	1E+3	6E-7	2E-9	-
-							
75	Rhenium-186m	D, see ^{177}Re	1E+3	2E+3	7E-7	-	-
-							
			St wall (2E+3)	St wall (2E+3)	-	3E-9	2E-5
2E-4							
		W, see ^{177}Re	-	2E+2	6E-8	2E-10	-
-							
75	Rhenium-186	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	3E-5
3E-4							
		W, see ^{177}Re	-	2E+3	7E-7	2E-9	-
-							
75	Rhenium-187	D, see ^{177}Re	6E+5	8E+5	4E-4	-	8E-3
8E-2							
			St wall -	(9E+5)	-	1E-6	-
-							
		W, see ^{177}Re	-	1E+5	4E-5	1E-7	-
-							
75	Rhenium-188m[2]	D, see ^{177}Re	8E+4	1E+5	6E-5	2E-7	1E-3
1E-2							
		W, see ^{177}Re	-	1E+5	6E-5	2E-7	-
-							
75	Rhenium-188	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	2E-5
2E-4							
		W, see ^{177}Re	-	3E+3	1E-6	4E-9	-
-							
75	Rhenium-189	D, see ^{177}Re	3E+3	5E+3	2E-6	7E-9	4E-5
4E-4							
		W, see ^{177}Re	-	4E+3	2E-6	6E-9	-
-							
76	Osmium-180[2]	D, all compounds except those given for W and Y	1E+5	4E+5	2E-4	5E-7	1E-3
1E-2							
		W, halides and nitrates	-	5E+5	2E-4	7E-7	-
-							
		Y, oxides and hydroxides	-	5E+5	2E-4	6E-7	-
-							
76	Osmium-181[2]	D, see ^{180}Os	1E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
		W, see ^{180}Os	-	5E+4	2E-5	6E-8	-
-							
		Y, see ^{180}Os	-	4E+4	2E-5	6E-8	-
-							
76	Osmium-182	D, see ^{180}Os	2E+3	6E+3	2E-6	8E-9	3E-5
3E-4							
		W, see ^{180}Os	-	4E+3	2E-6	6E-9	-
-							

		Y, see ^{180}Os	-	4E+3	2E-6	6E-9	-
-							
76	Osmium-185	D, see ^{180}Os	2E+3	5E+2	2E-7	7E-10	3E-5
3E-4							
		W, see ^{180}Os	-	8E+2	3E-7	1E-9	-
-							
		Y, see ^{180}Os	-	8E+2	3E-7	1E-9	-
-							
76	Osmium-189m	D, see ^{180}Os	8E+4	2E+5	1E-4	3E-7	1E-3
1E-2							
		W, see ^{180}Os	-	2E+5	9E-5	3E-7	-
-							
		Y, see ^{180}Os	-	2E+5	7E-5	2E-7	-
-							
76	Osmium-191m	D, see ^{180}Os	1E+4	3E+4	1E-5	4E-8	2E-4
2E-3							
		W, see ^{180}Os	-	2E+4	8E-6	3E-8	-
-							
		Y, see ^{180}Os	-	2E+4	7E-6	2E-8	-
-							
76	Osmium-191	D, see ^{180}Os	2E+3	2E+3	9E-7	3E-9	-
-							
			LLI wall (3E+3)	-	-	-	3E-5
3E-4							
		W, see ^{180}Os	-	2E+3	7E-7	2E-9	-
-							
		Y, see ^{180}Os	-	1E+3	6E-7	2E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

76	Osmium-193	D, see ^{180}Os	2E+3	5E+3	2E-6	6E-9	-
-							
			LLI wall (2E+3)	-	-	-	2E-5
2E-4							
		W, see ^{180}Os	-	3E+3	1E-6	4E-9	-
-							
		Y, see ^{180}Os	-	3E+3	1E-6	4E-9	-
-							
76	Osmium-194	D, see ^{180}Os	4E+2	4E+1	2E-8	6E-11	-
-							
			LLI wall (6E+2)	-	-	-	8E-6
8E-5							
		W, see ^{180}Os	-	6E+1	2E-8	8E-11	-
-							
		Y, see ^{180}Os	-	8E+0	3E-9	1E-11	-
-							
77	Iridium-182[2]	D, all compounds except those given for W and Y	4E+4	1E+5	6E-5	2E-7	-
-							
			St wall (4E+4)	-	-	-	6E-4
6E-3							
		W, halides, nitrates, and metallic iridium	-	2E+5	6E-5	2E-7	-
-							
		Y, oxides and hydroxides	-	1E+5	5E-5	2E-7	-
-							
77	Iridium-184	D, see ^{182}Ir	8E+3	2E+4	1E-5	3E-8	1E-4
1E-3							
		W, see ^{182}Ir	-	3E+4	1E-5	5E-8	-
-							
		Y, see ^{182}Ir	-	3E+4	1E-5	4E-8	-
-							
77	Iridium-185	D, see ^{182}Ir	5E+3	1E+4	5E-6	2E-8	7E-5
7E-4							
		W, see^{182}Ir	-	1E+4	5E-6	2E-8	-
-							
		Y, see ^{182}Ir	-	1E+4	4E-6	1E-8	-
-							
77	Iridium-186	D, see ^{182}Ir	2E+3	8E+3	3E-6	1E-8	3E-5
3E-4							
		W, see ^{182}Ir	-	6E+3	3E-6	9E-9	-
-							
		Y, see ^{182}Ir	-	6E+3	2E-6	8E-9	-
-							
77	Iridium-187	D, see ^{182}Ir	1E+4	3E+4	1E-5	5E-8	1E-4
1E-3							
		W, see ^{182}Ir	-	3E+4	1E-5	4E-8	-
-							
		Y, see ^{182}Ir	-	3E+4	1E-5	4E-8	-
-							
77	Iridium-188	D, see ^{182}Ir	2E+3	5E+3	2E-6	6E-9	3E-5
3E-4							

		W, see ^{182}Ir	-	4E+3	1E-6	5E-9	-
-							
		Y, see ^{182}Ir	-	3E+3	1E-6	5E-9	-
-							
77	Iridium-189	D, see ^{182}Ir	5E+3	5E+3	2E-6	7E-9	-
-							
			LLI wall (5E+3)	-	-	-	7E-5
7E-4							
		W, see ^{182}Ir	-	4E+3	2E-6	5E-9	-
-							
		Y, see ^{182}Ir	-	4E+3	1E-6	5E-9	-
-							
77	Iridium-190m^{2}	D, see ^{182}Ir	2E+5	2E+5	8E-5	3E-7	2E-3
2E-2							
		W, see ^{182}Ir	-	2E+5	9E-5	3E-7	-
-							
		Y, see ^{182}Ir	-	2E+5	8E-5	3E-7	-
-							
77	Iridium-190	D, see ^{182}Ir	1E+3	9E+2	4E-7	1E-9	1E-5
1E-4							
		W, see ^{182}Ir	-	1E+3	4E-7	1E-9	-
-							
		Y, see ^{182}Ir	-	9E+2	4E-7	1E-9	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

77	Iridium-192m	D, see ^{182}Ir	3E+3	9E+1	4E-8	1E-10	4E-5
4E-4							
		W, see ^{182}Ir	-	2E+2	9E-8	3E-10	-
-							
		Y, see ^{182}Ir	-	2E+1	6E-9	2E-11	-
-							
77	Iridium-192	D, see ^{182}Ir	9E+2	3E+2	1E-7	4E-10	1E-5
1E-4							
		W, see ^{182}Ir	-	4E+2	2E-7	6E-10	-
-							
		Y, see ^{182}Ir	-	2E+2	9E-8	3E-10	-
-							
77	Iridium-194m	D, see ^{182}Ir	6E+2	9E+1	4E-8	1E-10	9E-6
9E-5							
		W, see ^{182}Ir	-	2E+2	7E-8	2E-10	-
-							
		Y, see ^{182}Ir	-	1E+2	4E-8	1E-10	-
-							
77	Iridium-194	D, see ^{182}Ir	1E+3	3E+3	1E-6	4E-9	1E-5
1E-4							
		W, see ^{182}Ir	-	2E+3	9E-7	3E-9	-
-							
		Y, see ^{182}Ir	-	2E+3	8E-7	3E-9	-
-							
77	Iridium-195m	D, see ^{182}Ir	8E+3	2E+4	1E-5	3E-8	1E-4
1E-3							
		W, see ^{182}Ir	-	3E+4	1E-5	4E-8	-
-							
		Y, see ^{182}Ir	-	2E+4	9E-6	3E-8	-
-							
77	Iridium-195	D, see ^{182}Ir	1E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
		W, see ^{182}Ir	-	5E+4	2E-5	7E-8	-
-							
		Y, see ^{182}Ir	-	4E+4	2E-5	6E-8	-
-							
78	Platinum-186	D, all compounds	1E+4	4E+4	2E-5	5E-8	2E-4
2E-3							
78	Platinum-188	D, all compounds	2E+3	2E+3	7E-7	2E-9	2E-5
2E-4							
78	Platinum-189	D, all compounds	1E+4	3E+4	1E-5	4E-8	1E-4
1E-3							
78	Platinum-191	D, all compounds	4E+3	8E+3	4E-6	1E-8	5E-5
5E-4							
78	Platinum-193m	D, all compounds	3E+3	6E+3	3E-6	8E-9	-
-							
			LLI wall (3E+4)	-	-	-	4E-5
4E-4							
78	Platinum-193	D, all compounds	4E+4	2E+4	1E-5	3E-8	-
-							
			LLI wall (5E+4)	-	-	-	6E-4
6E-3							
78	Platinum-195m	D, all compounds	2E+3	4E+3	2E-6	6E-9	-
-							
			LLI wall				

			(2E+3)	-	-	-	3E-5
3E-4							
78	Platinum-197m[2]	D, all compounds	2E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
78	Platinum-197	D, all compounds	3E+3	1E+4	4E-6	1E-8	4E-5
4E-4							
78	Platinum-199[2]	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4
7E-3							
78	Platinum-200	D, all compounds	1E+3	3E+3	1E-6	5E-9	2E-5
2E-4							
79	Gold-193	D, all compounds except those given for W and Y	9E+3	3E+4	1E-5	4E-8	1E-4
1E-3							
		W, halides and nitrates	-	2E+4	9E-6	3E-8	-
-							
		Y, oxides and hydroxides	-	2E+4	8E-6	3E-8	-
-							
79	Gold-194	D, see ^{193}Au	3E+3	8E+3	3E-6	1E-8	4E-5
4E-4							
		W, see ^{193}Au	-	5E+3	2E-6	8E-9	-
-							
		Y, see ^{193}Au	-	5E+3	2E-6	7E-9	-
-							
79	Gold-195	D see ^{193}Au	5E+3	1E+4	5E-6	2E-8	7E-5
7E-4							
		W see ^{193}Au	-	1E+3	6E-7	2E-9	-
-							
		Y see ^{193}Au	-	4E+2	2E-7	6E-10	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

79	Gold-198m	D see ^{193}Au	1E+3	3E+3	1E-6	4E-9	1E-5
1E-4							
		W see ^{193}Au	-	1E+3	5E-7	2E-9	-
-							
		Y see ^{193}Au	-	1E+3	5E-7	2E-9	-
-							
79	Gold-198	D see ^{193}Au	1E+3	4E+3	2E-6	5E-9	2E-5
2E-4							
		W see ^{193}Au	-	2E+3	8E-7	3E-9	-
-							
		Y see ^{193}Au	-	2E+3	7E-7	2E-9	-
-							
79	Gold-199	D see ^{193}Au	3E+3	9E+3	4E-6	1E-8	-
-							
			LLI wall (3E+3)	-	-	-	4E-5
4E-4							
		W, see ^{193}Au	-	4E+3	2E-6	6E-9	-
-							
		Y, see ^{193}Au	-	4E+3	2E-6	5E-9	-
-							
79	Gold-200m	D, see ^{193}Au	1E+3	4E+3	1E-6	5E-9	2E-5
2E-4							
		W, see ^{193}Au	-	3E+3	1E-6	4E-9	-
-							
		Y, see ^{193}Au	-	2E+4	1E-6	3E-9	-
-							
79	Gold-200[2]	D, see ^{193}Au	3E+4	6E+4	3E-5	9E-8	4E-4
4E-3							
		W, see ^{193}Au	-	8E+4	3E-5	1E-7	-
-							
		Y, see ^{193}Au	-	7E+4	3E-5	1E-7	-
-							
79	Gold-201[2]	D, see ^{193}Au	7E+4	2E+5	9E-5	3E-7	-
-							
			St wall (9E+4)	-	-	-	1E-3
1E-2							
		W, see ^{193}Au	-	2E+5	1E-4	3E-7	-
-							
		Y, see ^{193}Au	-	2E+5	9E-5	3E-7	-
-							
80	Mercury-193m	Vapor	-	8E+3	4E-6	1E-8	-
-							
		Organic D	4E+3	1E+4	5E-6	2E-8	6E-5
6E-4							
		D, sulfates	3E+3	9E+3	4E-6	1E-8	4E-5
4E-4							
		W, oxides, hydroxides, halides, nitrates, and sulfides	-	8E+3	3E-6	1E-8	-
-							
80	Mercury-193	Vapor	-	3E+4	1E-5	4E-8	-
-							
		Organic D	2E+4	6E+4	3E-5	9E-8	3E-4
3E-3							

		D, see ^{193m}Hg	2E+4	4E+4	2E-5	6E-8	2E-4
2E-3							
		W, see ^{193m}Hg	-	4E+4	2E-5	6E-8	-
-							
80	Mercury-194	Vapor	-	3E+1	1E-8	4E-11	-
-							
		Organic D	2E+1	3E+1	1E-8	4E-11	2E-7
2E-6							
		D, see ^{193m}Hg	8E+2	4E+1	2E-8	6E-11	1E-5
1E-4							
		W, see ^{193m}Hg	-	1E+2	5E-8	2E-10	-
-							
80	Mercury-195m	Vapor	-	4E+3	2E-6	6E-9	-
-							
		Organic D	3E+3	6E+3	3E-6	8E-9	4E-5
4E-4							
		D, see ^{193m}Hg	2E+3	5E +3	2E-6	7E-9	3E-5
3E-4							
		W, see ^{193m}Hg	-	4E+3	2E-6	5E-9	-
-							
80	Mercury-195	Vapor	-	3E+4	1E-5	4E-8	-
-							
		Organic D	2E+4	5E+4	2E-5	6E-8	2E-4
2E-3							
		D, see ^{193m}Hg	1E+4	4E+ 4	1E-5	5E-8	2E-4
2E-3							
		W, see ^{193m}Hg	-	3E+4	1E-5	5E-8	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

80	Mercury-197m	Vapor	-	5E+3	2E-6	7E-9	-
-							
		Organic D	4E+3	9E+3	4E-6	1E-8	5E-5
5E-4							
		D, see ^{193m}Hg	3E+3	7E+3	3E-6	1E-8	4E-5
4E-4							
		W, see ^{193m}Hg	-	5E+3	2E-6	7E-9	-
-							
80	Mercury-197	Vapor	-	8E+3	4E-6	1E-8	-
-							
		Organic D	7E+3	1E+4	6E-6	2E-8	9E-5
9E-4							
		D, see ^{193m}Hg	6E+3	1E+4	5E-6	2E-8	8E-5
8E-4							
		W, see ^{193m}Hg	-	9E+3	4E-6	1E-8	-
-							
80	Mercury-199m[2]	Vapor	-	8E+4	3E-5	1E-7	-
-							
		Organic D	6E+4	2E+5	7E-5	2E-7	-
-							
			St wall (1E+5)	-	-	-	1E-3
1E-2							
		D, see ^{193m}Hg	6E+4	1E+5	6E-5	2E-7	8E-4
8E-3							
		W, see ^{193m}Hg	-	2E+5	7E-5	2E-7	-
-							
80	Mercury-203	Vapor	-	8E+2	4E-7	1E-9	-
-							
		Organic D	5E+2	8E+2	3E-7	1E-9	7E-6
7E-5							
		D, see ^{193m}Hg	2E+3	1E+3	5E-7	2E-9	3E-5
3E-4							
		W, see ^{193m}Hg	-	1E+3	5E-7	2E-9	-
-							
81	Thallium-194m[2]	D, all compounds	5E+4	2E+5	6E-5	2E-7	-
-							
			St wall (7E+4)	-	-	-	1E-3
1E-2							
81	Thallium-194[2]	D, all compounds	3E+5	6E+5	2E-4	8E-7	-
-							
			St wall (3E+5)	-	-	-	4E-3
4E-2							
81	Thallium-195[2]	D, all compounds	6E+4	1E+5	5E-5	2E-7	9E-4
9E-3							
81	Thallium-197	D, all compounds	7E+4	1E+5	5E-5	2E-7	1E-3
1E-2							
81	Thallium-198m[2]	D, all compounds	3E+4	5E+4	2E-5	8E-8	4E-4
4E-3							
81	Thallium-198	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4
3E-3							
81	Thallium-199	D, all compounds	6E+4	8E+4	4E-5	1E-7	9E-4
9E-3							
81	Thallium-200	D, all compounds	8E+3	1E+4	5E-6	2E-8	1E-4
1E-3							

81	Thallium-201	D, all compounds	2E+4	2E+4	9E-6	3E-8	2E-4
2E-3							
81	Thallium-202	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5
5E-4							
81	Thallium-204	D, all compounds	2E+3	2E+3	9E-7	3E-9	2E-5
2E-4							
82	Lead-195m[2]	D, all compounds	6E+4	2E+5	8E-5	3E-7	8E-4
8E-3							
82	Lead-198	D, all compounds	3E+4	6E+4	3E-5	9E-8	4E-4
4E-3							
82	Lead-199[2]	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4
3E-3							
82	Lead-200	D, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5
4E-4							
82	Lead-201	D, all compounds	7E+3	2E+4	8E-6	3E-8	1E-4
1E-3							
82	Lead-202m	D, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4
1E-3							
82	Lead-202	D, all compounds	1E+2	5E+1	2E-8	7E-11	2E-6
2E-5							
82	Lead-203	D, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5
7E-4							
82	Lead-205	D, all compounds	4E+3	1E+3	6E-7	2E-9	5E-5
5E-4							
82	Lead-209	D, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4
3E-3							
82	Lead-210	D, all compounds	6E1	2E1	1E-10	-	-
-							
			Bone surf (1E+0)	Bone surf (4E-1)	-	6E-13	1E-8
1E-7							
82	Lead-211[2]	D, all compounds	1E+4	6E+2	3E-7	9E-10	2E-4
2E+3							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

82	Lead-212	D, all compounds	8E+1	3E+1	1E-8	5E-11	-
			Bone surf (1E+2)	-	-	-	2E-6
82	Lead-214[2]	D, all compounds	9E+3	8E+2	3E-7	1E-9	1E-4
83	Bismuth-200[2]	D, nitrates	3E+4	8E+4	4E-5	1E-7	4E-4
		W, all other compounds	-	1E+5	4E-5	1E-7	-
83	Bismuth-201[2]	D, see ^{200}Bi	1E+4	3E+4	1E-5	4E-8	2E-4
		W, see ^{200}Bi	-	4E+4	2E-5	5E-8	-
83	Bismuth-202[2]	D, see ^{200}Bi	1E+4	4E+4	2E-5	6E-8	2E-4
		W, see ^{200}Bi	-	8E+4	3E-5	1E-7	-
83	Bismuth-203	D, see ^{200}Bi	2E+3	7E+3	3E-6	9E-9	3E-5
		W, see ^{200}Bi	-	6E+3	3E-6	9E-9	-
83	Bismuth-205	D, see ^{200}Bi	1E+3	3E+3	1E-6	3E-9	2E-5
		W, see ^{200}Bi	-	1E+3	5E-7	2E-9	-
83	Bismuth-206	D, see ^{200}Bi	6E+2	1E+3	6E-7	2E-9	9E-6
		W, see ^{200}Bi	-	9E+2	4E-7	1E-9	-
83	Bismuth-207	D, see ^{200}Bi	1E+3	2E+3	7E-7	2E-9	1E-5
		W, see ^{200}Bi	-	4E+2	1E-7	5E-10	-
83	Bismuth-210m	D, see ^{200}Bi	4E+1	5E+0	2E-9	-	-
			Kidneys (6E+1)	Kidneys (6E+0)	-	9E-12	8E-7
		W, see ^{200}Bi	-	7E-1	3E-10	9E-13	
83	Bismuth-210	D, see ^{200}Bi	8E+2	2E+2	1E-7	-	1E-5
			-	Kidneys (4E+2)	-	5E-10	-
		W, see ^{200}Bi	-	3E+1	1E-8	4E-11	-
83	Bismuth-212[2]	D, see ^{200}Bi	5E+3	2E+2	1E-7	3E-10	7E-5
		W, see ^{200}Bi	-	3E+2	1E-7	4E-10	-
83	Bismuth-213[2]	D, see ^{200}Bi	7E+3	3E+2	1E-7	4E-10	1E-4
		W, see ^{200}Bi	-	4E+2	1E-7	5E-10	-

83	Bismuth-214[2]	D, see ^{200}Bi	2E+4	8E+2	3E-7	1E-9	-
-							
			St wall (2E+4)	-	-	-	3E-4
3E-3							
		W, see ^{200}Bi	-	9E-2	4E-7	1E-9	-
-							
84	Polonium-203[2]	D, all compounds except those given for W	3E+4	6E+4	3E-5	9E-8	3E-4
3E-3							
		W, oxides, hydroxides, and nitrates	-	9E+4	4E-5	1E-7	-
-							
84	Polonium-205[2]	D, see ^{203}Po	2E+4	4E+4	2E-5	5E-8	3E-4
3E-3							
		W, see ^{203}Po	-	7E+4	3E-5	1E-7	-
-							
84	Polonium-207	D, see ^{203}Po	8E+3	3E+4	1E-5	3E-8	1E-4
1E-3							
		W, see ^{203}Po	-	3E+4	1E-5	4E-8	-
-							
84	Polonium-210	D, see ^{203}Po	3E+0	6E-1	3E-10	9E-13	4E-8
4E-7							
		W, see ^{203}Po	-	6E-1	3E-10	9E-13	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

85	Astatine-207[2]	D, halides	6E+3	3E+3	1E-6	4E-9	8E-5
8E-4							
		W	-	2E+3	9E-7	3E-9	-
-							
85	Astatine-211	D, halides	1E+2	8E+1	3E-8	1E-10	2E-6
2E-5							
		W	-	5E+1	2E-8	8E-11	-
-							
86	Radon-220	With daughters removed	-	2E+4	7E-6	2E-8	-
-							
		With daughters present	-	2E+1	9E-9	3E-11	-
-							
				(or 12 working level months)		(or 1.0 working level)	
86	Radon-222	With daughters removed	-	1E+4	4E-6	1E-8	-
-							
		With daughters present	-	1E+2	3E-8	1E-10	-
-							
				(or 4 working level months)		(or 0.33 working level)	
87	Francium-222[2]	D, all compounds	2E+3	5E+2	2E-7	6E-10	3E-5
3E-4							
87	Francium-223[2]	D, all compounds	6E+2	8E+2	3E-7	1E-9	8E-6
8E-5							
88	Radium-223	W, all compounds	5E+0	7E-1	3E-10	9E-13	-
-							
			Bone surf (9E+0)	-	-	-	1E-7
1E-6							
88	Radium-224	W, all compounds	8E+0	2E+0	7E-10	2E-12	-
-							
			Bone surf (2E+1)	-	-	-	2E-7
2E-6							
88	Radium-225	W, all compounds	8E+0	7E-1	3E-10	9E-13	-
-							
			Bone surf (2E+1)	-	-	-	2E-7
2E-6							
88	Radium-226	W, all compounds	2E+0	6E-1	3E-10	9E-13	-
-							
			Bone surf (5E+0)	-	-	-	6E-8
6E-7							
88	Radium-227[2]	W, all compounds	2E+4	1E+4	6E-6	-	-
-							
			Bone surf (2E+4)	Bone surf (2E+4)	-	3E-8	3E-4
3E-3							
88	Radium-228	W, all compounds	2E+0	1E+0	5E-10	2E-12	-
-							
			Bone surf (4E+0)	-	-	-	6E-8
6E-7							
89	Actinium-224	D, all compounds except those given for W and Y	2E+3	3E+1	1E-8	-	-
-							
			LLI wall	Bone surf			

			(2E+3)	(4E+1)	-	5E-11	3E-5
3E-4							
		W, halides and nitrates	-	5E+1	2E-8	7E-11	-
-							
		Y, oxides and hydroxides	-	5E+1	2E-8	6E-11	-
-							
89	Actinium-225						
		D, see ^{224}Ac	5E+1	3E-1	1E-10	-	-
-							
			LLI wall	Bone surf			
			(5E+1)	(5E-1)	-	7E-13	7E-7
7E-6							
		W, see ^{224}Ac	-	6E-1	3E-10	9E-13	-
-							
		Y, see ^{224}Ac	-	6E-1	3E-10	9E-13	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

89	Actinium-226	D, see ^{224}Ac	1E+2	3E+0	1E-9	-	-
-							
			LLI wall (1E+2)	Bone surf (4E+0)	-	5E-12	2E-6
2E-5							
		W, see ^{224}Ac	-	5E+0	2E-9	7E-12	-
-							
		Y, see ^{224}Ac	-	5E+0	2E-9	6E-12	-
-							
89	Actinium-227	D, see ^{224}Ac	2E-1	4E-4	2E-13	-	-
-							
			Bone surf (4E-1)	Bone surf (8E-4)	-	1E-15	5E-9
5E-8							
		W, see ^{224}Ac	-	2E-3	7E-13	-	-
-							
			-	Bone surf (3E-3)	-	4E-15	-
-							
		Y, see ^{224}Ac	-	4E-3	2E-12	6E-15	-
-							
89	Actinium-228	D, see ^{224}Ac	2E+3	9E+0	4E-9	-	3E-5
3E-4							
			-	Bone surf (2E+1)	-	2E-11	-
-							
		W see ^{224}Ac	-	4E+1	2E-8	-	-
-							
			-	Bone surf (6E+1)	-	8E-11	-
-							
		Y see ^{224}Ac	-	4E+1	2E-8	6E-11	-
-							
90	Thorium-226[2]	W, all compounds except those given for Y	5E+3	2E+2	6E-8	2E-10	-
-							
			St wall (5E+3)	-	-	-	7E-5
7E-4							
		Y, oxides and hydroxides	-	1E+2	6E-8	2E-10	-
-							
90	Thorium-227	W, see ^{226}Th	1E+2	3E-1	1E-10	5E-13	2E-6
2E-5							
		Y, see ^{226}Th	-	3E-1	1E-10	5E-13	-
-							
90	Thorium-228	W, see ^{226}Th	6E+0	1E-2	4E-12	-	-
-							
			Bone surf (1E+1)	Bone surf (2E-2)	-	3E-14	2E-7
2E-6							
		Y, see ^{226}Th	-	2E-2	7E-12	2E-14	-
-							
90	Thorium-229	W, see ^{226}Th	6E-1	9E-4	4E-13	-	-
-							
			Bone surf (1E+0)	Bone surf (2E-3)	-	3E-15	2E-8
2E-7							

		Y, see ^{226}Th	-	2E-3	1E-12	-		-
-								
			-	Bone surf (3E-3)	-	4E-15	-	-
90	Thorium-230	W, see ^{226}Th	4E+0	6E-3	3E-12	-		-
-								
			Bone surf (9E+0)	Bone surf (2E-2)	-	2E-14	1E-7	1E-6
		Y, see ^{226}Th	-	2E-2	6E-12	-		-
-								
			-	Bone surf (2E-2)	-	3E-14	-	-
90	Thorium-231	W, see ^{228}Th	4E+3	6E+3	3E-6	9E-9		5E-5
5E-4								
		Y, see ^{228}Th	-	6E+3	3E-6	9E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

90	Thorium-232	W, see ^{228}Th	7E-1	1E-3	5E-13	-	-
-							
			Bone surf (2E+0)	Bone surf (3E-3)	-	4E-15	3E-8
3E-7							
		Y, see ^{228}Th	-	3E-3	1E-12	-	-
-							
			-	Bone surf (4E-3)	-	6E-15	-
-							
90	Thorium-234	W, see ^{228}Th	3E+2	2E+2	8E-8	3E-10	-
-							
			LLI wall (4E+2)	-	-	-	5E-6
5E-5							
		Y, see ^{228}Th	-	2E+2	6E-8	2E-10	-
-							
91	Protactinium-227[2]	W, all compounds except those given for Y	4E+3	1E+2	5E-8	2E-10	5E-5
5E-4							
		Y, oxides and hydroxides	-	1E+2	4E-8	1E-10	-
-							
91	Protactinium-228	W, see ^{227}Pa	1E+3	1E+1	5E-9	-	2E-5
2E-4							
			-	Bone surf (2E+1)	-	3E-11	-
-							
		Y, see ^{227}Pa	-	1E+1	5E-9	2E-11	-
-							
91	Protactinium-230	W, see ^{227}Pa	6E+2	5E+0	2E-9	7E-12	-
-							
			Bone surf (9E+2)	-	-	-	1E-5
1E-4							
		Y, see ^{227}Pa	-	4E+0	1E-9	5E-12	-
-							
91	Protactinium-231	W, see ^{22}7Pa	2E-1	2E-3	6E-13	-	-
-							
			Bone surf (5E-1)	Bone surf (4E-3)	-	6E-15	6E-9
6E-8							
		Y, see ^{227}Pa	-	4E-3	2E-12	-	-
-							
			-	Bone surf (6E-3)	-	8E-15	-
-							
91	Protactinium-232	W, see ^{227}Pa	1E+3	2E+1	9E-9	-	2E-5
2E-4							
			-	Bone surf (6E+1)	-	8E-11	-
-							
		Y, see ^{227}Pa	-	6E+1	2E-8	-	-
-							
			-	Bone surf (7E+1)	-	1E-10	-
-							
91	Protactinium-233	W, see ^{227}Pa	1E+3	7E+2	3E-7	1E-9	-
-							

			LLI wall (2E+3)	-	-	-	2E-5
2E-4							
		Y, see ^{227}Pa	-	6E+2	2E-7	8E-10	-
-							
91	Protactinium-234	W, see ^{227}Pa	2E+3	8E+3	3E-6	1E-8	3E-5
3E-4							
		Y, see ^{227}Pa	-	7E+3	3E-6	9E-9	-
-							
92	Uranium-230	D, UF, UOF, UO(NO)	4E+0	4E-1	2E-10	-	-
-							
			Bone surf (6E+0)	Bone surf (6E-1)	-	8E-13	8E-8
8E-7							
		W, UO, UF, UCl	-	4E-1	1E-10	5E-13	-
-							
		Y, UO, UO	-	3E-1	1E-10	4E-13	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

92	Uranium-231	D, see ^{230}U	5E+3	8E+3	3E-6	1E-8	-
-							
			LLI wall (4E+3)	-	-	-	6E-5
6E-4							
		W, see ^{230}U	-	6E+3	2E-6	8E-9	-
-							
		Y, see ^{230}U	-	5E+3	2E-6	6E-9	-
-							
92	Uranium-232	D, see ^{230}U	2E+0	2E-1	9E-11	-	-
-							
			Bone surf (4E+0)	Bone surf (4E-1)	-	6E-13	6E-8
6E-7							
		W, see ^{230}U	-	4E-1	2E-10	5E-13	-
-							
		Y, see ^{230}U	-	8E-3	3E-12	1E-14	-
-							
92	Uranium-233	D, see ^{230}U	1E+1	1E+0	5E-10	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
3E-6							
		W, see ^{230}U	-	7E-1	3E-10	1E-12	-
-							
		Y, see ^{230}U	-	4E-2	2E-11	5E-14	-
-							
92	Uranium-234[3]	D, see ^{230}U	1E+1	1E+0	5E-10	-	-
-							
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
3E-6							
		W, see ^{230}U	-	7E-1	3E-10	1E-12	-
-							
		Y, see ^{230}U	-	4E-2	2E-11	5E-14	-
-							
92	Uranium-235[3]	D, see ^{230}U	1E+1	1E+0	6E-10	-	-
-							
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
3E-6							
		W, see ^{230}U	-	8E-1	3E-10	1E-12	-
-							
		Y, see ^{230}U	-	4E-2	2E-11	6E-14	-
-							
92	Uranium-236	D, see ^{230}U	1E+1	1E+0	5E-10	-	-
-							
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
3E-6							
		W, see ^{230}U	-	8E-1	3E-10	1E-12	-
-							
		Y, see ^{230}U	-	4E-2	2E-11	6E-14	-
-							
92	Uranium-237	D, see ^{230}U	2E+3	3E+3	1E-6	4E-9	-
-							
			LLI wall				

			(2E+3)	-	-	-	3E-5
3E-4							
		W, see ^{230}U	-	2E+3	7E-7	2E-9	-
-							
		Y, see ^{230}U	-	2E+3	6E-7	2E-9	-
-							
92	Uranium-238[3]	D, see ^{230}U	1E+1	1E+0	6E-10	-	-
-							
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
3E-6							
		W, see ^{230}U	-	8E-1	3E-10	1E-12	-
-							
		Y, see ^{230}U	-	4E-2	2E-11	6E-14	-
-							
92	Uranium-239[2]	D, see ^{230}U	7E+4	2E+5	8E-5	3E-7	9E-4
9E-3							
		W, see ^{230}U	-	2E+5	7E-5	2E-7	-
-							
		Y, see ^{230}U	-	2E+5	6E-5	2E-7	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

92	Uranium-240	D, see ^{230}U	1E+3	4E+3	2E-6	5E-9	2E-5
2E-4							
		W, see ^{230}U	-	3E+3	1E-6	4E-9	-
-							
		Y, see ^{230}U	-	2E+3	1E-6	3E-9	-
-							
92	Uranium-natural[3]	D, see ^{230}U	1E+1	1E+0	5E-10	-	-
-							
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
3E-6							
		W, see ^{230}U	-	8E-1	3E-10	9E-13	-
-							
		Y, see ^{230}U	-	5E-2	2E-11	9E-24	-
-							
93	Neptunium-232[2]	W, all compounds	1E+5	2E+3	7E-7	-	2E-3
2E-2							
			-	Bone surf (5E+2)	-	6E-9	-
-							
93	Neptunium-233[2]	W, all compounds	8E+5	3E+6	1E-3	4E-6	1E-2
1E-1							
93	Neptunium-234	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5
3E-4							
93	Neptunium-235	W, all compounds	2E+4	8E+2	3E-7	-	-
-							
			LLI wall (2E+4)	Bone surf (1E+3)	-	2E-9	3E-4
3E-3							
93	Neptunium-236	W, all compounds	3E+0	2E-2	9E-12	-	-
-							
	(1.15E+5 y)		Bone surf (6E+0)	Bone surf (5E-2)	-	8E-14	9E-8
9E-7							
93	Neptunium-236	W, all compounds	3E+3	3E+1	1E-8	-	-
-							
	(22.5 h)		Bone surf (4E+3)	Bone surf (7E+1)	-	1E-10	5E-5
5E-4							
93	Neptunium-237	W, all compounds	5E-1	4E-3	2E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (1E-2)	-	1E-14	2E-8
2E-7							
93	Neptunium-238	W, all compounds	1E+3	6E+1	3E-8	-	2E-5
2E-4							
			-	Bone surf (2E+2)	-	2E-10	-
-							
93	Neptunium-239	W, all compounds	2E+3	2E+3	9E-7	3E-9	-
-							
			LLI wall (2E+3)	-	-	-	2E-5
2E-4							
93	Neptunium-240[2]	W, all compounds	2E+4	8E+4	3E-5	1E-7	3E-4
3E-3							
94	Plutonium-234	W, all compounds except PuO	8E+3	2E+2	9E-8	3E-10	1E-4
1E-3							

		Y, PuO	-	2E+2	8E-8	3E-10	-
-							
94	Plutonium-235[2]	W, see ^{234}Pu	9E+5	3E+6	1E-3	4E-6	1E-2
1E-1							
		Y, see ^{234}Pu	-	3E+6	1E-3	3E-6	-
-							
94	Plutonium-236	W, see ^{234}Pu	2E+0	2E-2	8E-12	-	-
-							
			Bone surf (4E+0)	Bone surf (4E-2)	-	5E-14	6E-8
6E-7							
		Y, see ^{234}Pu	-	4E-2	2E-11	6E-14	-
-							
94	Plutonium-237	W, see ^{234}Pu	1E+4	3E+3	1E-6	5E-9	2E-4
2E-3							
		Y, see ^{234}Pu	-	3E+3	1E-6	4E-9	-
-							
94	Plutonium-238	W, see ^{234}Pu	9E-1	7E-3	3E-12	-	-
-							
			Bone surf (2E+0)	Bone surf (1E-2)	-	2E-14	2E-8
2E-7							
		Y, see ^{234}Pu	-	2E-2	8E-12	2E-14	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

94	Plutonium-239	W, see ^{234}Pu	8E-1	6E-3	3E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
2E-7							
		Y, see ^{234}Pu	-	2E-2	7E-12	-	-
-							
			-	Bone surf (2E-2)	-	2E-14	-
-							
94	Plutonium-240	W, see ^{234}Pu	8E-1	6E-3	3E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
2E-7							
		Y, see ^{234}Pu	-	2E-2	7E-12	-	-
-							
			-	Bone surf (2E-2)	-	2E-14	-
-							
94	Plutonium-241	W, see ^{234}Pu	4E+1	3E-1	1E-10	-	-
-							
			Bone surf (7E+1)	Bone surf (6E-1)	-	8E-13	1E-6
1E-5							
		Y, see ^{234}Pu	-	8E-1	3E-10	-	-
-							
			-	Bone surf (1E+0)	-	1E-12	-
-							
94	Plutonium-242	W, see ^{234}Pu	8E-1	7E-3	3E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
2E-7							
		Y, see ^{234}Pu	-	2E-2	7E-12	-	-
-							
			-	Bone surf (2E-2)	-	2E-14	-
-							
94	Plutonium-243	W, see ^{234}Pu	2E+4	4E+4	2E-5	5E-8	2E-4
2E-3							
		Y, see ^{234}Pu	-	4E+4	2E-5	5E-8	-
-							
94	Plutonium-244	W, see ^{234}Pu	8E-1	7E-3	3E-12	-	-
-							
			Bone surf (2E+0)	Bone surf (1E-2)	-	2E-14	2E-8
2E-7							
		Y, see ^{234}Pu	-	2E-2	7E-12	-	-
-							
			-	Bone surf (2E-2)	-	2E-14	-
-							
94	Plutonium-245	W, see ^{234}Pu	2E+3	5E+3	2E-6	6E-9	3E-5
3E-4							
		Y, see ^{234}Pu	-	4E+3	2E-6	6E-9	-
-							

94	Plutonium-246	W, see ^{234}Pu	4E+2	3E+2	1E-7	4E-10	-
-							
			LLI wall (4E+2)	-	-	-	6E-6
6E-5							
		Y, see ^{234}Pu	-	3E+2	1E-7	4E-10	-
-							
95	Americium-237[2]	W, all compounds	8E+4	3E+5	1E-4	4E-7	1E-3
1E-2							
95	Americium-238[2]	W, all compounds	4E+4	3E+3	1E-6	-	5E-4
5E-3							
				Bone surf			
			-	(6E+3)	-	9E-9	-
-							
95	Americium-239	W, all compounds	5E+3	1E+4	5E-6	2E-8	7E-5
7E-4							
95	Americium-240	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5
3E-4							
95	Americium-241	W, all compounds	8E-1	6E-3	3E-12	-	-
-							
			Bone surf	Bone surf			
			(1E+0)	(1E-2)	-	2E-14	2E-8
2E-7							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

95	Americium-242m	W, all compounds	8E-1	6E-3	3E-12	-		-
-								
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14		2E-8
2E-7								
95	Americium-242	W, all compounds	4E+3	8E+1	4E-8	-		5E-5
5E-4								
			-	Bone surf (9E+1)	-	1E-10		-
-								
95	Americium-243	W, all compounds	8E-1	6E-3	3E-12	-		-
-								
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14		2E-8
2E-7								
95	Americium-244m[2]	W, all compounds	6E+4	4E+3	2E-6	-		-
-								
			St wall (8E+4)	Bone surf (7E+3)	-	1E-8		1E-3
1E-2								
95	Americium-244	W, all compounds	3E+3	2E+2	8E-8	-		4E-5
4E-4								
			-	Bone surf (3E+2)	-	4E-1	0	-
-								
95	Americium-245	W, all compounds	3E+4	8E+4	3E-5	1E-7		4E-4
4E-3								
95	Americium-246m[2]	W, all compounds	5E+4	2E+5	8E-5	3E-7		-
-								
			St wall (6E+4)	-	-	-		8E-4
8E-3								
95	Americium-246[2]	W, all compounds	3E+4	1E+5	4E-5	1E-7		4E-4
4E-3								
96	Curium-238	W, all compounds	2E+4	1E+3	5E-7	2E-9		2E-4
2E-3								
96	Curium-240	W, all compounds	6E+1	6E-1	2E-10	-		-
-								
			Bone surf (8E+1)	Bone surf (6E-1)	-	9E-13		1E-6
1E-5								
96	Curium-241	W, all compounds	1E+3	3E+1	1E-8	-		2E-5
2E-4								
			-	Bone surf (4E+1)	-	5E-11		-
-								
96	Curium-242	W, all compounds	3E+1	3E-1	1E-10	-		-
-								
			Bone surf (5E+1)	Bone surf (3E-1)	-	4E-13		7E-7
7E-6								
96	Curium-243	W, all compounds	1E+0	9E-3	4E-12	-		-
-								
			Bone surf (2E+0)	Bone surf (2E-2)	-	2E-14		3E-8
3E-7								
96	Curium-244	W, all compounds	1E+0	1E-2	5E-12	-		-
-								
			Bone surf	Bone surf				

			(3E+0)	(2E-2)	-	3E-14	3E-8
	3E-7						
96	Curium-245	W, all compounds	7E-1	6E-3	3E-12	-	-
	-						
			Bone surf	Bone surf			
			(1E+0)	(1E-2)	-	2E-14	2E-8
	2E-7						
96	Curium-246	W, all compounds	7E-1	6E-3	3E-12	-	-
	-						
			Bone surf	Bone surf			
			(1E+0)	(1E-2)	-	2E-14	2E-8
	2E-7						
96	Curium-247	W, all compounds	8E-1	6E-3	3E-12	-	-
	-						
			Bone surf	Bone surf			
			(1E+0)	(1E-2)	-	2E-14	2E-8
	2E-7						
96	Curium-248	W, all compounds	2E-1	2E-3	7E-13	-	-
	-						
			Bone surf	Bone surf			
			(4E-1)	(3E-3)	-	4E-15	5E-9
	5E-8						

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

96	Curium-249[2]	W, all compounds	5E+4	2E+4	7E-6	-	7E-4
7E-3							
			-	Bone surf (3E+4)	-	4E-8	-
-							
96	Curium-250	W, all compounds	4E-2	3E-4	1E-13	-	-
-							
			Bone surf (6E-2)	Bone surf (5E-4)	-	8E-16	9E-10
9E-9							
97	Berkelium-245	W, all compounds	2E+3	1E+3	5E-7	2E-9	3E-5
3E-4							
97	Berkelium-246	W, all compounds	3E+3	3E+3	1E-6	4E-9	4E-5
4E-4							
97	Berkelium-247	W, all compounds	5E-1	4E-3	2E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8
2E-7							
97	Berkelium-249	W, all compounds	2E+2	2E+0	7E-10	-	-
-							
			Bone surf (5E+2)	Bone surf (4E+0)	-	5E-12	6E-6
6E-5							
97	Berkelium-250	W, all compounds	9E+3	3E+2	1E-7	-	1E-4
1E-3							
			-	Bone surf (7E+2)	-	1E-9	-
-							
98	Californium-244[2]	W, all compounds except those given for Y	3E+4	6E+2	2E-7	8E-10	-
-							
			St wall (3E+4)	-	-	-	4E-4
4E-3							
		Y, oxides and hydroxides	-	6E+2	2E-7	8E-10	-
-							
98	Californium-246	W, see ^{244}Cf	4E+2	9E+0	4E-9	1E-11	5E-6
5E-5							
		Y, see ^{244}Cf	-	9E+0	4E-9	1E-11	-
-							
98	Californium-248	W, see ^{244}Cf	8E+0	6E-2	3E-11	-	-
-							
			Bone surf (2E+1)	Bone surf (1E-1)	-	2E-13	2E-7
2E-6							
		Y, see ^{244}Cf	-	1E-1	4E-11	1E-13	-
-							
98	Californium-249	W, see ^{244}Cf	5E-1	4E-3	2E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8
2E-7							
		Y, see ^{244}Cf	-	1E-2	4E-12	-	-
-							
			-	Bone surf (1E-2)	-	2E-14	-
-							

98	Californium-250	W, see ^{244}Cf	1E+0	9E-3	4E-12	-	-
-							
			Bone surf (2E+0)	Bone surf (2E-2)	-	3E-14	3E-8
3E-7							
		Y, see ^{244}Cf	-	3E-2	1E-11	4E-14	-
-							
98	Californium-251	W, see ^{244}Cf	5E-1	4E-3	2E-12	-	-
-							
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8
2E-7							
		Y, see ^{244}Cf	-	1E-2	4E-12		-
-							
			-	Bone surf (1E-2)	-	2E-14	-
-							
98	Californium-252	W, see ^{244}Cf	2E+0	2E-2	8E-12	-	-
-							
			Bone surf (5E+0)	Bone surf (4E-2)	-	5E-14	7E-8
7E-7							
		Y, see ^{244}Cf	-	3E-2	1E-11	5E-14	-
-							

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

98	Californium-253	W, see ^{244}Cf	2E+2	2E+0	8E-10	3E-12	-
-							
			Bone surf (4E+2)	-	-	-	5E-6
5E-5							
		Y, see ^{244}Cf	-	2E+0	7E-10	2E-12	-
-							
98	Californium-254	W, see ^{244}Cf	2E+0	2E-2	9E-12	3E-14	3E-8
3E-7							
		Y, see ^{244}Cf	-	2E-2	7E-12	2E-14	-
-							
99	Einsteinium-250	W, all compounds	4E+4	5E+2	2E-7	-	6E-4
6E-3							
			-	Bone surf (1E+3)	-	2E-9	-
-							
99	Einsteinium-251	W, all compounds	7E+3	9E+2	4E-7	-	1E-4
1E-3							
			-	Bone surf (1E+3)	-	2E-9	-
-							
99	Einsteinium-253	W, all compounds	2E+2	1E+0	6E-10	2E-12	2E-6
2E-5							
99	Einsteinium-254m	W, all compounds	3E+2	1E+1	4E-9	1E-11	-
-							
			LLI wall (3E+2)	-	-	-	4E-6
4E-5							
99	Einsteinium-254	W, all compounds	8E+0	7E-2	3E-11	-	-
-							
			Bone surf (2E+1)	Bone surf (1E-1)	-	2E-13	2E-7
2E-6							
100	Fermium-252	W, all compounds	5E+2	1E+1	5E-9	2E-11	6E-6
6E-5							
100	Fermium-253	W, all compounds	1E+3	1E+1	4E-9	1E-11	1E-5
1E-4							
100	Fermium-254	W, all compounds	3E+3	9E+1	4E-8	1E-10	4E-5
4E-4							
100	Fermium-255	W, all compounds	5E+2	2E+1	9E-9	3E-11	7E-6
7E-5							
100	Fermium-257	W, all compounds	2E+1	2E-1	7E-11	-	-
-							
			Bone surf (4E+1)	Bone surf (2E-1)	-	3E-13	5E-7
5E-6							
101	Mendelevium-257	W, all compounds	7E+3	8E+1	4E-8	-	1E-4
1E-3							
			-	Bone surf (9E+1)	-	1E-10	-
-							
101	Mendelevium-258	W, all compounds	3E+1	2E-1	1E-10	-	-
-							
			Bone surf (5E+1)	Bone surf (3E-1)	-	5E-13	6E-7
6E-6							
-	Any single radionuclide not listed above with decay mode other than alpha emission or						

spontaneous fission and with radioactive half-life less than 2 hours	Submersion[1]	-	2E+2	1E-7	1E-9	-	-
- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours .	. . .	-	2E-1	1E-10	1E-12	1E-8	1E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known	.	. . .	-	4E-4	2E-13	1E-15	2E-9	2E-8

FOOTNOTES:

[1] "Submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

[2] These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1E-7 μCi/ml for the listed DAC to account for the submersion dose prospectively but shall use individual monitoring devices or other radiation-measuring instruments that measure external exposure to demonstrate compliance with the limits. (See R12-1-410)

[3] For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (see R12-1-408(E)). If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour work week is 0.2 milligrams uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour work week shall not exceed 8E-3 (SA) μCi-hr/ml, where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is 6.77E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:

SA = 3.6E-7 curies/gram U U-depleted

SA = $[0.4 + 0.38 \text{ (enrichment)} + 0.0034 \text{ (enrichment)}^2] \text{ E-6}$, enrichment > 0.72

where enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.
2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this Appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture are the lowest values specified in this Appendix for any radionuclide that is not known to be absent from the mixture; or\

		Table I Occupational Values			Table II Effluent Concentrations		Table III
		Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
Atomic No.	Radionuclide	Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Releases to Sewers Monthly Average Concentration (μCi/ml)
	Class						
If it is known that Ac-227-D and Cm-250-W are not present				-	7E-4	3E-13	-
-	-						
If, in addition, it is known that Ac-227-W,Y, Th-229-W,Y, Th-230-W, Th-232-W,Y, Pa-231-W,Y, Np-237-W, Pu-239-W, Pu-240-W, Pu-242-W, Am-241-W, Am-242m-W, Am-243-W, Cm-245-W, Cm-246-W, Cm-247-W, Cm-248-W, Bk-247-W,							

Cf-249-W, and Cf-251-W are not present			-	7E-3	3E-12
-	-	-			

Atomic No.	Radionuclide	Class	Table I Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table II Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table III Releases to Sewers Monthly Average Concentration (µCi/ml)

If, in addition, it is known that Sm-146-W, Sm-147-W, Gd-148-D,W, Gd-152-D,W, Th-228-W,Y, Th-230-Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, Np-236-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-Y, Pu-240-Y, Pu-242-Y, Pu-244-W,Y, Cm-243-W, Cm-244-W, Cf-248-W, Cf-249-Y, Cf-250-W,Y, Cf-251-Y, Cf-252-WY, and Cf-254-W,Y are not present - 7E-2 3E-11 - - -

If, in addition, it is known that Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-Y, Es-254-W, Fm-257-W, and Md-258-W are not present - 7E-1 3E-10 - - -

If, in addition, it is known that Si-32-Y, Ti-44-Y, Fe-60-D, Sr-90-Y, Zr-93-D, Cd-113m-D, Cd-113-D, In-115-D,W, La-138-D, Lu-176-W, Hf-178m-D,W, Hf-182-D,W, Bi-210m-D, Ra-224-W, Ra-228-W, Ac-226-D,W,Y, Pa-230-W,Y, U-233-D,W, U-234-D,W, U-235-D,W, U-236-D,W, U-238-D,W, Pu-241-Y, Bk-249-W, Cf-253-W,Y, and Es-253-W are not present - 7E+0 3E-9 - - -

If it is known that Ac-227-D,W,Y, Th-229-W,Y, Th-232-W,Y, Pa-231-W,Y, Cm-248-W, and Cm-250-W are not present - - - 1E-14 - -

If, in addition, it is known that Sm-146-W, Gd-148-D,W, Gd-152-D, Th-228-W,Y, Th-230-W,Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, U-Nat-Y, Np-236-W, Np-237-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-W,Y, Pu-240-W,Y, Pu-242-W,Y, Pu-244-W,Y, Am-241-W, Am-242m-W, Am-243-W, Cm-243-W, Cm-244-W, Cm-245-W, Cm-246-W, Cm-247-W, Bk-247-W, Cf-249-W,Y, Cf-250-W,Y, Cf-251-W,Y, Cf-252-W,Y, and Cf-254-W,Y are not present - - - 1E-13 - -

If, in addition, it is known that Sm-147-W, Gd-152-W, Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, U-Nat-W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-W,Y, Es-254-W, Fm-257-W, and Md-258-W are not present - - - - 1E-12 -

If, in addition it is known that Fe-60, Sr-90, Cd-113m, Cd-113, In-115, I-129, Cs-134, Sm-145, Sm-147, Gd-148, Gd-152, Hg-194 (organic), Bi-210m, Ra-223, Ra-224, Ra-225, Ac-225, Th-228, Th-230, U-233, U-234, U-235, U-236, U-238, U-Nat, Cm-242, Cf-248, Es-254, Fm-257, and Md-258 are not present - - - - 1E-6 1E-5

3. If a mixture of radionuclides consists of Uranium and its daughters in ore dust (10 µm AMAD particle distribution assumed) prior to chemical separation of the Uranium from the ore, the following values may be used for the DAC of the mixture: 6E-11 µCi of gross alpha activity from Uranium-238, Uranium-234, Thorium-230, and Radium-226 per milliliter of air; 3E-11 µCi of natural uranium per milliliter of air; or 45 micrograms of natural uranium per cubic meter of air.
4. If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in Appendix B to Article 4 for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed "1" (i.e., "unity").
Example: If radionuclides "A," "B," and "C" are present in concentrations C_A, C_B, and C_C, and if the applicable DACs are DAC_A, DAC_B, and DAC_C, respectively then the concentrations shall be limited so that the following relationship exists:

$$\frac{C_A}{DAC_A} + \frac{C_B}{DAC_B} + \frac{C_C}{DAC_C} \leq 1$$

Historical Note

New Appendix B recodified from 12 A.A.C. 1, Article 4, Appendix B, effective March 22, 2018 (Supp. 18-1).

Appendix C. Quantities[1] of Licensed or Registered Material Requiring Labeling

Radionuclide	Quantity (μCi)
Hydrogen-3	1,000
Beryllium-7	1,000
Beryllium-10	1
Carbon-11	1,000
Carbon-14	1,000
Fluorine-18	1,000
Sodium-22	10
Sodium-24	100
Magnesium-28	100
Aluminum-26	10
Silicon-31	1,000
Silicon-32	1
Phosphorus-32	10
Phosphorus-33	100
Sulfur-35	100
Chlorine-36	10
Chlorine-38	1,000
Chlorine-39	1,000
Argon-39	1,000
Argon-41	1,000
Potassium-40	100
Potassium-42	1,000
Potassium-43	1,000
Potassium-44	1,000
Potassium-45	1,000
Calcium-41	100
Calcium-45	100
Calcium-47	100
Scandium-43	1,000
Scandium-44m	100
Scandium-44	100
Scandium-46	10
Scandium-47	100
Scandium-48	100
Scandium-49	1,000
Titanium-44	1
Titanium-45	1,000
Vanadium-47	1,000
Vanadium-48	100
Vanadium-49	1,000
Chromium-48	1,000
Chromium-49	1,000
Chromium-51	1,000
Manganese-51	1,000
Manganese-52m	1,000
Manganese-52	100
Manganese-53	1,000
Manganese-54	100
Manganese-56	1,000
Iron-52	100
Iron-55	100
Iron-59	10
Iron-60	1
Cobalt-55	100

Cobalt-56	10
Cobalt-57	100
Cobalt-58m	1,000
Cobalt-58	100
Cobalt-60m	1,000
Cobalt-60	1
Cobalt-61	1,000
Cobalt-62m	1,000
Nickel-56	100

Radionuclide	**Quantity (µCi)**
Nickel-57	100
Nickel-59	100
Nickel-63	100
Nickel-65	1,000
Nickel-66	10
Copper-60	1,000
Copper-61	1,000
Copper-64	1,000
Copper-67	1,000
Zinc-62	100
Zinc-63	1,000
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zinc-71m	1,000
Zinc-72	100
Gallium-65	1,000
Gallium-66	100
Gallium-67	1,000
Gallium-68	1,000
Gallium-70	1,000
Gallium-72	100
Gallium-73	1,000
Germanium-66	1,000
Germanium-67	1,000
Germanium-68	10
Germanium-69	1,000
Germanium-71	1,000
Germanium-75	1,000
Germanium-77	1,000
Germanium-78	1,000
Arsenic-69	1,000
Arsenic-70	1,000
Arsenic-71	100
Arsenic-72	100
Arsenic-73	100
Arsenic-74	100
Arsenic-76	100
Arsenic-77	100
Arsenic-78	1,000
Selenium-70	1,000
Selenium-73m	1,000
Selenium-73	100
Selenium-75	100
Selenium-79	100
Selenium-81m	1,000
Selenium-81	1,000

Selenium-83	1,000
Bromine-74m	1,000
Bromine-74	1,000
Bromine-75	1,000
Bromine-76	100
Bromine-77	1,000
Bromine-80m	1,000
Bromine-80	1,000
Bromine-82	100
Bromine-83	1,000
Bromine-84	1,000
Krypton-74	1,000
Krypton-76	1,000
Krypton-77	1,000
Krypton-79	1,000
Krypton-81	1,000

Radionuclide	**Quantity (μCi)**
Krypton-83m	1,000
Krypton-85m	1,000
Krypton-85	1,000
Krypton-87	1,000
Krypton-88	1,000
Rubidium-79	1,000
Rubidium-81m	1,000
Rubidium-81	1,000
Rubidium-82m	1,000
Rubidium-83	100
Rubidium-84	100
Rubidium-86	100
Rubidium-87	100
Rubidium-88	1,000
Rubidium-89	1,000
Strontium-80	100
Strontium-81	1,000
Strontium-83	100
Strontium-85m	1,000
Strontium-85	100
Strontium-87m	1,000
Strontium-89	10
Strontium-90	0.1
Strontium-91	100
Strontium-92	100
Yttrium-86m	1,000
Yttrium-86	100
Yttrium-87	100
Yttrium-88	10
Yttrium-90m	1,000
Yttrium-90	10
Yttrium-91m	1,000
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Yttrium-94	1,000
Yttrium-95	1,000
Zirconium-86	100
Zirconium-88	10
Zirconium-89	100

Zirconium-93	1	
Zirconium-95	10	
Zirconium-97	100	
Niobium-88	1,000	
Niobium-89m (66 min)		1,000
Niobium-89 (122 min)		1,000
Niobium-90	100	
Niobium-93m	10	
Niobium-94	1	
Niobium-95m	100	
Niobium-95	100	
Niobium-96	100	
Niobium-97	1,000	
Niobium-98	1,000	
Molybdenum-90	100	
Molybdenum-93m	100	
Molybdenum-93	10	
Molybdenum-99	100	
Molybdenum-101	1,000	
Technetium-93m	1,000	
Technetium-93	1,000	

Appendix C. Continued

Radionuclide	**Quantity (μCi)**
Technetium-94m	1,000
Technetium-94	1,000
Technetium-96m	1,000
Technetium-96	100
Technetium-97m	100
Technetium-97	1,000
Technetium-98	10
Technetium-99m	1,000
Technetium-99	100
Technetium-101	1,000
Technetium-104	1,000
Ruthenium-94	1,000
Ruthenium-97	1,000
Ruthenium-103	100
Ruthenium-105	1,000
Ruthenium-106	1
Rhodium-99m	1,000
Rhodium-99	100
Rhodium-100	100
Rhodium-101m	1,000
Rhodium-101	10
Rhodium-102m	10
Rhodium-102	10
Rhodium-103m	1,000
Rhodium-105	100
Rhodium-106m	1,000
Rhodium-107	1,000
Palladium-100	100
Palladium-101	1,000
Palladium-103	100
Palladium-107	10

Palladium-109	100
Silver-102	1,000
Silver-103	1,000
Silver-104m	1,000
Silver-104	1,000
Silver-105	100
Silver-106m	100
Silver-106	1,000
Silver-108m	1
Silver-110m	10
Silver-111	100
Silver-112	100
Silver-115	1,000
Cadmium-104	1,000
Cadmium-107	1,000
Cadmium-109	1
Cadmium-113m	0.1
Cadmium-113	100
Cadmium-115m	10
Cadmium-115	100
Cadmium-117m	1,000
Cadmium-117	1,000
Indium-109	1,000
Indium-110m (69.1m)	1,000
Indium-110 (4.9h)	1,000
Indium-111	100
Indium-112	1,000
Indium-113m	1,000
Indium-114m	10
Indium-115m	1,000
Indium-115	100

Radionuclide	**Quantity (µCi)**
Indium-116m	1,000
Indium-117m	1,000
Indium-117	1,000
Indium-119m	1,000
Tin-110	100
Tin-111	1,000
Tin-113	100
Tin-117m	100
Tin-119m	100
Tin-121m	100
Tin-121	1,000
Tin-123m	1,000
Tin-123	10
Tin-125	10
Tin-126	10
Tin-127	1,000
Tin-128	1,000
Antimony-115	1,000
Antimony-116m	1,000
Antimony-116	1,000
Antimony-117	1,000
Antimony-118m	1,000
Antimony-119	1,000

Antimony-120 (16m)	1,000
Antimony-120 (5.76d)	100
Antimony-122	100
Antimony-124m	1,000
Antimony-124	10
Antimony-125	100
Antimony-126m	1,000
Antimony-126	100
Antimony-127	100
Antimony-128 (10.4m)	1,000
Antimony-128 (9.01h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100
Tellurium-132	10
Tellurium-133m	100
Tellurium-133	1,000
Tellurium-134	1,000
Iodine-120m	1,000
Iodine-120	100
Iodine-121	1,000
Iodine-123	100
Iodine-124	10
Iodine-125	1
Iodine-126	1

Radionuclide	**Quantity (µCi)**
Iodine-128	1,000
Iodine-129	1
Iodine-130	10
Iodine-131	1
Iodine-132m	100
Iodine-132	100
Iodine-133	10
Iodine-134	1,000
Iodine-135	100
Xenon-120	1,000
Xenon-121	1,000
Xenon-122	1,000
Xenon-123	1,000
Xenon-125	1,000
Xenon-127	1,000

Xenon-129m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000
Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Barium-126	1,000
Barium-128	100
Barium-131m	1,000
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000

Appendix C. Continued

Radionuclide	**Quantity (µCi)**
Praseodymium-137	1,000
Praseodymium-138m	1,000
Praseodymium-139	1,000
Praseodymium-142m	1,000
Praseodymium-142	100

Praseodymium-143	100
Praseodymium-144	1,000
Praseodymium-145	100
Praseodymium-147	1,000
Neodymium-136	1,000
Neodymium-138	100
Neodymium-139m	1,000
Neodymium-139	1,000
Neodymium-141	1,000
Neodymium-147	100
Neodymium-149	1,000
Neodymium-151	1,000
Promethium-141	1,000
Promethium-143	100
Promethium-144	10
Promethium-145	10
Promethium-146	1
Promethium-147	10
Promethium-148m	10
Promethium-148	10
Promethium-149	100
Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100
Europium-150 (12.62h)	100
Europium-150 (34.2y)	1
Europium-152m	100
Europium-152	1
Europium-154	1
Europium-155	10
Europium-156	100
Europium-157	100
Europium-158	1,000
Gadolinium-145	1,000
Gadolinium-146	10
Gadolinium-147	100
Gadolinium-148	0.001
Gadolinium-149	100
Gadolinium-151	10
Gadolinium-152	100
Gadolinium-153	10
Gadolinium-159	100

Radionuclide	Quantity (µCi)
Terbium-147	1,000
Terbium-149	100
Terbium-150	1,000
Terbium-151	100
Terbium-153	1,000
Terbium-154	100
Terbium-155	1,000
Terbium-156m (5.0h)	1,000
Terbium-156m (24.4h)	1,000
Terbium-156	100
Terbium-157	10
Terbium-158	1
Terbium-160	10
Terbium-161	100
Dysprosium-155	1,000
Dysprosium-157	1,000
Dysprosium-159	100
Dysprosium-165	1,000
Dysprosium-166	100
Holmium-155	1,000
Holmium-157	1,000
Holmium-159	1,000
Holmium-161	1,000
Holmium-162m	1,000
Holmium-162	1,000
Holmium-164m	1,000
Holmium-164	1,000
Holmium-166m	1
Holmium-166	100
Holmium-167	1,000
Erbium-161	1,000
Erbium-165	1,000
Erbium-169	100
Erbium-171	100
Erbium-172	100
Thulium-162	1,000
Thulium-166	100
Thulium-167	100
Thulium-170	10
Thulium-171	10
Thulium-172	100
Thulium-173	100
Thulium-175	1,000
Ytterbium-162	1,000
Ytterbium-166	100
Ytterbium-167	1,000
Ytterbium-169	100
Ytterbium-175	100
Ytterbium-177	1,000
Ytterbium-178	1,000
Lutetium-169	100
Lutetium-170	100
Lutetium-171	100
Lutetium-172	100

Lutetium-173	10
Lutetium-174m	10
Lutetium-174	10
Lutetium-176m	1,000
Lutetium-176	100
Lutetium-177m	10
Lutetium-177	100
Lutetium-178m	1,000
Lutetium-178	1,000

Radionuclide	**Quantity (µCi)**
Lutetium-179	1,000
Hafnium-170	100
Hafnium-172	1
Hafnium-173	1,000
Hafnium-175	100
Hafnium-177m	1,000
Hafnium-178m	0.1
Hafnium-179m	10
Hafnium-180m	1,000
Hafnium-181	10
Hafnium-182m	1,000
Hafnium-182	0.1
Hafnium-183	1,000
Hafnium-184	100
Tantalum-172	1,000
Tantalum-173	1,000
Tantalum-174	1,000
Tantalum-175	1,000
Tantalum-176	100
Tantalum-177	1,000
Tantalum-178	1,000
Tantalum-179	100
Tantalum-180m	1,000
Tantalum-180	100
Tantalum-182m	1,000
Tantalum-182	10
Tantalum-183	100
Tantalum-184	100
Tantalum-185	1,000
Tantalum-186	1,000
Tungsten-176	1,000
Tungsten-177	1,000
Tungsten-178	1,000
Tungsten-179	1,000
Tungsten-181	1,000
Tungsten-185	100
Tungsten-187	100
Tungsten-188	10
Rhenium-177	1,000
Rhenium-178	1,000
Rhenium-181	1,000
Rhenium-182 (12.7h)	1,000
Rhenium-182 (64.0h)	100
Rhenium-184m	10
Rhenium-184	100

Rhenium-186m	10
Rhenium-186	100
Rhenium-187	1,000
Rhenium-188m	1,000
Rhenium-188	100
Rhenium-189	100
Osmium-180	1,000
Osmium-181	1,000
Osmium-182	100
Osmium-185	100
Osmium-189m	1,000
Osmium-191m	1,000
Osmium-191	100
Osmium-193	100
Osmium-194	1
Iridium-182	1,000
Iridium-184	1,000

Appendix C. Continued

Radionuclide	**Quantity (µCi)**
Iridium-185	1,000
Iridium-186	100
Iridium-187	1,000
Iridium-188	100
Iridium-189	100
Iridium-190m	1,000
Iridium-190	100
Iridium-192m (1.4m)	10
Iridium-192 (73.8d)	1
Iridium-194m	10
Iridium-194	100
Iridium-195m	1,000
Iridium-195	1,000
Platinum-186	1,000
Platinum-188	100
Platinum-189	1,000
Platinum-191	100
Platinum-193m	100
Platinum-193	1,000
Platinum-195m	100
Platinum-197m	1,000
Platinum-197	100
Platinum-199	1,000
Platinum-200	100
Gold-193	1,000
Gold-194	100
Gold-195	10
Gold-198m	100
Gold-198	100
Gold-199	100
Gold-200m	100
Gold-200	1,000
Gold-201	1,000
Mercury-193m	100
Mercury-193	1,000

Mercury-194	1
Mercury-195m	100
Mercury-195	1,000
Mercury-197m	100
Mercury-197	1,000
Mercury-199m	1,000
Mercury-203	100
Thallium-194m	1,000
Thallium-194	1,000
Thallium-195	1,000
Thallium-197	1,000
Thallium-198m	1,000
Thallium-198	1,000
Thallium-199	1,000
Thallium-201	1,000
Thallium-200	1,000
Thallium-202	100
Thallium-204	100
Lead-195m	1,000
Lead-198	1,000
Lead-199	1,000
Lead-200	100
Lead-201	1,000
Lead-202m	1,000
Lead-202	10
Lead-203	1,000
Lead-205	100

Radionuclide	**Quantity (µCi)**
Lead-209	1,000
Lead-210	0.01
Lead-211	100
Lead-212	1
Lead-214	100
Bismuth-200	1,000
Bismuth-201	1,000
Bismuth-202	1,000
Bismuth-203	100
Bismuth-205	100
Bismuth-206	100
Bismuth-207	10
Bismuth-210m	0.1
Bismuth-210	1
Bismuth-212	10
Bismuth-213	10
Bismuth-214	100
Polonium-203	1,000
Polonium-205	1,000
Polonium-207	1,000
Polonium-210	0.1
Astatine-207	100
Astatine-211	10
Radon-220	1
Radon-222	1
Francium-222	100
Francium-223	100
Radium-223	0.1
Radium-224	0.1

Radium-225	0.1
Radium-226	0.1
Radium-227	1,000
Radium-228	0.1
Actinium-224	1
Actinium-225	0.01
Actinium-226	0.1
Actinium-227	0.001
Actinium-228	1
Thorium-226	10
Thorium-227	0.01
Thorium-228	0.001
Thorium-229	0.001
Thorium-230	0.001
Thorium-231	100
Thorium-232	100
Thorium-234	10
Thorium-natural	100
Protactinium-227	10
Protactinium-228	1
Protactinium-230	0.1
Protactinium-231	0.001
Protactinium-232	1
Protactinium-233	100
Protactinium-234	100
Uranium-230	0.01
Uranium-231	100
Uranium-232	0.001
Uranium-233	0.001
Uranium-234	0.001
Uranium-235	0.001
Uranium-236	0.001
Uranium-237	100
Uranium-238	100
Uranium-239	1,000

Radionuclide	**Quantity (µCi)**
Uranium-240	100
Uranium-natural	100
Neptunium-232	100
Neptunium-233	1,000
Neptunium-234	100
Neptunium-235	100
Neptunium-236 (1.15E + 5)	0.001
Neptunium-236 (22.5h)	1
Neptunium-237	0.001
Neptunium-238	10
Neptunium-239	100
Neptunium-240	1,000
Plutonium-234	10
Plutonium-235	1,000
Plutonium-236	0.001
Plutonium-237	100
Plutonium-238	0.001
Plutonium-239	0.001
Plutonium-240	0.001

Plutonium-241	0.01
Plutonium-242	0.001
Plutonium-243	1,000
Plutonium-244	0.001
Plutonium-245	100
Americium-237	1,000
Americium-238	100
Americium-239	1,000
Americium-240	100
Americium-241	0.001
Americium-242m	0.001
Americium-242	10
Americium-243	0.001
Americium-244m	100
Americium-244	10
Americium-245	1,000
Americium-246m	1,000
Americium-246	1,000
Curium-238	100
Curium-240	0.1
Curium-241	1
Curium-242	0.01
Curium-243	0.001
Curium-244	0.001
Curium-245	0.001
Curium-246	0.001
Curium-247	0.001
Curium-248	0.001
Curium-249	1,000
Berkelium-245	100
Berkelium-246	100
Berkelium-247	0.001
Berkelium-249	0.1
Berkelium-250	10
Californium-244	100
Californium-246	1
Californium-248	0.01
Californium-249	0.001
Californium-250	0.001
Californium-251	0.001
Californium-252	0.001
Californium-253	0.1
Californium-254	0.001

Appendix C. Continued

Radionuclide	**Quantity (µCi)**
Einsteinium-250	100
Einsteinium-251	100
Einsteinium-253	0.1
Einsteinium-254m	1
Einsteinium-254	0.01
Fermium-252	1
Fermium-253	1
Fermium-254	10
Fermium-255	1
Fermium-257	0.01
Mendelevium-257	10

Mendelevium-258	0.01

Radionuclide	**Quantity (μCi)**
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001
Any radionuclide other than alpha-emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

* To convert μCi to kBq, multiply the μCi value by 37.

NOTE: Where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1" -- that is, unity.

[1] The quantities listed above were derived by taking 1/10 of the most restrictive ALI listed in Table I, Columns 1and 2, of Appendix B to Article 4, rounding to the nearest factor of 10, and constraining the values listed between 37 Bq and 37 MBq (0.001 and 1,000 μCi). Values of 3.7 MBq (100 μCi) have been assigned for radionuclides having a radioactive half-life in excess of E+9 years, except rhenium, 37 MBq (1,000 μCi), to take into account their low specific activity.

Historical Note

New Appendix C recodified from 12 A.A.C. 1, Article 4, Appendix C, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

Appendix D. Classification and Characteristics of Low-level Radioactive Waste

I. Classification of Radioactive Waste for Land Disposal

a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radio nuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

b) Classes of waste.

1) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in Section II(a). If Class A waste also meets the stability requirements set forth in Section II(b), it is not necessary to segregate the waste for disposal.

2) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in Section II.

3) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in Section II.

c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

1) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

2) If the concentration exceeds 0.1 times the value in Table I but does not exceed the value in Table I, the waste is Class C.

3) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

4) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Section I(g).

Appendix D. Table I

TABLE I
Concentration

Radionuclide	curie/cubic meter[a]	nanocuries/gram[b]
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha-emitting transuranic radionuclides with half-life greater than five years	100	
Pu-241		3,500
Cm-242		20,000
Ra-226		100

[a]To convert the Ci/m^3 values to gigabecquerel (GBq) per cubic meter, multiply the Ci/m^3 value by 37.

[b]To convert the nCi/g values to becquerel (Bq) per gram, multiply the nCi/g value by 37.

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d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Section I(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

1) If the concentration does not exceed the value in Column 1, the waste is Class A.

2) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

3) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.
4) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.
5) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Section I(g).

Appendix D. Table II

TABLE II

Radionuclide	Concentration, Curie/cubic meter*		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal		35	700
Sr-90	0.04	150	7000
Cs-137	1	44	4600

* DEPARTMENT NOTE: To convert the Ci/m^3 value to gigabecquerel (GBq) per cubic meter, multiply the Ci/m^3 value by 37. There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

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e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Section I.

*****See Section R9-7-102 for definition of pyrophoric.

Historical Note

New Appendix D, including Tables 1 and 2 recodified from 12 A.A.C. 1, Article 4, Appendix D, Tables 1 and 2, effective March 22, 2018 (Supp. 18-1).

Appendix E. Quantities for Use with Decommissioning

Material	Microcurie	
Americium-241	0.01	
Antimony-122	100	
Antimony-124	10	
Antimony-125	10	
Arsenic-73	100	
Arsenic-74	10	
Arsenic-76	10	
Arsenic-77	100	
Barium-131	10	
Barium-133	10	
Barium-140	10	
Bismuth-210	1	
Bromine-82	10	
Cadmium-109	10	
Cadmium-115m	10	
Cadmium-115	100	
Calcium-45	10	
Calcium-47	10	
Carbon-14	100	
Cerium-141	100	
Cerium-143	100	
Cerium-144	1	
Cesium-131	1,000	
Cesium-134m	100	
Cesium-134	1	
Cesium-135	10	
Cesium-136	10	
Cesium-137	10	
Chlorine-36	10	
Chlorine-38	10	
Chromium-51	1,000	
Cobalt-58m	10	
Cobalt-58	10	
Cobalt-60	1	
Copper-64	100	
Dysprosium-165	10	
Dysprosium-166	100	
Erbium-169	100	
Erbium-171	100	
Europium-152 (9.2 h)		100
Europium-152 (13 yr)		1
Europium-154	1	
Europium-155	10	
Fluorine-18	1,000	
Gadolinium-153	10	
Gadolinium-159	100	
Gallium-72	10	
Germanium-71	100	
Gold-198	100	
Gold-199	100	
Hafnium-181	10	
Holmium-166	100	
Hydrogen-3	1,000	
Indium-113m	100	
Indium-114m	10	

Indium-115m	100
Indium-115	10
Iodine-125	1
Iodine-126	1
Iodine-129	0.1
Iodine-131	1
Iodine-132	10
Iodine-133	1
Iodine-134	10
Material	**Microcurie**
Iodine-135	10
Iridium-192	10
Iridium-194	100
Iron-55	100
Iron-59	10
Krypton-85	100
Krypton-87	10
Lanthanum-140	10
Lutetium-177	100
Manganese-52	10
Manganese-54	10
Manganese-56	10
Mercury-197m	100
Mercury-197	100
Mercury-203	10
Molybdenum-99	100
Neodymium-147	100
Neodymium-149	100
Nickel-59	100
Nickel-63	10
Nickel-65	100
Niobium-93m	10
Niobium-95	10
Niobium-97	10
Osmium-185	10
Osmium-191m	100
Osmium-191	100
Osmium-193	100
Palladium-103	100
Palladium-109	100
Phosphorus-32	10
Platinum-191	100
Platinum-193m	100
Platinum-193	100
Platinum-197m	100
Platinum-197	100
Plutonium-239	0.01
Polonium-210	0.1
Potassium-42	10
Praseodymium-142	100
Praseodymium-143	100
Promethium-147	10
Promethium-149	10
Radium-226	0.01
Rhenium-186	100
Rhenium-188	100
Rhodium-103m	100
Rhodium-105	100

Rubidium-86	10	
Rubidium-87	10	
Ruthenium-97	100	
Ruthenium-103	10	
Ruthenium-105	10	
Ruthenium-106	1	
Samarium-151	10	
Samarium-153	100	
Scandium-46	10	
Scandium-47	100	
Scandium-48	10	
Selenium-75	10	
Silicon-31	100	
Silver-105	10	
Silver-110m	1	
Silver-111	100	
Material	**Microcurie**	
Sodium-22	1	
Sodium-24	10	
Strontium-85	10	
Strontium-89	1	
Strontium-90	0.1	
Strontium-91	10	
Strontium-92	10	
Sulfur-35	100	
Tantalum-182	10	
Technetium-96	10	
Technetium-97m	100	
Technetium-97	100	
Technetium-99m	100	
Technetium-99	10	
Tellurium-125m	10	
Tellurium-127m	10	
Tellurium-127	100	
Tellurium-129m	10	
Tellurium-129	100	
Tellurium-131m	10	
Tellurium-132	10	
Terbium-160	10	
Thallium-200	100	
Thallium-201	100	
Thallium-202	100	
Thallium-204	10	
Thorium (natural)**		100
Thulium-170	10	
Thulium-171	10	
Tin-113	10	
Tin-125	10	
Tungsten-181	10	
Material	**Microcurie**	
Tungsten-185	10	
Tungsten-187	100	
Uranium (natural)**		100
Uranium-233	0.01	
Uranium-234	0.01	
Uranium-235	0.01	
Vanadium-48	10	
Xenon-131m	1,000	

Xenon-133	100
Xenon-135	100
Ytterbium-175	100
Yttrium-90	10
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10
Any alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.01
Any radionuclide other than alpha emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition	0.1

* To convert μCi to kBq, multiply the μCi value by 37.

** Based on alpha disintegration rate of Th-232, Th-230 and their daughter products.

*** Based on alpha disintegration rate of U-238, U-234, and U-235.

NOTE: Where there is involved a combination of isotopes in known amounts, the limit for the combination should be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of such ratios for all the isotopes in the combination may not exceed “1” - that is, unity.

Historical Note

New Appendix E recodified from 12 A.A.C. 1, Article 4, Appendix E, effective March 22, 2018 (Supp. 18-1).

Statutory Authority for Rules in 9 A.A.C. 7, Article 4

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.**30-**

657. <u>Records</u>

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.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 12, Article 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 9, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 12, Article 1 & 2

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to seven (7) rules and one (1) table in Title 9, Chapter 12, Article 1 regarding Licensure Requirements for sober living homes and seven (7) rules in Article 2 regarding Sober Living Home Requirements. Specifically, these rules "establish minimum standards and requirements for the licensure of sober living homes . . . necessary to ensure the public health, safety, and welfare" pursuant to A.R.S. § 36-2062(A).

This is the first 5YRR for these rules since they were established by regular rulemaking which became effective on July 1, 2019.

Proposed Action

In the current report, the Department indicates some of the rules are not clear, concise, understandable, consistent, or effective in achieving their objectives as outlined in more detail below. As such, the Department is proposing to amend the rules to address these issues and anticipates submitting a final rulemaking to the Council by August 2025.

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

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

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

The Department indicates the functions and persons affected by the 2019 rulemaking remain the same as anticipated.

Stakeholders include the Department and sober living homes and their occupants.

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

The Department believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public and still achieve the regulatory objective.

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

The Department indicates it received no written criticisms of the rules in the last five years.

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

The Department indicates the rules are clear, concise, and understandable except for the following:

- R9-12-103
    - This Section and its heading could be clearer if it was clarified that this Section pertains to an initial application for licensure. This Section could also be improved by including that a license is valid for one year as per A.R.S. § 36-2662(B).
- R9-12-104
    - Subsection (A) indicates that a renewal application must be submitted at least 60 calendar days before the license expires. The rule needs to be clarified to say that the renewal application should be submitted "no more than" 60 days before the license expires.
- R9-12-106
    - Subsection (B)(1) could be improved by simplifying language to say that the Department will send written notice to the applicant specifying the documentation missing or the information that is not complete and a timeframe within which the applicant/licensee has to provide the missing documentation or information.

    - Subsection (B)(1)(c) could be improved by amending language to be clearer. Possible language that may be clearer: "The Department shall consider the application withdrawn if the applicant fails to supply the missing documents or information included in the notice in subsection (1)(a) within 60 calendar days after the date of the notice described in subsection (1)(a) or within a time period the applicant or licensee and the Department agree upon in writing."
    - Subsection (C) addresses the process during the substantive review of a licensing application. For clarity purposes, the Department proposes to reword this subsection to be clearer about the process, expectations, and if applicable, the process when the Department requests information.
- Table 1.1
    - For clarity purposes the Department proposes to amend the following: The table says "Type of approval" when it is actually the type of "application" is listed under this column; and adding the Section number that applies to "changes affecting a license, including modification," which is under R9-12-105. The Department also proposes to update the time-frames indicated on Table 1.1. Proposed updates are as described under #3 of this report (see R9-12-106). Furthermore, the proposed amendments to the time-frames will be more in line with other Department rules.
- R9-12-201
    - Subsection (B)(1)(b) indicates that a manager of a sober living home must be sober and have maintained sobriety for at least one year. For clarity, the Department is proposing to include that the licensee should obtain documentation verifying that the manager has maintained sobriety. Conforming amendments may also be added to subsection (H).
    - Subsection (G) could be improved if it clarified that the items listed in this subsection must be visible to visitors and residents. The Department also proposes to correct a spelling error: "manger" should be corrected to say "manager".
- R9-12-204
    - Subsection (A)(2) could be improved by clarifying that not only should the resident's record include the date of orientation, but the record should also include documentation that verifies that the resident received the facility's orientation. This may include a signed statement by the resident attesting to have received the facility's orientation.
- R9-12-205
    - This Section could be improved by clarifying that the services provided at a sober living home are reserved to individuals who have a residency agreement. This Section could be improved by adding that the licensee should maintain documentation of topics discussed at house meetings.
- R9-12-206
    - Subsection (1) could be improved by clarifying that in addition to a first aid kit being available at the sober living home, the manager shall ensure the first aid kit is accessible by residents.
- R9-12-207

- This Section may also be improved if the rules included the option of a commercial permitted kitchen for applicants wanting to operate a sober living home that serves a larger population and who intend to use a commercial permitted kitchen in the facility. Conforming amendments to other rules in this Article may also be needed to address this option. Additionally, this Section may be improved if the rules allowed more flexibility on the requirement of the resident to have access to the kitchen or cooking appliances.
- Subsection (6) should clarify that the temperature specified in this subsection includes all rooms within the sober living home. This subsection should include that if the bedroom has a separate heating or cooling system from the home, the temperature in the bedroom should also meet the temperature settings specified in rule if the resident does not have the option to control the temperature in the bedroom.
- Subsection (D)(1)(d) could be made clearer by adding that the pest control program the sober living home implements complies with A.A.C. R3-8-201(C)(4).

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

The Department indicates the rules are generally consistent with other rules and statutes except for rule R9-12-201(D), which addresses the suspicion of abuse or exploitation and reporting responsibilities. The Department proposes to add "neglect" to align the rule with A.R.S. § 46-454.

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

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- R9-12-103
  - Subsection (A)(1)(j) requests an attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes; however, to improve the effectiveness, this subsection needs to be updated to indicate that the applicant must provide verification that the applicant is in compliance with local zoning ordinances, building codes, and fire codes.
  - Subsection (A)(4) could be improved by adding that the applicant must include more details with the floor plan and site plan. For example, the floor plan should include each story of the residence, room layout and usage, window and door, exit, and location of fire protection device. For example, each site plan should include each facility, property line, street and walkway adjacent to the sober living home, parking, fencing, gate, and if applicable swimming pool.
  - Subsection (A) could be improved by including that an applicant must disclose any history of suspensions or revocations of a license or certificate in previous years, including this state or another state.
- R9-12-104

    - Subsection (A) could be improved by including that a licensee must disclose if any license or certificate has been suspended or revoked during the past licensing year.
- R9-12-105
    - To improve effectiveness of this Section, it should include that if applicable, a licensee must report a change if the status of the sober living home's certificate from a certifying organization has changed.
    - Subsection (A)(6)(a)(ii) and (iii) request a floor plan when there is a change to the number of residents allowed at the sober living home, or there is construction or modification to the sober living home. The floor plan should be consistent with the information that is being proposed as an amendment in R9-12-103(A)(4).
    - Subsection (B): To improve effectiveness this subsection needs to be updated and the requirement to notify the Department changed from "no more than 30 calendar days after the effective date of ..." to requiring the licensee to notify the Department "immediately" to report changes listed under this subsection.
    - Subsection (D): To improve effectiveness of this subsection, it should indicate that when reporting a change of ownership, the current licensee is responsible for the daily operations of the sober living home and prevent any interruptions of services required to sustain the life, health and safety of the residents while the licensee's current license is still in effect.
- R9-12-106
    - To improve effectiveness, the Department believes the time-frames in this Section should be updated to allow more time for administrative reviews and substantive reviews where needed and decrease time-frames where historically the current time-frame stated in rule has not been needed. Confirming changes are being proposed as described in #6 of this report under "Table 1.1."
- R9-12-107
    - To improve effectiveness in subsection (A), the Department proposes to add that the Department may also consider denying or revoking an application or license when the applicant or licensee has had an application or license denied or revoked in another state or jurisdiction.
- R9-12-201
    - Subsection (B)(1)(c): To improve effectiveness, instead of requiring a manager to reside on the premises, the requirement should be amended to indicate that a licensee may have a manager live on the premises and the licensee shall ensure that a manager or staff is always on the premises of the sober living home when a resident is also on the premises.
    - Subsection (B)(3): Effectiveness could be improved by adding that the licensee's policy and procedures should include how the licensee or manager responds to an incident and subsequently documents the incident.
    - Subsection (B)(3)(n)(ii): Effectiveness can be improved by adding that the licensee's policy and procedures include that the licensee or manager will ensure staff's training regarding naloxone is provided upon staff on-boarding, offers refresher training, and/or when the method of administration of the naloxone available at the sober living home changes. The Department also proposes to

make conforming changes to subsection (H)(4) to indicate that a personnel record should include the naloxone training received.
    - Subsection (E): Effectiveness of this subsection could be improved by adding that the manager shall not only notify the Department in writing of a resident's death, within one working day, but also notify the Department within two working days of any incidents of the resident's self-injury or other incidents requiring emergency medical services
    - Subsection (F): Effectiveness of this subsection could be improved by including the expectation that the licensee should also keep a vehicle maintenance log that includes all services and repairs of the vehicle used by the sober living home for the transportation of a resident; by adding that the licensee is required to have the vehicle used by the sober living home insured and registered; and that such vehicle should have a working air conditioner and heating system. The Department also proposes to remove "or arranges" as these proposed requirements cannot be imposed when using transportation services such as Uber, a taxi, public transportation, etc.
    - Subsection (H)(4): Effectiveness could be improved by adding that the personnel records should include that the staff are current with their cardiopulmonary resuscitation certification.
- R9-12-203
    - Subsection (A)(1) indicates that a manager must ensure that a resident is not subjected to what is listed in this subsection. This subsection can be improved by adding the following to this list: neglect, seclusion, restraint, misappropriation of personal and private property, denial of food, denial of the opportunity to sleep, and the denial of the opportunity to use the toilet.
- R9-12-207
    - Subsection (A)(5): Effectiveness could be improved by amending this subsection to allow more flexibility on the bathroom requirements and yet accomplishing the objective of the rule and ensure residents still have access to a bathroom.
    - Subsection (A)(9): Effectiveness could be improved by adding that the expectation is that the sober living home have a working telephone that is accessible for resident's use at all times. Conforming amendments will need to be made to R9-12-103(A)(1)(c) and R9-12-104(A)(1)(b).
    - Subsection (C)(7): Effectiveness could be improved by adding the expectation that the licensee also provides a bed frame, in addition to a clean mattress for a resident at the sober living home.

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

The Department indicates the rules are currently enforced as written.

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

The Department indicates there are no corresponding federal laws.

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

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 A.R.S. § 36-2062(E) states that a license is valid only for the premises and is not transferable. As such, the Department states a general permit is not applicable and is not used. The Department believes that under A.R.S. § 41-1037(A)(2) a general permit is not applicable as "[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute."

11. Conclusion

This 5YRR from the Department relates to seven (7) rules and one (1) table in Title 9, Chapter 12, Article 1 regarding Licensure Requirements for sober living homes and seven (7) rules in Article 2 regarding Sober Living Home Requirements. Specifically, these rules "establish minimum standards and requirements for the licensure of sober living homes . . . necessary to ensure the public health, safety, and welfare" pursuant to A.R.S. § 36-2062(A).

The Department indicates some of the rules are not clear, concise, understandable, consistent, or effective in achieving their objectives. As such, the Department is proposing to amend the rules to address these issues and anticipates submitting a final rulemaking to the Council by August 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT OF HEALTH SERVICES

July 29, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 12, Articles 1 and 2, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 12, Articles 1 and 2, which is due on or before July 31, 2024.

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

For questions about this Report, please contact Angie Trevino at angelica.trevino@azdhs.gov or (480) 589-0298.

Sincerely,

Stacie Gravito Digitally signed by Stacie Gravito
Date: 2024.07.29 12:42:14 -07'00'

Stacie Gravito
Director's Designee

SG:at

Enclosures

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 12. Sober Living Homes

Article 1. Licensure Requirements

Article 2. Sober Living Home Requirements

Due: July 31, 2024

Submitted: July 29, 2024

1. Authorization of the rule by existing statutes

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

Implementing statutes: A.R.S. §§ 36-2062, 36-2063, and 36-2064

2. The objective of each rule:

Article 1

Rule	Objective
R9-12-101. Definitions	The objective of this rule is to define terms used in Article 1 and 2 of this Chapter, allowing for consistent interpretation.
R9-12-102. Individuals to Act for Applicant or Licensee	The objective of this rule is to specify the criteria when an individual is signing an application or a document on behalf of the business organization or if it is an individual applying, then it's the individual applying signing an application.
R9-12-103. Application for a License	The objective of this rule is to detail the application requirements.
R9-12-104. License Renewal	The objective of this rule is to detail the requirements for a license renewal application.
R9-12-105. Changes Affecting a License	The objective of this rule is to detail the changes that affect the license that must be reported to the Department; and the Department's process when changes to the license are reported.
R9-12-106. Time-frames	The objective of this rule is to detail the time-frame requirements according to A.R.S. § 41-1072
R9-12-107. Denial, Revocation, or Suspension of a License	The objective of this rule is to list the actions the Department may take and specify the criteria the Department will consider when determining such action.

Table 1.1. Time-frames (in calendar days)	The objective of this table is to summarize the time-frame durations used by the Department when reviewing applications.

Article 2

Rule	Objective
R9-1-201. Administration	The objective of the rule is to establish minimum requirements of administrative responsibilities and guidelines for licensees overseeing sober living homes.
R9-1-202. Residency Agreements	The objective of the rule is to establish minimum requirements for accepting and retaining an individual to be a resident at the sober living home, the manager's responsibilities, and agreements for residency.
R9-1-203. Resident Rights	The objective of the rule is to establish minimum requirement for resident rights and the managers responsibilities pertaining to a resident's rights.
R9-12-204. Records	The objective of the rule is to establish minimum requirements for resident's records.
R9-12-205. Sober Living Home Services	The objective of the rule is to establish minimum services provided at a sober living home.
R9-12-206. Emergency and Safety Standards	The objective of the rule is to establish minimum emergency and safety standards relevant to the sober living home.
R9-12-207. Environmental and Physical Plan Requirements	The objective of the rule is to establish minimum environmental and physical plant standards.

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

Rule	Explanation
R9-12-103	Subsection (A)(1)(j) requests an attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes; however, to improve the effectiveness, this subsection needs to be updated to indicate that the applicant must provide verification that the applicant is in compliance with local zoning ordinances, building codes, and fire codes. Subsection (A)(4) could be improved by adding that the applicant must include more details with the floor plan and site plan. For example, the floor plan should include each story of the residence, room layout and usage, window and door, exit, and location of fire protection device. For example, each site plan should include

	each facility, property line, street and walkway adjacent to the sober living home, parking, fencing, gate, and if applicable swimming pool. Subsection (A) could be improved by including that an applicant must disclose any history of suspensions or revocations of a license or certificate in previous years, including this state or another state.
R9-12-104	Subsection (A) could be improved by including that a licensee must disclose if any license or certificate has been suspended or revoked during the past licensing year.
R9-12-105	To improve effectiveness of this Section, it should include that if applicable, a licensee must report a change if the status of the sober living home's certificate from a certifying organization has changed. Subsection (A)(6)(a)(ii) and (iii) request a floor plan when there is a change to the number of residents allowed at the sober living home, or there is construction or modification to the sober living home. The floor plan should be consistent with the information that is being proposed as an amendment in R9-12-103(A)(4). Subsection (B): To improve effectiveness this subsection needs to be updated and the requirement to notify the Department changed from "no more than 30 calendar days after the effective date of ..." to requiring the licensee to notify the Department "immediately" to report changes listed under this subsection. Subsection (D): To improve effectiveness of this subsection, it should indicate that when reporting a change of ownership, the current licensee is responsible for the daily operations of the sober living home and prevent any interruptions of services required to sustain the life, health and safety of the residents while the licensee's current license is still in effect.
R9-12-106	To improve effectiveness, the Department believes the time-frames in this Section should be updated to allow more time for administrative reviews and substantive reviews where needed and decrease time-frames where historically the current time-frame stated in rule has not been needed. Confirming changes are being proposed as described in #6 of this report under "Table 1.1."
R9-12-107	To improve effectiveness in subsection (A), the Department proposes to add that the Department may also consider denying or revoking an application or license when the applicant or licensee has had an application or license denied or revoked in another state or jurisdiction.
R9-12-201	Subsection (B)(1)(c): To improve effectiveness, instead of requiring a manager to reside on the premises, the requirement should be amended to indicate that a licensee may have a manager live on the premises and the licensee shall ensure that a manager or staff is always on the premises of the sober living home when a resident is also on the premises. Subsection (B)(3): Effectiveness could be improved by adding that the licensee's policy and procedures should include how the licensee or manager responds to an incident and subsequently documents the incident.

	Subsection (B)(3)(n)(ii): Effectiveness can be improved by adding that the licensee's policy and procedures include that the licensee or manager will ensure staff's training regarding naloxone is provided upon staff on-boarding, offers refresher training, and/or when the method of administration of the naloxone available at the sober living home changes. The Department also proposes to make conforming changes to subsection (H)(4) to indicate that a personnel record should include the naloxone training received. Subsection (E): Effectiveness of this subsection could be improved by adding that the manager shall not only notify the Department in writing of a resident's death, within one working day, but also notify the Department within two working days of any incidents of the resident's self-injury or other incidents requiring emergency medical services Subsection (F): Effectiveness of this subsection could be improved by including the expectation that the licensee should also keep a vehicle maintenance log that includes all services and repairs of the vehicle used by the sober living home for the transportation of a resident; by adding that the licensee is required to have the vehicle used by the sober living home insured and registered; and that such vehicle should have a working air conditioner and heating system. The Department also proposes to remove "or arranges" as these proposed requirements cannot be imposed when using transportation services such as Uber, a taxi, public transportation, etc. Subsection (H)(4): Effectiveness could be improved by adding that the personnel records should include that the staff are current with their cardiopulmonary resuscitation certification.
R9-12-203	Subsection (A)(1) indicates that a manager must ensure that a resident is not subjected to what is listed in this subsection. This subsection can be improved by adding the following to this list: neglect, seclusion, restraint, misappropriation of personal and private property, denial of food, denial of the opportunity to sleep, and the denial of the opportunity to use the toilet.
R9-12-207	Subsection (A)(5): Effectiveness could be improved by amending this subsection to allow more flexibility on the bathroom requirements and yet accomplishing the objective of the rule and ensure residents still have access to a bathroom. Subsection (A)(9): Effectiveness could be improved by adding that the expectation is that the sober living home have a working telephone that is accessible for resident's use at all times. Conforming amendments will need to be made to R9-12-103(A)(1)(c) and R9-12-104(A)(1)(b). Subsection (C)(7): Effectiveness could be improved by adding the expectation that the licensee also provides a bed frame, in addition to a clean mattress for a resident at the sober living home.

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

Rule	Explanation
R9-12-201	Subsection (D) addresses the suspicion of abuse or exploitation and reporting responsibilities. The Department proposes to add "neglect" to align the rule with A.R.S. § 46-454.

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

Rule	Explanation

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

Rule	Explanation
R9-12-103	This Section and its heading could be clearer if it was clarified that this Section pertains to an initial application for licensure. This Section could also be improved by including that a license is valid for one year as per A.R.S. § 36-2662(B).
R9-12-104	Subsection (A) indicates that a renewal application must be submitted at least 60 calendar days before the license expires. The rule needs to be clarified to say that the renewal application should be submitted "no more than" 60 days before the license expires.
R9-12-106	Subsection (B)(1) could be improved by simplifying language to say that the Department will send written notice to the applicant specifying the documentation missing or the information that is not complete and a timeframe within which the applicant/licensee has to provide the missing documentation or information. Subsection (B)(1)(c) could be improved by amending language to be clearer. Possible language that may be clearer: "The Department shall consider the application withdrawn if the applicant fails to supply the missing documents or information included in the notice in subsection (1)(a) within 60 calendar days after the date of the notice described in subsection (1)(a) or within a time period the applicant or licensee and the Department agree upon in writing." Subsection (C) addresses the process during the substantive review of a licensing application. For clarity purposes, the Department proposes to reword this subsection to be clearer about the process, expectations, and if applicable, the process when the Department requests information.

Table 1.1	For clarity purposes the Department proposes to amend the following: The table says "Type of approval" when it is actually the type of "application" is listed under this column; and adding the Section number that applies to "changes affecting a license, including modification," which is under R9-12-105. The Department also proposes to update the time-frames indicated on Table 1.1. Proposed updates are as described under #3 of this report (see R9-12-106). Furthermore, the proposed amendments to the time-frames will be more in line with other Department rules.
R9-12-201	Subsection (B)(1)(b) indicates that a manager of a sober living home must be sober and have maintained sobriety for at least one year. For clarity, the Department is proposing to include that the licensee should obtain documentation verifying that the manager has maintained sobriety. Conforming amendments may also be added to subsection (H). Subsection (G) could be improved if it clarified that the items listed in this subsection must be visible to visitors and residents. The Department also proposes to correct a spelling error: "manger" should be corrected to say "manager".
R9-12-204	Subsection (A)(2) could be improved by clarifying that not only should the resident's record include the date of orientation, but the record should also include documentation that verifies that the resident received the facility's orientation. This may include a signed statement by the resident attesting to have received the facility's orientation.
R9-12-205	This Section could be improved by clarifying that the services provided at a sober living home are reserved to individuals who have a residency agreement. This Section could be improved by adding that the licensee should maintain documentation of topics discussed at house meetings.
R9-12-206	Subsection (1) could be improved by clarifying that in addition to a first aid kit being available at the sober living home, the manager shall ensure the first aid kit is accessible by residents.
R9-12-207	This Section may also be improved if the rules included the option of a commercial permitted kitchen for applicants wanting to operate a sober living home that serves a larger population and who intend to use a commercial permitted kitchen in the facility. Conforming amendments to other rules in this Article may also be needed to address this option. Additionally, this Section may be improved if the rules allowed more flexibility on the requirement of the resident to have access to the kitchen or cooking appliances. Subsection (6) should clarify that the temperature specified in this subsection includes all rooms within the sober living home. This subsection should include that if the bedroom has a separate heating or cooling system from the home, the temperature in the bedroom should also meet the temperature settings specified in rule if the resident does not have the option to control the temperature in the bedroom. Subsection (D)(1)(d) could be made clearer by adding that the pest control program the sober living home implements complies with A.A.C. R3-8-201(C)(4).

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

Commenter	Comment	Agency's Response

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

A.R.S. § 36-2062(A) requires the Department of Health Services (Department) to "adopt rules to establish minimum standards and requirements for the licensure of sober living homes . . . necessary to ensure the public health, safety, and welfare." The statute also requires the inclusion of specific standards; the establishment of fees for initial licensure, license renewal, and late payment of licensing fees; and provisions for the Department's enforcement of licensing requirements. The Department has adopted rules for licensing sober living homes in Arizona Administrative Code Title 9, Chapter 12. The rules in this Chapter became effective on July 1, 2019.

An economic, small business, and consumer impact statement was completed in 2019. Persons affected by these rules remains the same as first reported in the 2019 economic, small business, and consumer impact statement.

Almost all requirements in the rules are tied directly to a specific statutory requirement. As such, costs imposed by and benefits derived from them are the result of the statutes, rather than the rules. The Department designated the following costs/revenues at the time of the 2019 rulemaking and remain the same: Annual costs/revenues are designated as minimal when more than $0 and $5,000 or less, moderate when between $5,000 and $20,000, and substantial when $20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

In the 2019, the Department reported that it anticipated to need 13 to 14 new FTEs to monitor the requirements of these rules costing the Department approximately $1,050,000.00 with an average salary of $55,000. The Department approximated that between 5-11 new surveyors were going to be needed. Currently, the Bureau of Behavioral Health Facilities Licensing is the program/unit responsible for enforcement of the rules in this Chapter. This bureau has one Bureau Chief; one Deputy Bureau Chief; four managers; 15 Licensing Surveyors; two vacant Licensing Surveyor positions that manage the licensing or certification of six licensing or certification types, of which sober living home licensing is

included. The functions as detailed in the 2019 economic, small business and consumer impact statement remain the same. Costs for the Department include salary plus overhead costs.

Thus far in calendar year 2024, the Department has received 95 initial applications, licensed 35 sober living homes, renewed 77 sober living home licenses, and processed 12 applications for changes to the license. Of these applications received, the Department denied: seven initial applications, zero renewal applications, and zero applications for changes. The Department also suspended or revoked 11 licenses, thus far in calendar year 2024. In Fiscal Year 2024, the Department also conducted 624 total inspections, which include 63 complaint investigations in response to complaints received.

The Department anticipates that many sober living homes will continue to incur a minimal cost for licensing, which may be offset by fees charged to residents. Similar costs and benefits would apply to a person planning to open a sober living home in Arizona.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

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

Not applicable. This is the first review of the rules in 9 A.A.C 12, Articles 1 and 2.

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 of Health Services (Department) believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public and still achieve the regulatory objective.

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

Federal laws are not applicable to the rules in 9 A.A.C. 12, Articles 1 and 2.

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

Because A.R.S. § 36-2062(E) states that a license is valid only for the premises and is not transferable, a general permit is not applicable and is not used. Therefore, Department believes that under A.R.S. § 41-1037(A)(2) that a general permit is not applicable.

14. Proposed course of action:

The Department of Health Services has reviewed the current rules and proposes to amend the rules to address the issues identified in this report. The Department proposes to submit final rulemaking to the Council by August 2025.

TITLE 9. DEPARTMENT OF HEALTH SERVICES

CHAPTER 12. SOBER LIVING HOMES

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

ARTICLE 1. LICENSURE REQUIREMENTS

New Article, consisting of Sections R9-12-101 through R9-12-107, and Table 1.1, made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

Section

ARTICLE 2. SOBER LIVING HOME REQUIREMENTS

New Article, consisting of Sections R9-12-201 through R9-12-207, made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

Section

CHAPTER 12. SOBER LIVING HOMES

ARTICLE 1. LICENSURE REQUIREMENTS

R9-12-101. Definitions

In addition to the definitions in A.R.S. § 36-2061, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" means:
   a. The same as in A.R.S. § 46-451;
   b. A pattern of ridiculing or demeaning a resident;
   c. Making derogatory remarks or verbally harassing a resident; or
   d. Threatening to inflict physical harm on a resident.
2. "Accept" or "acceptance" means an individual becomes a resident of a sober living home.
3. "Administrative completeness review time-frame" means the same as in A.R.S. § 41-1072.
4. "Applicant" means an individual or business organization requesting a license under R9-12-104 to open a sober living home.
5. "Application packet" means the forms, documents, and additional information the Department requires to be submitted by an applicant.
6. "Business organization" means the same as "entity" in A.R.S. § 10-140.
7. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
8. "Controlling person" means a person who, with respect to a business organization:
   a. Has the power to vote at least 10% of the outstanding voting securities of the business organization;
   b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
   c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
   d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
9. "Department" means the Arizona Department of Health Services.
10. "Documentation" means information in written, photographic, electronic, or other permanent form.
11. "Drug" has the same meaning as in A.R.S. § 32-1901.
12. "Exploitation" has the same meaning as in A.R.S. § 46-451.
13. "Facility" means the building or buildings used for operating a sober living home.
14. "Health care provider" means a:
   a. Physician, as defined in A.R.S. § 36-401;
   b. Registered nurse practitioner, as defined in A.R.S. § 32-1601; or
   c. Physician assistant, as defined in A.R.S. § 32-2501.
15. "Illicit drug" means:
   a. A substance listed in A.R.S. § 36-2512 as a schedule I controlled substance;
   b. A dangerous drug, as defined in A.R.S. § 13-3401, that is not an individual's prescription medication; or
   c. A prescription medication that is not an individual's prescription medication.
16. "Licensee" means the individual or business organization to which the Department has issued a license to operate a sober living home.
17. "Manager" means an individual designated by a licensee to:
   a. Act on behalf of the licensee in the onsite management of a sober living home; and
   b. Support and assist residents of the sober living home.
18. "Modification" means the substantial improvement, enlargement, reduction, alteration, or other substantial change in the facility or another structure on the premises at a sober living home.
19. "Over-the-counter drug" means the same as in A.R.S. § 32-1901.
20. "Overall time-frame" means the same as in A.R.S. § 41-1072.
21. "Premises" means:
   a. A facility; and
   b. The grounds surrounding the facility that are owned, leased, or controlled by the licensee, including other structures.
22. "Prescription medication" means the same as in A.R.S. § 32-1901.
23. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
24. "Resident" means an individual who is accepted by a licensee under the terms of a residency agreement with the individual to live at the licensee's sober living home.
25. "Resident's representative" means:
   a. An individual acting on behalf of a resident with the written consent of the resident, or
   b. The resident's legal guardian.
26. "Sober" or "sobriety" means that an individual is free of alcohol or drugs, except for a drug that is:
   a. Used as part of medication-assisted treatment,
   b. The individual's prescription medication, or
   c. An over-the-counter drug.
27. "Staff" means the employees or volunteers who provide monitoring or assistance to residents at a sober living home.
28. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
29. "Swimming pool" means the same as "private residential swimming pool" as defined in A.A.C. R18-5-201.
30. "Termination of residency" or "terminate residency" means an individual is no longer a resident of a sober living home.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-102. Individuals to Act for Applicant or Licensee

When an applicant or licensee is required by this Chapter to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual; and
2. If the applicant or licensee is a business organization, the individual who the business organization has designated to act on the business organization's behalf for purposes of this Chapter and who:
   a. Is a controlling person of the business organization,
   b. Is a U.S. citizen or legal resident, and

c. Has an Arizona address.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-103. Application for a License

A. An applicant shall submit to the Department a completed application packet to operate a sober living home that contains:
1. An application, in a Department-provided format, that includes:
   a. The applicant's name;
   b. The proposed name, if any, of the sober living home;
   c. The address and telephone number of the proposed sober living home;
   d. The applicant's address and telephone number, if different from the address or telephone number of the proposed sober living home;
   e. The applicant's e-mail address;
   f. The name and contact information of an individual acting on behalf of the applicant according to R9-12-102, if applicable;
   g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-12-106(C)(3);
   h. The maximum number of residents of the proposed sober living home;
   i. The name, telephone number, and e-mail address of the manager for the proposed sober living home;
   j. An attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes; and
   k. The applicant's signature and the date signed;
2. Documentation for the applicant that complies with A.R.S. § 41-1080;
3. If applicable, a copy of the applicant's current certificate as a sober living home from a certifying organization approved by the Director;
4. A floor plan for the proposed sober living home, including:
   a. The location and size of each resident bedroom, and
   b. The location of each openable window or door from a resident bedroom;
5. If the premises for the proposed sober living home are leased, documentation from the owner of the premises, in a Department-provided format, that the applicant has permission from the owner to operate a sober living home on the premises; and
6. A licensing fee of $500 plus $100 times the maximum number of residents of the proposed sober living home in subsection (A)(1)(h).

B. Upon receipt of the application packet in subsection (A), the Department shall issue or deny a license to an applicant as provided in R9-12-106.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-104. License Renewal

A. At least 60 calendar days before the expiration date indicated on a license to operate a sober living home, a licensee shall submit to the Department an application packet for renewal of the license that contains:
1. An application, in a Department-provided format, that includes:
   a. The applicant's name;
   b. The address and telephone number of the sober living home;
   c. The applicant's address and telephone number, if different from the address or telephone number of the sober living home;
   d. The applicant's e-mail address;
   e. The license number of the sober living home; and
   f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-12-106(C)(3);
2. If applicable, a copy of the licensee's current certificate as a sober living home from a certifying organization approved by the Director; and
3. Except as provided in subsection (B), a licensing fee of $500 plus $100 times the maximum number of residents approved for the sober living home during the current licensing period.

B. A licensee may submit to the Department the licensing fee in subsection (A)(3) with an additional late payment fee of $250 within 30 calendar days after the expiration date of the license as a sober living home.

C. The Department shall renew or deny renewal of a license to operate a sober living home as provided in R9-12-106.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-105. Changes Affecting a License

A. A licensee shall notify the Department in writing at least 30 calendar days before the effective date of:
1. Termination of operation of the sober living home, including the proposed termination date;
2. A change in the individual or business organization controlling the sober living home, including the name, address, telephone number, and e-mail address of the individual or business organization proposing to assume control of the sober living home;
3. A change in the address of the sober living home, including the new address for the sober living home;
4. A change in the name of the sober living home, including the new name of the sober living home;
5. If the licensee is an individual, a legal change of the licensee's name, including the new name of the licensee; or
6. A proposed change in the maximum number of residents in the sober living home or construction or modification of the facility, including:
   a. A floor plan for the sober living home showing:
      i. If applicable, the areas in which construction or modification of the facility will occur;
      ii. The location and size of each resident bedroom; and
      iii. The location of each openable window or door from a resident bedroom;
   b. For a proposed change in the maximum number of residents in the sober living home:
      i. The proposed new maximum number of residents in the sober living home; and
      ii. If the proposed new maximum number of residents in the sober living home is larger than the current maximum number of residents, a fee of $100 times the difference between the current maximum number of residents and the new maximum number of residents; and
   c. For construction or modification of the facility, an attestation that the construction or modification will

be in compliance with local zoning ordinances, building codes, and fire codes.

B. A licensee shall notify the Department in writing no more than 30 calendar days after the effective date of:
1. A change in the name or contact information of an individual acting on behalf of the licensee according to R9-12-102, including the name and contact information of the new individual acting on behalf of the licensee;
2. A change in the licensee's e-mail address, including the new e-mail address; or
3. A change in the manager of the sober living home, including the name, telephone number, and e-mail address of the new manager.

C. If the Department receives the notification of termination of operation in subsection (A)(1), the Department shall void the licensee's license to operate a sober living home as of the termination date specified by the licensee.

D. If the Department receives the notification in subsection (A)(2) of a change in the individual or business organization controlling the sober living home, the Department shall void the licensee's license to operate a sober living home upon issuance of a new license to operate a sober living home.

E. If the Department receives the notification in subsection (A)(3) of a change in the address of the sober living home, the Department shall review, according to R9-12-106, the licensee's application for a new license, submitted consistent with R9-12-103.

F. If the Department receives the notification of a change in the name of the sober living home in subsection (A)(4) or of the licensee in subsection (A)(5), the Department shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.

G. If the Department receives the notification in subsection (A)(6) of a proposed change in the maximum number of residents in the sober living home or of construction or modification of the facility, the Department:
1. May conduct an inspection of the premises as allowed by A.R.S. § 36-2063; and
2. Shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license if the sober living home is in compliance with A.R.S. Title 36, Chapter 18, Article 4 and this Chapter.

H. An individual or business organization planning to assume operation of an existing sober living home shall obtain a new license, as required in A.R.S. § 36-2062(E), before beginning operation of the sober living home.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-106. Time-frames

A. The overall time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1. The applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application packet.
1. The Department shall send a notice of administrative completeness or deficiencies to the applicant or licensee within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant or licensee.
   c. If an applicant or licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within 120 calendar days after the date that the Department sent the notice of deficiencies or within a time period the applicant or licensee and the Department agree upon in writing, the Department shall consider the application withdrawn.
2. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review of an application for a license, the Department may conduct an inspection according to A.R.S. § 36-2063 that may require more than one visit to complete.
2. The Department shall send a license or a written notice of denial of a license within the substantive review time-frame.
3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information.
   a. The Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies, stating each statute and rule upon which noncompliance is based, if the Department determines that an applicant or licensee, a sober living home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 18, Article 4 or this Chapter.
   b. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information or within a time period the applicant or licensee and the Department agree upon in writing.
   c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
   d. If an applicant or licensee fails to submit to the Department all of the information requested in a

comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(3)(b), the Department shall deny the application.

4. The Department shall issue a license if the Department determines that the applicant or licensee and the sober living home, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 18, Article 4, and this Chapter.
5. If the Department denies a license, the Department shall send to the applicant or licensee a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-107. Denial, Revocation, or Suspension of a License

A. The Department may deny an application or suspend or revoke a license to operate a sober living home if:
1. An applicant or licensee does not meet the application requirements contained in R9-12-103(A) or R9-12-104(A), as applicable;
2. A licensee does not comply with requirements in A.R.S. Title 36, Chapter 18, Article 4, or this Chapter;
3. A licensee does not correct the deficiencies according to the plan of correction specified in R9-12-201(J)(1) by the time stated in the plan of correction;
4. An applicant or licensee provides false or misleading information as part of an application; or
5. The nature or number of violations revealed by any type of inspection or investigation of a sober living home poses a direct risk to the life, health, or safety of a resident or another individual on the premises.

B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a resident in the sober living home based on:
1. Repeated violations of statutes or rules,
2. Pattern of violations,
3. Types of violation,
4. Severity of violation, and
5. Number of violations.

C. An applicant or licensee may appeal the Department's determination in subsection (A) according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

Table 1.1. Time-frames (in calendar days)

Type of approval	Statutory authority	Overall time-frame	Administrative completeness review time-frame	Substantive review time-frame
Application for a license under R9-12-103	A.R.S. § 36-2062	90	30	60
Renewal of a license under R9-12-104	A.R.S. § 36-2062	30	10	20
Changes affecting a license, including modifications	A.R.S. § 36-2062	60	30	30

Historical Note
Table 1.1 made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

ARTICLE 2. SOBER LIVING HOME REQUIREMENTS

R9-12-201. Administration

A. A licensee of a sober living home:
1. Has the authority and responsibility for the management of the sober living home, including when the licensee designates another individual or contracts with a person to accomplish an action or perform a service;
2. Shall establish, in writing, the scope of services to be provided by the sober living home;
3. Shall designate, in writing, an individual, who may be the licensee, as the manager of the sober living home; and
4. Shall ensure that the knowledge, skills, and experience of the manager and any other staff of the sober living home are sufficient to carry out the scope of services established according to subsection (A)(2).

B. A licensee shall ensure that:
1. A manager:
   a. Is at least 21 years of age;
   b. Is sober and has maintained sobriety for at least one year;
   c. Resides on the premises of only the one sober living home;
   d. Has documentation of current training in cardiopulmonary resuscitation; and
   e. Is directly accountable to the licensee for:
      i. The daily operation of the sober living home;
      ii. Enforcing all policies and procedures, house rules, and other requirements of the sober living home; and
      iii. All services provided by or at the sober living home;
2. Policies and procedures are established, documented, and implemented to:
   a. Prevent or address any concerns or complaints from individuals living in the surrounding neighborhood by:
      i. Identifying an individual for individuals living in the surrounding neighborhood to contact to discuss a concern;
      ii. Requiring the identified individual to respond to a concern or complaint, even if the issue cannot be resolved; and

iii. Ensuring that requirements for residents and visitors related to parking, noise emanating from the sober living home, smoking, cleanliness of the public space near the sober living home, and loitering in front of the sober living home or near-by homes are established, known to residents, and enforced; and

b. Promote the safety of the surrounding neighborhood, to comply with A.R.S. § 36-2062(A)(3); and

3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that cover:
   a. Recordkeeping;
   b. Resident acceptance;
   c. Resident rights;
   d. Orientation of a resident to:
      i. The premises of the sober living home,
      ii. The resident's rights and responsibilities,
      iii. The prohibition of the possession of alcohol or illicit drugs at the sober living home,
      iv. Services offered by or coordinated through the sober living home,
      v. Drug and alcohol testing practices, and
      vi. Expectations about food preparation and chores;
   e. Drug and alcohol testing conducted by an independent testing facility certified under 42 C.F.R. 493 for the sober living home and other assessments of sobriety, including:
      i. The frequency of testing or assessment, based on the residents accepted; and
      ii. The compounds included in the testing panel or, if applicable, an assessment methodology, based on the sober living home's scope of services and residents accepted;
   f. Allowing the acceptance and retention as a resident of an individual:
      i. Who is receiving and will continue to receive medication-assisted treatment;
      ii. Who has a co-occurring behavioral health issue, as defined in A.A.C. R9-10-101; or
      iii. If included in the scope of services established according to subsection (A)(2), has a co-occurring medical condition;
   g. House meetings, including:
      i. Frequency;
      ii. Typical duration; and
      iii. Participation requirements, if applicable;
   h. The provision of services, including:
      i. Facilitating peer support activities;
      ii. If applicable, providing other services on the premises to support sobriety or improve independent living;
      iii. If applicable, coordinating the provision of services to support sobriety provided by other persons; and
      iv. Referring a resident to other persons for the provision of services to support sobriety;
   i. Residents' records, including electronic records if applicable;
   j. The establishment, updating, and enforcement of house rules, including:
      i. If applicable, curfews;
      ii. Requirements related to chores, smoking, and visitors; and
      iii. Requirements for the storage, security, and use of a resident's prescription medications or over-the-counter drugs;
   k. Management of all monies received or spent by the sober living home, including:
      i. Accounting for monies received by residents;
      ii. Prohibiting a requirement for an individual or resident to sign a document relinquishing the resident's public assistance benefits, such as medical assistance, case assistance, or supplemental nutrition assistance program benefits, as a condition of residency; and
      iii. Providing copy of the record of the resident's account to the resident or the resident's representative upon request;
   l. Specific steps for:
      i. A resident to file a complaint,
      ii. The sober living home to respond to a resident's complaint, and
      iii. The prevention of retaliation against a resident who files a complaint;
   m. How the licensee or the manager will respond to:
      i. A resident's loss of sobriety; or
      ii. A resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
   n. The provision of naloxone, including requirements for:
      i. Informing the residents, the manager, and any other staff of the availability and location of the naloxone on the premises of the sober living home;
      ii. Providing training to the manager and any other staff on the correct use of naloxone; and
      iii. Ensuring the naloxone provided is available and not beyond the listed expiration date; and
   o. Termination of residency, including:
      i. Planning for termination of residency when the services provided by the sober living home are no longer needed by a resident, including assisting the resident to find other housing;
      ii. Coordinating the relocation of a resident to a health care institution or another sober living home if the resident needs services outside the scope of services provided by the sober living home;
      iii. Coordinating the relocation of a resident to another sober living home or other housing option if the resident terminates residency; and
      iv. Addressing factors that may negatively impact the surrounding neighborhood.

C. A licensee shall:
1. Not act as a patient's representative; and
2. Ensure that a manager, an employee, or a family member of a manager or employee does not act as a resident's representative.

D. If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse or exploitation of a resident has occurred on the premises, the manager shall:
1. If applicable, take immediate action to stop the suspected abuse or exploitation;
2. Immediately report the suspected abuse or exploitation of the resident according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse or exploitation,

b. Any action taken according to subsection (D)(1), and
c. The report in subsection (D)(2); and
4. Maintain the documentation in subsection (D)(3) for at least 12 months after the date of the report in subsection (D)(2).

E. A manager shall notify:
1. A resident's representative, family member, or other emergency contact designated by the resident according to R9-12-202(C)(2):
a. Within one calendar day after:
i. The resident's death, or
ii. The resident has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider; and
b. Within seven calendar days after the manager determines that a resident is:
i. Incapable of handling financial affairs, or
ii. Not complying with the residency agreement; and
2. The Department, in a Department-provided format, of a resident's death, within one working day after the resident's death, if the resident's death is required to be reported according to A.R.S. § 11-593.

F. If a sober living home provides or arranges transportation for residents, a manager shall ensure that the vehicle used for transportation:
1. Is in good working order, and
2. Has a seat belt for each occupant of the vehicle.

G. A manger shall ensure that the following are conspicuously posted in a sober living home:
1. The license of the sober living home;
2. The name and contact information for the individual or business organization controlling the sober living home; and
3. A statement of resident's rights, including:
a. The right to file a complaint about the manager or the sober living home,
b. How to file a complaint about the manager or the sober living home, and
c. The phone number for the unit in the Department responsible for licensing and monitoring the sober living home.

H. A licensee shall ensure that a personnel record is established for a manager and any other staff of a sober living home that includes the individual's:
1. Name;
2. Date of birth;
3. Contact telephone number; and
4. Documentation of:
a. Verification of skills and knowledge sufficient to carry out the sober living home's scope of services;
b. Training in the use of naloxone; and
c. If applicable:
i. Certification in cardiopulmonary resuscitation, and
ii. Compliance with subsection (B)(1)(b).

I. A licensee shall ensure that:
1. The manager or other staff of the sober living home is on the premises within 30 minutes after notification by the Department of the Department's presence at the sober living home; and
2. The Department is allowed immediate access to all:
a. Areas of the premises;
b. Information in records pertaining to the sober living home or residents, except as prohibited by 42 CFR, Part 2; and
c. Staff or residents of the sober living home who are on the premises.

J. If the Department notifies the licensee of noncompliance with requirements in A.R.S. Title 36, Chapter 18, Article 4, or this Chapter, the licensee shall:
1. Within 14 calendar days after the date of the Department's notice of noncompliance, establish a plan of correction, if applicable, for correction of a deficiency; and
2. Ensure that a deficiency listed on the plan of correction is corrected within 30 calendar days after the date of the plan of correction or within a time period the Department and the licensee agree upon in writing.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-202. Residency Agreements

A. Within three calendar days before or at the time of acceptance into a sober living home, an individual requesting to be a resident of the sober living home shall provide proof of sobriety to the manager of the sober living home.

B. A manager shall not accept or retain an individual as a resident of a sober living home if the individual:
1. Is not at least 18 years of age,
2. Cannot provide proof of sobriety, or
3. Needs more support to maintain sobriety than is within the scope of services for the sober living home.

C. Before or at the time of an individual's acceptance by a sober living home, a manager shall ensure that there is a documented residency agreement between the individual and the sober living home that includes:
1. The individual's name;
2. The name and phone number of an emergency point of contact, which may be a family member or another individual designated by the individual;
3. Information about the individual's:
a. Length of sobriety;
b. History of previous recovery activities; and
c. Source of referral to the sober living home, if applicable;
4. Terms of occupancy, including:
a. Date of occupancy or expected date of occupancy,
b. Resident responsibilities, and
c. Responsibilities of the sober living home;
5. The consequences of a loss of sobriety;
6. A description of the room for the individual to occupy;
7. A list of the services to be provided by the sober living home to a resident;
8. The fees to be charged to the individual for residency in the sober living home;
9. A list of the services available from the sober living home at an additional fee or charge and the associated fees or charges;
10. The policy for refunding fees, charges, or deposits;
11. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the residency agreement;
12. The policy and procedure for a sober living home to terminate residency;
13. A statement that a resident has a right to file a complaint about the sober living home, manager, or licensee and a description of the complaint process;

14. A statement that a resident is expected to:
    a. Comply with the terms of the residency agreement and requirements established for residents according to R9-12-201(B)(2)(a)(iii) or R9-12-201(B)(3)(j);
    b. Maintain sobriety; and
    c. Participate in activities to improve life skills, support independent living, and promote recovery:
        i. Such as a treatment program, a self-help group, or another program to support sobriety and recovery; and
        ii. That may include job training, school, or looking for a job;
15. A statement that a sober living home may not require an individual to relinquish the individual's public assistance benefits, such as medical assistance, case assistance, or supplemental nutrition assistance program benefits, as a condition of residency;
16. A statement that a sober living home must notify a family member or other emergency contact of the individual, according to R9-12-201(E)(1), if the individual:
    a. Dies while a resident of the sober living home,
    b. Has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider,
    c. Appears to be incapable of handling financial affairs, or
    d. Is not complying with the residency agreement;
17. The name and contact information for the individual or business organization controlling the sober living home;
18. The signature of the individual and the date signed; and
19. The manager's signature and date signed.

D. A manager shall:
1. Before or at the time of an individual's acceptance by a sober living home, provide to the resident or resident's representative a copy of:
    a. The residency agreement in subsection (C), and
    b. Resident's rights; and
2. Maintain the original of the residency agreement in subsection (C) in the resident's record.

E. A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in a sober living home;
2. With a seven-calendar-day written notice of termination of residency:
    a. For nonpayment of fees, charges, or deposit; or
    b. Under the conditions in subsection (B)(3); or
3. With a 14-calendar-day written notice of termination of residency, for any other reason.

F. A manager shall ensure that a written notice of termination of residency includes:
1. The date of notice;
2. The reason for termination of residency;
3. If termination of residency is because the resident needs more support to maintain sobriety than is within the scope of services for the sober living home, a description of why the sober living home cannot meet the resident's needs;
4. The policy for refunding fees, charges, or deposits; and
5. The deposition of a resident's fees, charges, and deposits.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-203. Resident Rights

A. A manager shall ensure that:
1. A resident is not subjected to:
    a. Abuse,
    b. Exploitation,
    c. Coercion,
    d. Manipulation,
    e. Sexual abuse,
    f. Sexual assault, or
    g. Retaliation for submitting a complaint to the Department or another entity; and
2. A resident or the resident's representative is informed of and given the opportunity to ask questions about:
    a. The residency agreement,
    b. The costs associated with residency,
    c. The resident's rights and responsibilities,
    d. The prohibition of the possession of alcohol or illicit drugs at the sober living home,
    e. Drug and alcohol testing and other assessments of sobriety,
    f. The consequences of loss of sobriety, and
    g. The complaint process.

B. A resident has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive services that support the resident's sobriety, including, if applicable, continuing to receive medication-assisted treatment while a resident;
3. To have a secure place to store personal belongings, medications, or other personal items to deter misappropriation by another individual;
4. To be able to gain access to the sober living home at any time while a resident;
5. To have access to all areas of the sober living home's premises, except for:
    a. The bedrooms and secure storage locations of other residents,
    b. The bedroom and secure storage locations of the manager or other staff, and
    c. Areas of the sober living home used as the manager's office or for storage of records or supplies for assessment of sobriety;
6. To have access to meals prepared in the sober living home;
7. To review, upon written request, the resident's own record; and
8. To receive assistance in locating another place to live if the resident's record indicates that the resident:
    a. No longer needs the services of a sober living home, or
    b. Needs more services and support to maintain sobriety than the sober living home is authorized to provide.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-204. Resident Records

A. A manager shall ensure that a resident record is established and maintained for each resident that includes:
1. The original of the residency agreement in R9-12-202(C);
2. The date the resident received orientation to the sober living home, as required by R9-12-205(A);
3. A copy of each drug and alcohol test performed on the resident by an independent testing facility, including the date of the test and the test result;

4. Any other assessments of sobriety performed on the resident, including:
   a. The date of the assessment,
   b. A description of the assessment,
   c. The result of the assessment, and
   d. The name of the individual conducting the assessment;
5. Documentation of the resident's attendance at and participation in treatment, self-help groups, and other supports that promote recovery, including:
   a. The name or a description of the support towards recovery, and
   b. The date of the resident's attendance;
6. A current list of medications taken by the resident and the resident's medical conditions;
7. An account of monies received from the resident and any expenditures made specific to the resident;
8. Documentation of any complaints made by or about the resident and the outcome of each complaint;
9. Documentation of any notification made according to R9-12-201(E) about the resident; and
10. If applicable, documentation related to termination of residency, including:
    a. Whether termination of residency was initiated by the resident or the sober living home,
    b. The reason for termination of residency,
    c. Any assistance the resident received in locating another place to live, and
    d. The date the residency ended.

B. A licensee shall ensure that a resident's record is:
1. Protected from loss, damage, or unauthorized use;
2. Available for review by the resident or the resident's representative, within 24 hours after a request; and
3. Maintained for at least 12 months after the termination of residency.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-205. Sober Living Home Services

A. Within 24 hours after an individual becomes a resident of a sober living home, a licensee shall ensure that the resident receives orientation to the sober living home and premises, according to policies and procedures, that includes:
1. The location of all exits from the sober living home and the route to evacuate the sober living home in case of an emergency;
2. The location of the first-aid kit required in R9-12-206(1);
3. The use of the kitchen of the sober living home, including:
   a. Operation of the appliances,
   b. Use of food storage areas, and
   c. Removal of garbage and refuse;
4. The use of the washing machine and dryer;
5. The dates, time, and location of house meetings;
6. The prohibition of the possession of alcohol or illicit drugs at the sober living home;
7. Review and discussion of specific resident requirements, as applicable, such as curfews, smoking, visitors, signing in or out of the sober living home, meal preparation schedule, chore schedule, or other house rules;
8. Review and discussion of requirements related to R9-12-201(B)(2)(a)(iii); and
9. The information required according to R9-12-201(B)(3)(n).

B. A manager shall:
1. Conduct drug and alcohol testing according to policies and procedures;
2. Assist a resident to identify and participate in programs to support sobriety and recovery;
3. Provide to a resident information about community resources, such as nearby bus routes, grocery stores, department stores, other places to obtain food or other personal items, schools, libraries or other locations providing access to computers, or other locations providing items or services a resident may need.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-206. Emergency and Safety Standards

A manager shall ensure that:
1. A first aid kit is available at a sober living home sufficient to meet the needs of residents;
2. Naloxone is available and accessible to the manager, staff, and residents of the sober living home;
3. A smoke detector and, if there is a gas line in the sober living home, a carbon monoxide detector are installed in:
   a. A bedroom used by a resident,
   b. A hallway in a sober living home, and
   c. A sober living home's kitchen;
4. The smoke detector and, if applicable, carbon monoxide detector in subsection (3) are:
   a. Either battery operated or, if hard-wired into the electrical system of the sober living home, have a back-up battery; and
   b. In working order;
5. A fire extinguisher that is labeled as rated at least 1A-10-BC by the Underwriters Laboratories:
   a. Is maintained in the sober living home's kitchen;
   b. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
   c. If a rechargeable fire extinguisher:
      i. Is serviced at least once every 12 months, and
      ii. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
6. An evacuation path is conspicuously posted on each hallway of each floor of the sober living home;
7. A written evacuation plan is maintained and available for use by the manager, any other staff of the sober living home, and any resident in a sober living home;
8. An evacuation drill is conducted at least once every six months; and
9. A record of an evacuation drill required in subsection (8) is maintained for at least 12 months after the date of the evacuation drill.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-207. Environmental and Physical Plant Requirements

A. A licensee shall ensure that a sober living home:
1. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may result in physical injury or illness to an individual or jeopardize the health or safety of a resident;
2. Has a kitchen for use by the manager and residents of the sober living home;
3. Has a living room accessible at all times to a resident;

4. Has a dining area furnished for group meals that is accessible to the manager, residents, and any other individuals present in the sober living home;
5. For each five residents of the sober living home, has at least one bathroom equipped with:
   a. A working toilet that flushes and has a seat;
   b. A sink with running water accessible for use by a resident; and
   c. A working bathtub or shower with a slip-resistant surface;
6. Has heating and cooling systems that maintain the sober living home at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
7. Has a supply of hot and cold water that is sufficient to meet the personal hygiene needs of residents and the cleaning requirements in this Article;
8. Has a working washing machine and dryer that is accessible to a resident; and
9. Has a working telephone that is accessible to a resident.

B. If the sober living home has a swimming pool, a licensee shall ensure that:
1. The swimming pool is equipped with the following:
   a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      i. A removable strainer,
      ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
      iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
   b. An operational cleaning system;
2. The swimming pool is enclosed by a wall or fence that:
   a. Is at least five feet in height as measured on the exterior of the wall or fence;
   b. Has no vertical openings greater that four inches across;
   c. Has no horizontal openings, except as described in subsection (B)(2)(e);
   d. Is not chain-link;
   e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
   f. Has a self-closing, self-latching gate that:
      i. Opens away from the swimming pool,
      ii. Has a latch located at least 54 inches from the ground, and
      iii. Is locked when the swimming pool is not in use; and
3. A life preserver or shepherd's crook is available and accessible in the swimming pool area.

C. A licensee shall ensure that:
1. A bedroom for use by a resident:
   a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
   b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
   c. Has at least one openable window or door to the outside for use as an emergency exit;
   d. Contains for each resident using the bedroom:
      i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair; and
      ii. Clean bedding appropriate for the season; and
   e. If used for:
      i. Single occupancy, contains at least 60 square feet of floor space; or
      ii. Two or more residents, has an area of at least 50 square feet per resident;
2. A mirror is available to a resident for grooming; and
3. Each resident has individual storage space available for personal possessions and clothing.

D. A manager shall ensure that:
1. A sober living home:
   a. Is maintained free of a condition or situation that may cause a resident or another individual to suffer physical injury;
   b. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
   c. Is clean and free from accumulations of dirt, garbage, and rubbish; and
   d. Implements a pest control program to minimize the presence of insects and vermin at the sober living home;
2. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the sober living home;
3. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the sober living home;
4. A resident does not share a bedroom with an individual who is not a resident;
5. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings;
6. A resident has a lockable or other secure storage location for medications, valuables, or other personal belongings to deter misappropriation by other individuals that is accessible only by the resident and the manager;
7. If pets or animals are allowed in the sober living home, pets or animals are:
   a. Controlled to prevent endangering the residents and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or cat, vaccinated against rabies;
8. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
   a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria;
   b. If necessary, corrective action is taken to ensure the water is safe to drink; and
   c. Documentation of testing is retained for at least 12 months after the date of the test; and
9. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants.

The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

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

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

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

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum,

hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for

consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

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

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply

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

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

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

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

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the

designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

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

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

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

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

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

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

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

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

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

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

R. For the purposes of this section:

1. "Cottage food product":

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

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

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

36-2062. Licensure; standards; civil penalties; inspections; use of title

A. The director shall adopt rules to establish minimum standards and requirements for the licensure of sober living homes in this state necessary to ensure the public health, safety and welfare. The director may use the current standards adopted by any

recognized national organization approved by the department as guidelines in prescribing the minimum standards and requirements under this subsection. The standards shall include:

1. A requirement that each sober living home to develop policies and procedures to allow individuals who are on medication-assisted treatment to continue to receive this treatment while living in the sober living home.

2. Consistent and fair practices for drug and alcohol testing, including frequency, that promote the residents' recovery.

3. Policies and procedures for the residence to maintain an environment that promotes the safety of the surrounding neighborhood and the community at large.

4. Policies and procedures for discharge planning of persons living in the residence that do not negatively impact the surrounding community.

5. A good neighbor policy to address neighborhood concerns and complaints.

6. A requirement that the operator of each sober living home have available for emergency personnel an up-to-date list of current medications and medical conditions of each person living in the home.

7. A policy that ensures residents are informed of all sober living home rules, residency requirements and resident agreements.

8. Policies and procedures for the management of all monies received and spent by the sober living home in accordance with standard accounting practices, including monies received from residents of the sober living home.

9. A requirement that each sober living home post a statement of resident rights that includes the right to file a complaint about the residence or provider and information about how to file a complaint.

10. Policies that promote recovery by requiring residents to participate in treatment, self-help groups or other recovery supports.

11. Policies requiring abstinence from alcohol and illicit drugs.

12. Procedures regarding the appropriate use and security of medication by a resident.

13. Policies regarding the maintenance of sober living homes, including the installation of functioning smoke detectors, carbon monoxide detectors and fire

extinguishers and compliance with local fire codes applicable to comparable dwellings occupied by single families.

14. Policies and procedures that prohibit a sober living home owner, employee or administrator from requiring a resident to sign any document for the purpose of relinquishing the resident's public assistance benefits, including medical assistance benefits, cash assistance and supplemental nutrition assistance program benefits.

15. Policies and procedures for managing complaints about sober living homes.

16. Requirements for the notification of a family member or other emergency contact designated by a resident under certain circumstances, including death due to an overdose.

B. The licensure of a sober living home under this article is for one year. A person operating a sober living home in this state that has failed to attain or maintain licensure of the sober living home shall pay a civil penalty of up to one thousand dollars for each violation.

C. To receive and maintain licensure, a sober living home must comply with all federal, state and local laws, including the Americans with disabilities act of 1990.

D. A treatment facility that is licensed by the department for the treatment of substance use disorders and that has one or more sober living homes on the same campus as the facility's program shall obtain licensure for each sober living home pursuant to this article.

E. Once the director adopts the minimum standards as required in subsection A of this section, a person may not establish, conduct or maintain in this state a sober living home unless that person holds a current and valid license issued by the department or is certified as prescribed in section 36-2064. The license is valid only for the establishment, operation and maintenance of the sober living home. The licensee may not:

1. Imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this article and the underlying rules for sober living homes.

2. Transfer or assign the license. A license is valid only for the premises occupied by the sober living home at the time of its issuance.

36-2063. Fees; licensure; inspections; complaints; investigation; civil penalty; sanctions

A. The department shall establish fees for initial licensure and license renewal and a fee for the late payment of licensing fees that includes a grace period. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the fees collected pursuant to this section in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section in the state general fund.

B. On a determination by the director that there is reasonable cause to believe a sober living home is not adhering to the licensing requirements of this article, the director and any duly designated employee or agent of the director may enter on and into the premises of any sober living home that is licensed or required to be licensed pursuant to this article at any reasonable time for the purpose of determining the state of compliance with this article, the rules adopted pursuant to this article and local fire ordinances or rules. Any application for licensure under this article constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the sober living home is not adhering to the licensing requirements established pursuant to this article, the director may take action authorized by this article. Any sober living home whose license has been suspended or revoked in accordance with this article is subject to inspection on application for relicensure or reinstatement of license.

C. The director may impose a civil penalty on a person that violates this article or the rules adopted pursuant to this article in an amount of not more than five hundred dollars for each violation. 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. If a person requests a hearing to appeal an assessment, the director may 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 for which the violation has been documented by the department.

D. The department may impose sanctions and commence disciplinary actions against a licensed sober living home, including revoking the license. A license may not be suspended or revoked under this article without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

E. The department may contract with a third party to assist the department with licensure and inspections.

36-2064. Certified sober living homes

A. Notwithstanding any other provision of this article, a sober living home in this state that is certified by a certifying organization may operate in this state and receive referrals pursuant to section 36-2065. A sober living home certification is in lieu of licensure until the sober living home is licensed. A certified sober living home shall apply to the department for licensure within ninety days after the department's initial licensure rules are final. The department shall notify the certifying organization when the department's initial licensure rules are final.

B. In lieu of an initial on-site licensure survey and any annual on-site survey, the department shall issue a license to a sober living home that submits an application prescribed by the department and that meets the following requirements:

1. Is currently certified as a sober living home by a certifying organization.

2. Meets all department licensure requirements.

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VIA EMAIL

Ms. Jessica Klein, Chair and ADAO General Counsel
Ms. Elizabeth Alvarado-Thorson, ADAO Director
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
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September 30, 2024

RE: October 1, 2024 Public Meeting of Governor's Regulatory Review Council (the "Council") - Consent Agenda Item No. 6, Department of Health Services, Title 9, Chapter 12, Articles 1 & 2, Sober Living Home Rules Five-Year Review Report (the "SLH Report") - Request to Remove from Consent Agenda and Request for Continuance

Dear Director Alvarado-Thorson, Chair Klein, and Members of GRRC:

On behalf of the Alliance of Recovery Residences, an Arizona non-profit corporation, we respectfully request that the Council remove the above-referenced Sober Living Home Rules Five-Year Review Report (the "SLH Report") from the October 1, 2024 consent agenda, take public comment at the October 1st hearing, and vote to return the SLH Report to the Arizona Department of Health Services ("ADHS") for non-compliance with A.R.S. § 41-1056(A). The SLH Report also demonstrates an attempt by ADHS to circumvent the legislative process by adopting new rules which were recently rejected by the Arizona Legislature during the 2024 session. Finally, the Alliance of Recovery Residences and sober living home stakeholders were not aware of this SLH Report until days before the October 1, 2024 Council hearing. Upon information and belief, no public notice regarding the SLH Report was provided on the ADHS website in advance of the hearing.

I. The Council's Authority to Return the SLH Report to ADHS.

Section R1-6-305 of A.A.C. authorizes the Council to vote to return, in whole or in part, a five-year review report after identifying the manner in which the report does not meet the standards of A.R.S. § 41-1056(A). If a report is returned, the Council must then schedule a deadline by which the agency shall submit a revised report, together with a letter responding to the Council's explanation for return of the five-year report and an explanation as to how the changes ensure that the report meets the standards in A.R.S. § 41-1056(A).

II. SLH Report Should be Returned to ADHS for Non-Compliance with Five-Year Review Report Requirements in A.R.S. § 41-1056(A).

The SLH Report fails to comply with the requirement in A.R.S. § 41-1056(A) as follows:

A. A.R.S. § 41-1056.A.2 - The SLH Report fails to include written criticisms of the rule received during the previous five years.

The SLH Report inaccurately states that ADHS has received no written criticisms of the rules in the last five years. For instance, in 2020, the Arizona Recovery Housing Association filed a HUD complaint against ADHS, challenging the good neighbor policies and procedures in A.A.C. § R9-12-201.B.2 and the licensing fee amounts set forth in A.A.C. § R9-12-103.A.6. The HUD complaint has resulted in an on-going Department of Justice investigation. *See* Exhibit "A" attached hereto.

We respectfully request that the SLH Report be returned to ADHS with direction to disclose all written criticisms of the rules received during the previous five years, including all written criticisms received in lawsuits and correspondence with ADHS staff.

B. A.R.S. § 41-1056.A.3 – The SLH Report fails to include an analysis of existing statutes that authorize ADHS's proposal of new rules.

The SLH Report fails to include an analysis of existing statutes that authorize ADHS's proposal of the new rules. For example, in A.A.C. R9-12-201, ADHS is proposing a new rule requiring the licensee to obtain documentation verifying that the sober living home manager has maintained sobriety for a year. ADHS has no statutory authority to impose this documentation requirement, and it is unclear what documentation or testing is available to provide such verification. Furthermore, requiring a year of sobriety as a condition of employment is discriminatory and violates Federal labor laws. The one-year sobriety requirement for sober living home managers in R9-12-201 should be repealed as unlawful.

We respectfully request that the SLH Report be returned to ADHS with direction to disclose statutes that authorize each of the proposed rules, and to analyze whether the existing or proposed rules violate the Fair Housing Act or Federal labor laws.

C. A.R.S. § 41-1056.A.12 – The SLH Report fails to identify corresponding federal laws and whether ADHS has statutory authority to exceed the requirements of that federal law.

The SLH Report inaccurately states that "ADHS indicates there are no corresponding federal laws" with regard to the sober living home rules. The disabled residents living in sober living homes are protected by the Fair Housing Act. We respectfully request that the SLH Report be returned to ADHS with direction to disclose the Fair Housing Act as a corresponding federal law and to analyze whether the existing rules or proposed rules exceed requirements of the Fair Housing Act.

III. SLH Report Attempts to Circumvent the Legislative Process by Recommending New Rules that were Rejected by the Arizona Legislature during the 2024 Session.

The SLH Report attempts to circumvent the legislative process by recommending new rules that were recently rejected by the Arizona Legislature during the 2024 Session. For instance, in A.A.C. R9-12-103(A)(1)(j), the existing rule requires that the applicant provide an attestation as part of its license application that the sober living home is in compliance with local zoning ordinances, building codes, and fire codes. ADHS is now proposing that a new rule be adopted requiring the applicant to provide verification (i.e. documentation) that the home is in compliance with local zoning ordinances and codes. This new verification requirement was recently proposed during the 2024 legislative session in House Bill 2317 and Senate Bill 1361, both of which failed to pass.

We respectfully request that the SLH Report be returned to ADHS with direction to disclose which of the proposed rules are similar to proposed statutory language from the failed HB 2317 and SB 1361, together with an analysis of the existing statutory authority that would allow ADHS to enact such rules.

Very truly yours,

/s/ Heather N. Dukes

Heather N. Dukes, Esq.
602.320.8866 | hdukes@dukeslawaz.com

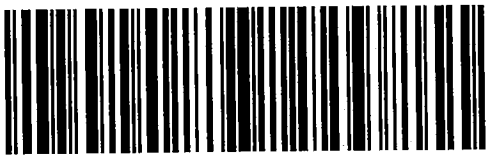
Enclosures

EXHIBIT A

RETURN RECEIPT REQUESTED ELECTRONICALLY

2960 Pelham Parkway #249
Birmingham AL 35124

USPS CERTIFIED MAIL



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HEMS
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IMPORTANT HUD NOTICE

ARIZONA RECOVERY HOUSING ASSOCIATION (AZRHA)
5101 N 17TH AVE
PHOENIX AZ 85015-3316

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity – Region IX
One Sansome Street, Suite 1200
San Francisco, CA 94104-4430
Voice: (800) 347-3739 TTY: (415) 489-6564
TTY: (415) 489-6564

March 20, 2020

Arizona Recovery Housing Association (AzRHA)
5101 N. 17th Ave.
Phoenix, AZ 85015

Dear Complainant:

Subject: Housing Discrimination Complaint
AzRHA v. State of Arizona
HUD File No.: 09-20-0081-8
Section 504 Case No.: 09-20-0081-4
ADA Case No.: 09-20-0081-D

Your complaint, alleging one or more discriminatory housing practices, was officially filed on March 19, 2020 as a complaint under the Federal Fair Housing Law, 42 U.S.C. Sections 3601-3619. For your records, we are enclosing a copy of your complaint, and, as required by law, a copy has been sent to the respondent(s).

The purpose of this letter is to inform you of: 1) the rights you have during the processing of this complaint, 2) the rights each respondent has in responding to this complaint, and 3) the steps the U.S. Department of Housing and Urban Development (the Department) will take to determine whether the complaint has merit.

Since a respondent organization is a recipient of federal financial assistance, the complaint has also been accepted and will be investigated by the Department under Section 504 of the Rehabilitation Act of 1973 as amended.

Section 504 states:

No otherwise qualified individual with handicaps in the United States... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Since a respondent is also a "public entity" as defined by Section 201 of the Americans with Disabilities Act (ADA), the complaint has also been accepted and will be investigated by the Department under Title II of the ADA as amended.

Title II states:

Subject to the provisions of this title, no qualified individual with disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.

In order to ensure that the Department informs you properly of the law's requirements, this notification letter contains language required by the law. A similar letter is used to notify all parties whenever a formal complaint has been filed with the Department under the Federal Fair Housing Law.

We are governed by federal law, which sets out what steps we must take when a formal complaint is filed. The law also includes steps that each respondent can take to answer or refute the allegations of this complaint.

Under federal law, a respondent can file an answer to this complaint or any amendment made to this complaint within 10 calendar days of receipt of the Department's notification letter to him or her. Each respondent's answer must be signed and affirmed that the response is truthful by including the statement "I declare under penalty of perjury that the foregoing is true and correct." A respondent can, with the agreement of the Department, amend his or her answer at any time during the investigation.

Our responsibility under the law is to undertake an impartial investigation and, at the same time, encourage all sides to reach an agreement, where appropriate, through conciliation. The law requires us to complete our investigation within 100 days of the date of the official filing of the complaint. If we are unable to meet the 100-day requirement for issuing a determination, the law requires that we notify you and the respondent(s) and explain the reasons why the investigation of the complaint is not completed. All evidence gathered during the investigation will become part of the investigative record.

In handling this complaint, we will conduct an impartial investigation of all claims that the Fair Housing Act has been violated. If the investigation indicates that there is no evidence establishing jurisdiction, the case will be dismissed. At any point, you can request that our staff assist you in conciliating (or settling) this complaint with the respondent(s). If the case is not resolved, we will complete our investigation and decide whether the evidence indicates that there has been a fair housing violation. If the parties involved have not reached an agreement to settle the complaint, the Department will issue a determination as to whether there is reasonable cause to believe a discriminatory housing practice has occurred.

If our investigation indicates that there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department may issue a charge. If the investigation indicates there is no reasonable cause to believe that discrimination has occurred, the complaint will be dismissed. In either event, you will be notified in writing.

If the determination is one of reasonable cause, the notification will advise you and the respondent(s) of your rights to choose, within 20 days, whether you wish to have the case heard

by an Administrative Law Judge, or to have the matter referred for trial in the appropriate U.S. District Court.

Under federal law, even if the Department dismisses the complaint, you still have the right to bring an individual suit under the Federal Fair Housing Law. You may file your lawsuit in an appropriate federal, state or local court within two years of the date of the alleged discriminatory practice or of the date when a conciliation agreement has been violated. The law does not count, as part of the two-year period, any of the time when a proceeding is pending with the Department. You also have the legal right to file a lawsuit in court, even if your complaint formed the basis for a charge, as long as an Administrative Law Judge has not started a hearing on the record with respect to the charge.

There may be other applicable federal, state or local statutes under which you and/or the respondent(s) may initiate court action. You may consult a private attorney in this regard.

The law also requires us to notify you that section 818 of the Fair Housing Act makes it unlawful for a respondent or anyone else to coerce, intimidate, threaten, or interfere with you in your exercise or enjoyment of, any right granted or protected under the Federal Fair Housing Law. The law also makes it illegal for anyone to coerce, threaten or interfere with you for your having aided or encouraged any other person in the exercise or enjoyment of, any right or protection granted to them under the Federal Fair Housing Law.

If you have any questions regarding this case, please contact Gregory Crespo, Los Angeles Enforcement Branch Chief at (213) 534-2554. Please refer to the case number at the top of this letter in those contacts, and keep this office advised of any change of your address or telephone number. We hope this information has been helpful to you.

Sincerely,

Anné Quesada
Regional Director
Office of Fair Housing and
Equal Opportunity

Enclosures

INVITATION TO CONCILIATION

Conciliation is a voluntary, non-binding and confidential process to help Complainant and Respondent achieve a resolution of the fair housing complaint accompanying this invitation. The Office of Fair Housing and Equal Opportunity (FHEO) is committed to working impartially with you to reach a settlement that may benefit everyone. A conciliated settlement is not an admission by a Respondent that the law has been violated, nor is it an admission by a Complainant that the complaint does not have merit. Conciliation is a way to resolve a dispute without the completion of a formal investigation.

The Conciliator is Impartial. The Conciliator is not a judge, or advocate, or there to advise anyone or decide anything. The Conciliator only helps persons create a resolution to the dispute.

A Settlement Agreement will be your agreement. It must meet your needs, the needs of other parties, as well as be in the public interest.

Conciliation requires Good Faith. This means keeping an open mind, being willing to listen, being flexible, and making a sincere effort to resolve the dispute. Good faith is needed from both Complainant and Respondent.

We encourage and invite your participation and commend your willingness to work with us to reach a conciliated settlement to this fair housing complaint.

CONCILIATION UNDER THE FAIR HOUSING ACT

HUD is *required*, from the time a Fair Housing Act complaint is filed, to give the parties a chance to reach a satisfactory settlement through conciliation.

Parties' Rights:

- Confidentiality. Nothing said or done during the course of conciliation can be used in a subsequent hearing or trial regarding the alleged violation.
- Legal Counsel. Attorneys may represent Parties.
- Voluntary Nature of Conciliation. Participation in conciliation is entirely voluntary. There is no penalty for declining to settle through conciliation.

Role of the HUD conciliator:

- is a neutral participant seeking to facilitate a mutually agreeable settlement;

- will inform the parties of their rights during conciliation;
- will inform the parties about the process, and help to structure negotiation arrangements in which the parties can have confidence;
- may provide interpretations of the Act to permit the parties to bargain from informed positions;
- may describe the evidence gathered up to that time, but only to permit the parties to bargain from informed positions;
- conveys offers between the parties;
- prepares the Conciliation Agreement;
- may describe the penalties for violations, but will not comment on the likelihood that they will be imposed; and
- will not discuss the probable outcome of the case.

Effect of Agreement. A formal conciliation agreement, which the Act requires to be in writing and approved by HUD, will terminate the complaint. It ends the Respondent's potential liability and the Complainant's right to pursue allegations that could be filed with HUD.

Nature of Agreement. The essential terms of the agreement will be those negotiated by the parties. The parties may agree to refer compensation matters to an arbitrator. The agreement will also include standard provisions in the public interest (for example, concerning monitoring and reporting).

HUD's Role. By approving the agreement, HUD acknowledges that its terms serve the public interest.

Role of the Department of Justice. The Justice Department will enforce the Conciliation Agreement in the event of a breach.

ORGANIZATIONAL DAMAGES WORKSHEET

NAME: _____

HUD INQUIRY NUMBER: _____

USE ADDITIONAL SHEETS IF NECESSARY.

Please provide information below so that we can better assess your damages and your standing to file. Your information will need to establish that you diverted resources in response to the discovery of discrimination, or that the respondent's conduct frustrated your mission in some manner. You do not have to return this worksheet with your signed complaint if the delay would be substantial. We will want this information at your earliest possible convenience.

A diversion cannot include litigation expenses or the filing of any sort of complaint with a court or government administrative agency.

Documentation of injury incurred resulting from frustration of mission includes expenses such as (for a fair housing education and training program) providing additional training to housing providers to counteract a known practice of the respondent's that is illegal under fair housing laws, (for a housing referral program) finding different referrals for housing when referral to the respondent was discovered to be futile, and (for a fair housing enforcement program) how your organization was impaired in its role of facilitating open housing.

In summary, you must be able to show how your organization did something different that it would not have otherwise done as part of your normal operating program as a result of the discovery of the allegedly discriminatory conduct.

If you have not already done so, please provide copies of all documents related to this claim, including any documents related to tests, investigation, or research. Testing documentation would include the testing reports, debriefing notes, tester instructions, and logs. These documents should also include any failed tests, negative tests, phone contacts, or any other contacts with the respondents or any other party related to the claim.

In order to calculate damages as well as assess the intangible nature of your efforts concerning this matter, please provide the following information.

1. What is the total dollar amount of your annual budget?

2. Please list the programs funded under your budget, giving dollar amounts expended in each program. Please state what dollar amounts were diverted from any of these programs to address the discrimination, which is addressed in the subject complaint.

3. What is your organization's mission? Where is any mission statement located (e.g., in articles of incorporation, or by-laws)? Please provide a copy of any mission statement, a citation of its source, and the date it was established.

4. Please list your instances of diversion of resources, stating for each item the names of personnel involved, the time spent, the dates this time was spent, the nature of the transaction, how this was related to addressing the discrimination in question if not already apparent, and the value in dollars of this diversion. Please be sure to address any of the following issues.

   a. Has the organization investigated the subject claim in any way? If so, please itemize dates, names of testers or investigators, their compensation, the time spent, and the nature of activities undertaken in the subject claim. Send all reports, notes, instructions, logs, or any other document related to this claim.

   b. Please state the salary, stipend, or other compensation for the test coordinator, other staff, and testers employed in the subject claim. In the case of salaries, please itemize the date, activities, and time spent by the employee on the subject claim.

   c. Please state whether you rent office space, and the monthly rental amount. Please also state how any of these items were involved in the subject claim.

   d. Please state what other facilities owned or rented by the organization were used in subject claim (e.g., vehicles, computers, office supplies, phones, etc.).

5. Please state whether the use of organizational resources was in response to a complaint filed in your office by an aggrieved person who is not a member of your staff. If so, please provide name, contact information, nature of allegations, and dates of transactions for this complainant. This may be contained in a log maintained for this claim.

6. If this discrimination was discovered through an audit of real estate, please describe how your diversion of resources in this case was outside of your normal operating procedures. What did you do in this case that you were not already planning on doing in your audit program? Please be sure to address the following issues.

   a. To what issue of discrimination presented in your community does this audit respond? How and when did you become aware of this practice? Please identify and give contact information for the persons involved in establishing the need for this audit.

   b. How were the properties selected, and what methodology was employed so that the issue of discrimination presented in your community was addressed?

7. If discrimination was discovered through means other than from an aggrieved person who is not a member of your staff, or through an audit, please describe how this occurred.

8. Has the organization contacted the respondent(s) for any reason (e.g., to attempt resolution, interview, notify that discrimination appears to exist, etc.)? If so, please

itemize dates, names of staff involved, their compensation, the time spent, and the nature of activities undertaken in the subject claim.

9. Itemize any research undertaken to discover the ownership of the property, the identity of the designers or constructors of the property in design and construction cases, or any other research other than through the use of testers or investigators. Please give the dates, the time spent, the personnel involved, the nature of the research, and the results.

10. Please describe, if applicable, how the respondent's actions have frustrated any program you administer. Please provide an itemized list of what efforts you undertook to remedy this frustration. Include any training sessions or advertising campaigns undertaken to advise the community that the actions such as those taken by the respondent are discriminatory. Also describe how any clients (including any clients other than those complaining about the respondent's practices) of yours have been unable to receive benefits in any of your programs due to the frustration of that program by the respondent's actions.

11. If not already addressed above, please list any other items of diversion of resources or frustration of mission related to the subject claim by date, time spent, name of personnel responsible, their position in the organization, the nature of the transaction, and why this may have been necessary to undertake to address the discrimination (if such is not already apparent).

Please be aware that a line of federal cases establishes the issues concerning the standing and nature of damages of organizations filing under the federal Fair Housing Act. This Worksheet is designed to collect information, which may be relevant to the determination of standing and damages in light of these cases. If you would like more information about these cases, they are listed below with citations to official reports and to paragraph numbers in Fair Housing-Fair Lending (Aspen Publishers).

Fair Housing of Marin v. Jack Combs, 285 F.3d 899 (9th Cir. April 9, 2002) ¶16,602

Inland Mediation Board v. City of Pomona, et al., 158 F.Supp.2d 1120 (CD Cal 2001)

Central Alabama Fair Housing Center, Inc. v. Lowder Realty Co., Inc, 236 F.3rd 629, 2000 U.S. App. LEXIS 33525 (11th Cir 2000) ¶2.4 (Feb. 2001 FH-FL Bulletin)

Fair Housing of Marin v. Combs, No C 97-1247 MJJ (ND Cal 3-29-2000) ¶16,430

Alexander v. Riga, 208 F.3rd 419 (3rd Cir. 2000)

Project Sentinel v. Evergreen Ridge, 40 F.Supp.2d 1136 (N.D. Cal. 1999) ¶16,324

United States v. Rock Springs Vista Development Corp., 1999 WL 1491621 (D. Nev. 1999)

Fair Housing Council v. Montgomery Newspapers, 141 F.3d 71 (3d Cir 1998) ¶16,275

Fair Housing Council v. Main Line Times, 141 F.3rd 439 (3d Cir 1998) ¶16,276

Fair Housing Council v. Mercury Newspapers, 141 F.3d 71 (E.D. Pa. 1998) ¶16,326

Fair Housing Council v. Mercury Newspapers, (unpublished) (E.D. Pa. 1999) ¶16,327

Arkansas ACORN Fair Housing, Inc. v. Greystone Dev't, Ltd., 160 F.3rd 433 (8th Cir 1998) ¶16,315

Ragin v. Harry Macklowe Real Estate, (2d Cir 1993) 6 F.3d 898, 905, ¶15,865

Hooker v. Weathers, (6th Cir 1993) 990 F.2d 913, 915, ¶15,831

City of Chicago v. Matchmaker, (7th Cir 1992) 982 F.2d 1086, ¶15,810

City of Bellwood v. Dwivedi, 895 F.2d 1521 (7th Cir 1990) ¶15,626

Havens Realty v. Coleman, 455 U.S. 363 (1982)

Baker v. Carr, 369 U.S. 186, 204 (1962)

cc: Steve G. Polin
The Law Offices of Steven G. Polin
3034 Tennyson St. N.W.
Washington, DC 20015

Housing Discrimination Complaint

Case Number: 09-20-0081-8

1. Complainants:

Arizona Recovery Housing Association (AzRHA)
5101 N. 17th Ave.
Phoenix, AZ 85015

2. Complainant Representatives:

Steve G. Polin
The Law Offices of Steven G. Polin
3034 Tennyson St. N.W.
Washington, DC 20015

3. Other Aggrieved Parties:

4. The following is alleged to have occurred or is about to occur:

- Otherwise deny or make housing unavailable
- Discriminatory acts under Section 818 (coercion, Etc.)
- Failure to make reasonable accommodation

5. The alleged violation occurred because of:

- Handicap

6. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Properties located in Arizona
Phoenix, et. al., AZ

7. **Respondents:**

State of Arizona
c/o Arizona Attorney General's Office
2005 N. Central Ave.
Phoenix, AZ 85004-2926

8. **The following is a brief and concise statement of the facts regarding the alleged violation:**

The complainant is the Arizona Recovery Housing Association (AzRHA), whose mission includes supporting and advocating for members who run housing programs for disabled persons related to substance abuse that do not provide treatment. The respondent is the State of Arizona.

The respondent has enacted a statute that regulates operators of housing programs for disabled persons related to substance abuse that do not provide treatment by imposing on these operations greater licensing fees and imposing fees and conditions that are disparately greater than the fees and conditions imposed on assisted living facilities or other providers of housing for the disabled that provide treatment, medical and personal care services along with housing.

The licensing purpose is stated to be to protect the welfare of the sober living house residents. However, no complaints have ever been filed for such misconduct, and the sober living houses that only provide a place to live and do not provide medical care, food, personal care, medication assistance, or treatment as assisted living facilities typically provide do not warrant this level of regulation.

The licensing requirements include that there be a house manager, this manager have CPR resuscitation training, the manager resides at only one sober living home, there is a complaint procedure (including those from the neighborhood) that must document the complaints, complaints records must be kept to establish the responses the sober living home operator has made on the complaints, that the house has addressed any problems related to insuring to the requirements for residents and visitors related to parking or noise emanating from the home, cleanliness of the public space near the home, loitering in front of the home or nearby homes, and that these rules have to be known to the residents and enforced. These conduct requirements are based upon stereotypical characteristics of sober living house residents not based on objective data, and are commonly produced as the nature of the objections to the location of sober living homes in neighborhoods opposed to use permits for these facilities.

The respondent imposed a flat licensing fee of $500 per house plus an additional fee of $100 per bed for housing-only facilities for those with substance abuse issues, which are typically 10 beds or less. For a ten-bed recovery housing facility the fee would be

$500 plus ($100 x 10 [beds]) or $1500. Assisted living facilities that provide treatment have a flat licensing fee of $280 plus $70 for each bed. This means for a ten-bed assisted living facility the fees would be $280 + ($70 x 10 [beds]) = ($280 + $700) = $980. This $520 difference in fees is an unreasonable and unnecessary barrier to the operation of housing programs for disabled persons related to substance abuse that do not provide treatment.

AzRHA requested a reasonable accommodation of the waiver of the fees. This request was denied.

On March 9, 2020, an agent of the complainant was approached by Amber Norman, Arizona Department of Health Services staff member and told that they would have to either pay the licensing fee required by the statute by March 18, 2020 or be fined $1000/day and be subject to a cease and desist order.

9. The most recent date on which the alleged discrimination occurred:

March 09, 2020, and is continuing.

10. Types of Federal Funding Identified:

- CDBG

11. The acts alleged in this complaint, if proven, may constitute a violation of the following sections:

804a, 818, and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Section 504 of the Rehabilitation Act of 1973
Americans with Disabilities Act of 1990

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

[signature] 03/18/20

DUANE MANLEY
TRIBAL BOARD CHAIR

Date

N O T E : HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 11, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16, Article 6

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers twenty-four (24) rules and one (1) Table in Title 9, Chapter 16, Article 6 related to Radiation Technologists. Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department replaced the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in assuming responsibility for regulating radiation technologists. The rules in this Article implement the statutory regulations assumed by the Department.

This is the first 5YRR since the rules were implemented in August of 2019.

Proposed Action

The Department anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by February 2025.

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

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

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

The rules govern the training and certification of Radiation Technologists. Stakeholders include the Department, Radiation Technologists, training providers and the general public. The Department indicates that under these rules it has approved 24 educational programs. It goes on to state, as of June 7, 204 there were 11,317 individuals with active certification as radiation technologists in Arizona, with another approximately 96 with inactive certificates. The Department has reviewed the rules and believes the economic impacts was as estimated. The Department indicates that in some cases the adoption of the new rules was believed to reduce confusion on the part of regulated persons and to decrease their administrative burden. The Department also indicates that the adoption of some rules was to update incorporations by reference to the current national standards, make the rules consistent with statutes, and correct typographical error. The Department believes that these changes did not increase the cost of regulatory compliance, did not increase a fee or reduce a procedural right of regulated persons, and either adopted or incorporated by reference, without material change, federal statutes and regulations, or clarified language of a rule without changing its effect.

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

The Department states that the individuals regulated under these rules apply radiation to patients to assist in the diagnosis or treatment of injury or disease. The Department believes that the substantive content of the rules is the minimum necessary to protect the health and safety of these patients, the radiation technologists, and the general public. Thus, the Department indicates, the probable benefits of the rules outweigh the probable costs of the rules. The Department states that since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

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

The Department has not received written criticism of the rules in the past five years.

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

The Department indicates the rules are not clear, concise, and understandable and would be made so with the following amendments:

- Because the licensing management system is online, all references to "application packet" should be amended to "application".
- R9-16-607, R9-16-609, R9-16-612, R9-16-615, R9-16-617: the word "an" should be corrected to "any".
- R9-16-622: requirements for name changes should be updated
- R9-16-624: title and body of the rule should use the same terms and a correction plan should be added for deficient certificate holders

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

The Department indicates the rules are not consistent and would be made so with the following amendments:

- R9-16-618: cross references and acronyms should be updated
- R9-16-624: citations should be updated

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

The Department indicates the rules are generally effective in achieving their objectives with the following exceptions:

- R9-16-603, R9-16-604, R9-16-605, R9-16-608, R9-16-610, R9-16-613, and R9-16-616: practice standards should be updated to the most current version
- R9-16-622 and R9-16-623: requirements for duplicates certificates should be amended

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

The Department states the rules are enforced as written.

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

The Department indicates that the rules related to mammography are not more stringent than corresponding federal law. All other rules are based on state statutes.

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

The Department indicates that all rules in this Article relate to different aspects of licensing and a general permit is used.

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers twenty-four rules and one Table in Title 9, Chapter 16, Article 6 related to Radiation Technologists. As indicated above the Department indicates the rules are generally effective in achieving their objectives and enforced as written. The Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT OF HEALTH SERVICES

June 13, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 16, Article 6, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 16, Article 6, which is due on or before August 30, 2024.

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

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 16. Department of Health Services

Occupational Licensing

Article 6. Radiation Technologists

July 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 32-2803 and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 32-2803, 32-2804, 32-2811 through 32-2819, 32-2821, 32-2824 and 36-2841 through 32-2843

2. The objective of each rule:

Rule	Objective
R9-16-601	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-16-602	To specify requirements for Department approval of educational programs.
R9-16-603	To specify eligibility and scope of practice for practical technologists in radiology.
R9-16-604	To specify eligibility and scope of practice for practical technologists in podiatry.
R9-16-605	To specify eligibility and scope of practice for practical technologists in bone densitometry.
R9-16-606	To specify the process for requesting to take a Department-approved examination as a prerequisite for licensing as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry.
R9-16-607	To specify the process for applying for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry.
R9-16-608	To specify eligibility and scope of practice for radiologic technologists, nuclear medicine technologists, and radiation therapy technologists.
R9-16-609	To specify the process for applying for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist.
R9-16-610	To specify eligibility and scope of practice for mammographic technologists.
R9-16-611	To specify requirements for obtaining a student mammography permit.
R9-16-612	To specify the process for applying for initial certification as a mammographic technologist.
R9-16-613	To specify eligibility and scope of practice for computed tomography technologist.
R9-16-614	To specify requirements for obtaining a computed tomography technologist preceptorship or a temporary certification in computed tomography.
R9-16-615	To specify the process for applying for initial certification as a computed tomography technologist.
R9-16-616	To specify eligibility and scope of practice for radiologist assistants.

R9-16-617	To specify the process for applying for initial certification as a radiologist assistant.
R9-16-618	To specify requirements for special permits under A.R.S. § 32-2814.
R9-16-619	To specify the information and documentation required as part of an initial application under this Article.
R9-16-620	To specify requirements for renewal of certification.
R9-16-621	To specify requirements for reviewing applications and issuing an approval or denial.
Table 16.1	To specify the timeframes for reviewing applications and issuing an approval or denial.
R9-16-622	To require notification of a certificate holder's change of address, email address, name, or employer. To specify the process for obtaining a duplicate certificate or to transfer to inactive or retirement status.
R9-16-623	To specify the fees applicable to different certificates for late renewal, and for duplicate certificates, as well as when submission of a fee is not required.
R9-16-624	To specify what enforcement actions the Department may take and what the Department would consider when determining what action to take. To provide notice that a certificate holder or permittee may appeal a disciplinary action.

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

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

Rule	Explanation
R9-16-603, R9-16-604, R9-16-605, R9-16-608, R9-16-610, R9-16-613, and R9-16-616	The rules would be more effective if the incorporated 2019 practice standards were updated to the corresponding 2023 national practice standards.
R9-16-622 and R9-16-623	Since the certification of radiation technologists is now part of the Department's Licensing Management System, certificate holders can now print their own duplicate certificates, but not if the certificate is being revised. Therefore, the rules would be more effective and less burdensome if requirements related to duplicate certificates were removed from the rules and replaced with the more accurate reference to a revised certificate.

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

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

Rule	Explanation
R9-16-618	The cross-references in subsection (A)(2)(a) are not accurate. While "Arizona medically underserved area" and "health professional shortage area" are included in A.A.C. R9-15-101, their acronyms, "AzMUA" and "HPSA," are the terms defined in the rule.
R9-16-624	The statutory citations in subsection (A) are incorrect and should be changed to A.R.S. § 32-2821 and A.R.S. § 32-2825.

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

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

Rule	Explanation

6. Are the rules clear, concise, and understandable? Yes ___ No _X_

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

Rule	Explanation
Multiple	Since the certification of radiation technologists is now part of the Department's Licensing Management System, applications are now on-line, so there is only an "application" not an "application packet." Therefore, the rules would be clearer if the term were changed in rule.
R9-16-607, R9-16-609, R9-16-612, R9-16-615, R9-16-617	The rule would be more understandable if the "an" were corrected to "any" in subsection (B)(3)(d) of R9-16-607, subsection (B)(3)(d) of R9-16-609, subsection (B)(3)(d) of R9-16-612, subsection (B)(3)(d) of R9-17-615, and subsection (B)(3)(d) of R9-17-617.
R9-16-622	Since notification of a name change in subsection (A)(2) also requires documentation establishing the validity of a new name on a certificate, the rule would be clearer if more explicit requirements were included for this type of notification, which requires the issuance of a revised certificate, as is the current practice.
R9-16-624	The rule would be more understandable if the title and the body of the rule used the same term - "enforcement" or "disciplinary action." In addition, the rules would be clearer and less burdensome if the submission of a plan of correction were included as an option for a certificate holder for some deficiencies not affecting patient safety, in lieu of revocation or suspension, consistent with current practice.

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

If yes, please fill out the table below:

Rule	Explanation
	Have you received any written criticisms of these rules (outside the rulemaking process)?

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

Under these rules, the Department has approved 24 educational programs. As of June 7, 2024, there were 11,317 individuals with active certification as radiation technologists in Arizona, with another approximately 96 with inactive certificates. Of the individuals with active certificates, 7,623 individuals were certified as radiologic technologists, with 759 of these individuals further certified as mammographic technologists and 2,180 further certified as computed tomography technologists. There were 657 individuals with active certification as radiation therapy technologists, 644 individuals certified as nuclear medicine technologists, 423 individuals certified as practical technologists in radiology, seven individuals certified as practical technologists in bone densitometry, 49

individuals certified as practical technologists in podiatry, one individual certified as unlimited practical technologists in radiology, and 27 individuals certified as radiologist assistants. Since 2023, the Department has received 2,543 applications for radiation technologists:1,593 applications for radiologic technologists; 116 applications for mammographic technologists; 423 applications for computed tomography technologists; 85 applications for practical technologists in radiology; two applications for practical technologists in bone densitometry; and 11 applications for practical technologists in podiatry. There were 24 applications for an inactive certification. Since the last rulemaking, one application was denied in 2022, two certificates were suspended in 2023, and one certificate was revoked in 2024.

These rules were first adopted under expedited rulemaking, effective August 27, 2019, from rules that had been in 12 A.A.C. 2, as part of the transition for the Department assuming responsibility for regulating radiation technologists. Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department replaced the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in these duties. Thirteen of the 25 rules created in the 2019 rulemaking have not been revised since adoption. The rules that had been in 12 A.A.C. 2 did not refer to the Department as the agency responsible for regulating radiation technologists, were inconsistent with statutory requirements, and were formatted in a way that was difficult to understand. The adoption of the new rules was believed to reduce confusion on the part of regulated persons and to decrease their administrative burden. The Department believes that these changes are still consistent with the purpose for A.R.S. § 41-1027.

Two rules, R9-16-614 and R9-16-623, were revised in a regular rulemaking effective April 25, 2020. An EIS is available for this rulemaking, which was undertaken to increase fees to cover the expenses incurred by the Department in carrying out the regulation of radiation technologists, including the addition of fees for applications for computed tomography preceptor certificates and computed tomography temporary certificates. As stated in the EIS, annual costs/revenues changes were designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. The EIS stated that the Department would receive a substantial benefit from the fee increase, enabling it to avoid the reduction in regulatory oversight, which might result in harm to the health and safety of the public, as well as causing a burden on the regulated community. Businesses employing radiation technologists, which include hospitals, some clinics, and medical imaging facilities, were thought to receive a significant benefit from the fee changes through the continuance of external monitoring by the Department of the competency of these employees or potential employees. If one of these entities pays for or subsidizes the cost of licensing/certification for their employees, the fee increase might also cause the entity to incur a minimal cost increase. An applicant or certificate holder was estimated to incur a minimal increased cost for certification of $40 for a two-year certification due to the fee increase. Adding fees for computed tomography preceptor certificates and computed tomography temporary certificates was also estimated to cause individuals wanting to gain experience towards certification as a computed tomography technologist without taking a separate examination in computed

tomography to incur a minimal cost increase. However, the new rules also made clear under what circumstances, specified in A.R.S. § 41-1080.01, the application fee for initial certification would be waived by the Department and, thus, provide a minimal benefit to students currently in occupational programs related to radiologic technology who meet the criteria for waiver. The general public was believed to receive a significant benefit due to knowing that only qualified and competent individuals are certified to provide radiologic technology. The Department believes the economic impact is as estimated.

Ten rules were revised in an expedited rulemaking effective November 2, 2022, to update incorporations by reference to the current national standards, make the rules consistent with statutes, and correct a typographical error. In keeping with the requirements for expedited rulemaking, the Department believed that these changes did not increase the cost of regulatory compliance, did not increase a fee or reduce a procedural right of regulated persons, and either adopted or incorporated by reference, without material change, federal statutes and regulations, or clarified language of a rule without changing its effect. The Department believes these considerations are still true.

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

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

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

This is the first five-year-review report for these rules, which were first adopted effective August 27, 2019.

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

The individuals regulated under these rules apply radiation to patients to assist in the diagnosis or treatment of injury or disease. The Department believes that the substantive content of the rules is the minimum necessary to protect the health and safety of these patients, the radiation technologists, and the general public. Thus, the probable benefits of the rules outweigh the probable costs of the rules. Since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

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)?

These rules are based on state statutes, rather than on federal requirements, except for those federal requirements related to mammography, such as 21 CFR 900.12.

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

The Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

14. Proposed course of action

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

To address the issues described in paragraphs 3, 4, and 6, the Department plans to submit a Notice of Final Expedited Rulemaking to the Council by February 2025.

ARTICLE 6. RADIATION TECHNOLOGISTS

Section

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-601. Definitions

In addition to the definitions in A.R.S. § 32-2801, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means:
   a. An individual who submits an application packet, or
   b. A person who submits a request for approval of a radiation technologist training program.
2. "Application packet" means the information, documents, and fees required by the Department for a certificate or permit.
3. "ARRT" means the American Registry of Radiologic Technologists.
4. "Authorized user" means the same as in A.A.C. R9-7-102.
5. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time beings to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "CBRPA" means the Certification Board for Radiology Practitioner Assistants.
7. "Certification" means the issuing of a certificate.
8. "Chest radiography" means radiography performed to visualize the heart and lungs only.
9. "Continuing education" means a course or learning activity that provides instruction and training designed to develop or improve the professional competence of a certificate holder related to the certificate holder's scope of practice.
10. "Contrast media" means material intentionally administered to a human body to define a part or parts of the human body that are not normally radiographically visible.
11. "Department-approved educational program" means a curriculum of courses and learning activities that is accredited by a nationally recognized accreditation body or granted approval through the Department.
12. "Department-approved examination" means a test administered through ARRT, NMTCB, ISCD, or CBRPA.
13. "Extremity" means the same as in A.A.C. R9-7-102.
14. "Fluoroscopy" means the use of radiography to directly visualize internal structures of the human body, the motion of internal structures, and fluids in real time, or near

real-time, to aid in the treatment or diagnosis of disease or the performance of other medical procedures.

15. "ISCD" means the International Society for Clinical Densitometry.
16. "Nationally recognized accreditation body" means ARRT, NMTCB, ISCD, or CBRPA.
17. "NMTCB" means the Nuclear Medicine Technology Certification Board.
18. "Radiograph" means the record of an image, representing anatomical details of a part of a human body examined through the use of ionizing radiation, formed by the differential absorption of ionizing radiation within the part of the human body.
19. "Radiography" means the use of ionizing radiation in making radiographs.
20. "Radiopharmaceutical agent" means a radionuclide or radionuclide compound designed and prepared for administration to human beings.

R9-16-602. Training Programs

A. The Department shall maintain a list of Department-approved educational programs according to A.R.S. § 32-2804 on the Department's website at https://www.azdhs.gov/licensing/special/index.php#mrt-approved-schools.

B. An applicant may request Department approval of a curriculum of courses and learning activities as a training program by submitting an application packet that contains:

1. An application, in a Department-provided format, that includes:
    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; and
    c. A list of each training program for which approval is being requested, including the number of hours of instruction provided for each;
2. A copy of the curriculum that includes course titles and course descriptions; and
3. A list of instructors providing the instruction and the credentials of each.

C. The Department shall:

1. Review each application packet according to R9-16-621; and
2. If approved, add the applicant's school to the list of Department-approved educational programs in subsection (A).

D. If an applicant for certification or permit did not complete a Department-approved educational program, the applicant may submit to the Department a copy of the curriculum for the training program completed by the applicant with the applicant's application packet in R9-16-606(B), R9-16-607(A), or R9-16-609(A).

R9-16-603. Practical Technologist in Radiology - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in radiology if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has completed a training program in radiologic technology through a Department-approved educational program and achieved a score of at least 67% on a Department-approved examination; or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in radiology shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments;
2. Perform only:
   a. Chest radiography, and
   b. Radiography of the extremities; and
3. Not use fluoroscopy or contrast media.

R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in podiatry if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has:
      i. Completed a training program in podiatry radiology through a Department-approved educational program;
      ii. Received a signed and dated attestation from a podiatrist licensed according to A.R.S. Title 32, Chapter 7, verifying that the applicant:
         (1) Completed training under the direction of the licensed podiatrist, and
         (2) Is proficient in independently taking radiographs; and
      iii. Achieved a score of at least 70% on a Department-approved examination; or

b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in podiatry shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Only perform radiographic examinations of the lower leg, ankle, and foot, without the use of fluoroscopy or contrast media.

R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in bone densitometry if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has completed a training program in bone densitometry through a Department-approved educational program and achieved a score of at least 70% on a Department-approved examination, or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in bone densitometry shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Bone Densitometry Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_bd.pdf?sfvrsn=11e176d0_22, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Apply ionizing radiation only to a person's hips, spine, and extremities through the use of a bone density machine without the use of fluoroscopy or contrast media.

R9-16-606. Application for Examination

A. An individual may apply for examination if the individual meets eligibility criteria for a:

1. Practical technologist in radiology listed in R9-16-603(A);
2. Practical technologist in podiatry listed in R9-16-604(A); or
3. Practical technologist in bone densitometry listed in R9-16-605(A).

B. An applicant for examination shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program; and
3. For an applicant for examination as a practical technologist in podiatry, the attestation specified in R9-16-604(A)(2)(a)(ii).

C. The Department shall approve or deny an individual's application for examination according to R9-16-621.

D. If the Department determines that the application packet submitted under subsection (B) is complete and in compliance, the Department shall notify the applicant that the applicant is approved to test.

E. Upon notification by the Department according to subsection (D), and applicant:
1. Shall arrange testing through ARRT, and
2. Has six months to complete testing before the applicant is required to re-apply for examination.

R9-16-607. Application for Initial Certification as a Practical Technologist in Radiology, Practical Technologist in Podiatry, or Practical Technologist in Bone Densitometry

A. Except as provided in subsection (B), an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program;
3. Documentation of achieving the applicable minimum score on a Department-approved examination;
4. For an application for a practical technologist in podiatry, the signed attestation in R9-16-604(A)(2)(a)(ii) containing:
    a. The name and date of birth of the applicant,
    b. The name and license number of the licensed podiatrist,
    c. A statement by the licensed podiatrist verifying completion of the applicant's clinical training and approval of radiographic images taken by the applicant, and
    d. The licensed podiatrist's signature and date; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a practical technologist in radiology, practical

technologist in podiatry, or practical technologist in bone densitometry may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-608. Radiologic Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist if the individual:

1. Is at least 18 years of age; and
2. Satisfies one of the following:
    a. Holds current applicable ARRT or NMTCB certification,
    b. Has completed a Department-approved educational program in radiation technology and has a passing score on a Department-approved examination, or
    c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a radiologic technologist shall follow the standards specified in the 2019 American Society of Radiologic Technologists Radiography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_rad.pdf?sfvrsn=13e176

d0_18, incorporated by reference, on file with the Department, and including no future editions or amendments.

C. An individual certified as a nuclear medicine technologist shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Nuclear Medicine Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_nm.pdf?sfvrsn=1ee176d0_14, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Use radiopharmaceutical agents on humans for diagnostic or therapeutic purposes only.

D. An individual certified as a radiation therapy technologist shall follow the standards specified in the 2019 American Society of Radiologic Technologists Radiation Therapy Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_rt.pdf?sfvrsn=18e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments.

R9-16-609. Application for Initial Certification as a Radiation Technologist, Nuclear Medicine Technologist, or Radiation Therapy Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
    a. A copy of the applicant's current ARRT or NMTCB certification; or
    b. Documentation of:
        i. Completing a Department-approved educational program, except as provided in R9-16-602(D); and
        ii. Having a passing score on a Department-approved examination; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the professional license or certification issued to the applicant by each

state in which the applicant holds a professional license or certification;

3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
   b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
   c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a mammographic technologist if the individual:
1. Is at least 18 years of age;
2. Possesses a current Department-issued certification in radiologic technology; and
3. Satisfies one of the following:
   a. Holds a current ARRT certification in mammography;
   b. Meets the initial training and education requirements in 21 CFR 900.12 and has a passing score on a Department-approved examination in mammography, or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a mammographic technologist:
1. Shall follow the standards specified in the 2019 American Society of Radiologic Technologists Mammography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_mamm.pdf?sfvrsn=10e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. May perform diagnostic mammography or screening mammography, as defined in A.R.S. § 30-651.

R9-16-611. Student Mammography Permits

A. Before beginning the initial training in 21 CFR 900.12 under R9-16-610(A)(3)(b), an individual shall obtain a student mammography permit from the Department.

B. An applicant for a student mammography permit shall submit an application packet to the Department that includes:

1. The information and documents required under R9-16-619; and
2. A Department-provided agreement form that includes the following:
    a. The name and date of birth of the applicant;
    b. The name, license number, e-mail address, and telephone number of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology;
    c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
    d. The licensed radiologist's signature and date of signing.

C. The Department shall approve or deny an individual's application for a student mammography permit according to R9-16-621.

D. A student mammography permit is valid for one year from the date issued and may not be renewed.

R9-16-612. Application for Initial Certification as a Mammographic Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a mammographic technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. The applicant's current radiology technologist certificate number;
3. The applicant's current student mammography permit number, if applicable;
4. Either:
    a. A copy of current ARRT certification in mammography; or
    b. Documentation of:
        i. Completing of initial education and training that meets the requirements specified in 21 CFR 900.12, and
        ii. Having a passing score on a Department-approved examination in mammography; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a mammographic technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a mammographic technologist issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified as a mammographic technologist in another state for at least one year;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a mammographic technologist according to R9-16-621.

R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a computed tomography technologist if the individual:

1. Is at least 18 years of age;
2. Possesses a current Department-issued certification as a radiologic technologist or nuclear medicine technologist; and
3. Satisfies one of the following:
    a. Holds a current ARRT or NMTCB certification in computed tomography,
    b. Has completed two years of training in computed tomography and twelve hours of computed tomography-specific education, or
    c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a computed tomography technologist:

1. Shall follow the standards specified in the 2019 American Society of Radiologic Technologists Computed Tomography Practice Standards, available at

https://www.asrt.org/docs/default-source/practice-standards-published/ps_ct.pdf?sfvrsn=9e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and

2. May apply ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

R9-16-614. Application for Computed Tomography Technologist Preceptorship and Temporary Certification

A. Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.

B. An applicant for a computed tomography preceptorship certificate shall submit an application packet to the Department that includes:

1. The information and documents required under R9-16-619;
2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
   a. The name and date of birth of the applicant;
   b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
   c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
   d. The licensed radiologist's signature and date of signing; and
3. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for a computed tomography preceptorship certificate according to R9-16-621.

D. A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.

E. At least 30 days before the expiration of an individual's computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary certificate by submitting an application packet to the Department that includes:

1. The information and documents required under R9-16-619;
2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:

a. The name and date of birth of the applicant;

b. The name, license number, e-mail address, and telephone number of the licensed radiologist;

c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and

d. The licensed radiologist's signature and date of signing; and

3. The applicable fee in R9-16-623.

F. The Department shall approve or deny an individual's application for a computed tomography temporary certificate according to R9-16-621.

G. A computed tomography temporary certificate is valid for one year and may not be renewed.

R9-16-615. Application for Initial Certification for a Computed Tomography Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a computed tomography technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. The applicant's current radiation technologist or nuclear medicine technologist certificate number;
3. The applicant's computed tomography preceptorship number or temporary certificate number, if applicable;
4. Either:
   a. A copy of the applicant's current ARRT or NMTCB certification in computed tomography; or
   b. Documentation of completion of:
      i. Two years of training in computed tomography, and
      ii. Twelve hours of computed tomography-specific education; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a computed tomography technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a computed tomography technologist issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:

a. Has been licensed or certified as a computed tomography technologist in another state for at least one year;

b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);

c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a computed tomography technologist according to R9-16-621.

R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a radiologist assistant if the individual:

1. Is at least 18 years of age; and
2. Satisfies one of the following:
   a. Holds a current ARRT or CBRPA certification as a radiologist assistant;
   b. Has:
      i. Completed a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
      ii. Achieved a passing score on an ARRT or a CBRPA examination for radiologist assistants; or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a radiologist assistant:

1. Shall follow the standards specified the 2019 American Society of Radiologic Technologists Radiologist Assistant Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_raa.pdf?sfvrsn=1ae076d0_16, incorporated by reference on file with the Department, and including no future editions or amendments; and
2. May perform the following procedures under the direction of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of

Radiology:

a. Fluoroscopy;

b. Assessment and evaluation of the physiological and psychological responsiveness of individuals undergoing radiologic procedures;

c. Evaluation of image quality, making initial image observations and communicating observations to the supervising radiologist; and

d. Administration of contrast media or other medications prescribed by the supervising radiologist.

C. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies.

R9-16-617. Application for Initial Certification as a Radiologist Assistant

A. Except as provided in subsection (B), an applicant for initial certification as a radiologist assistant shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
   a. The applicant's current ARRT or CBRPA certification as a radiologist assistant; or
   b. Documentation of:
      i. Completing a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
      ii. Having a passing score an ARRT or a CBRPA examination for radiologist assistants; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiologist assistant may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a radiologist assistant issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified as a radiologist assistant in another state for at least

one year;

b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);

c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a radiologist assistant according to R9-16-621.

R9-16-618. Special Permits

A. An applicant for a special permit under A.R.S. § 32-2814(B) shall submit an application packet to the Department containing:

1. The information and documents required in R9-16-619;
2. An attestation, in a Department-provided format, from the health care institution in which the applicant proposes to practice:
   a. Stating that the requesting health care institution is located in an Arizona medically underserved area, as defined in A.A.C. R9-15-101(4), or a health professional shortage area, as defined in A.A.C. R9-15-101(25);
   b. Verifying that the health care institution developed and is implementing a program of continuing education for the applicant to protect the health and safety of individuals undergoing radiologic procedures; and
   c. Signed and dated by the health care institution's administrator or designee; and
3. A letter signed by the health care institution's administrator or designee that provides justification for the issuance of a special permit.

B. The Department shall approve or deny an application for a special permit according to R9-16-621.

C. A special permit is valid for no more than one year, but may be renewed as provided in subsection (A) if the circumstances justifying the issuance of a special permit have not changed.

R9-16-619. Application Information

An applicant for certification shall submit to the Department:

1. The following information in a Department-provided format:
    a. The applicant's name;
    b. The applicant's residential address and, if different, mailing address;
    c. The applicant's telephone number;
    d. The applicant's e-mail address;
    e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    f. The applicant's date of birth;
    g. The applicant's current employment in the radiation technology field, if applicable, including:
        i. The employer's name,
        ii. The applicant's position,
        iii. Dates of employment,
        iv. The address of the employer,
        v. The supervisor's name,
        vi. The supervisor's email address, and
        vii. The supervisor's telephone number;
    h. The applicant's educational history related to radiation technology, including:
        i. The name and address of each educational institution,
        ii. The degree or certification received, and
        iii. The applicant's date of graduation;
    i. The type of certificate being applied for;
    j. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;
    k. If the applicant has been convicted of a felony or a misdemeanor:
        i. The date of the conviction,
        ii. The state or jurisdiction of the conviction,
        iii. An explanation of the crime of which the applicant was convicted, and
        iv. The disposition of the case;
    l. Whether the applicant holds other professional licenses or certifications and, if so:
        i. The professional license or certification, and
        ii. The state in which the professional license or certification was issued;
    m. Whether the applicant has had a professional license or certificate suspended,

revoked, or had disciplinary action taken against the professional license or certificate;

n. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;

o. An attestation that the information submitted as part of an application packet is true and accurate; and

p. The applicant's signature and date of signing;

2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:

a. The date of the disciplinary action, revocation, or suspension;

b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and

c. An explanation of the disciplinary action, revocation, or suspension;

3. If the applicant is currently ineligible for licensing or certification in any state because of a license revocation or suspension, documentation that includes:

a. The date of the ineligibility for licensing or certification,

b. The state or jurisdiction of the ineligibility for licensing or certification, and

c. An explanation of the ineligibility for licensing or certification; and

4. Documentation for the applicant that complies with A.R.S. § 41-1080.

R9-16-620. Renewal of Certification

A. Certifications issued under R9-16-607, R9-16-609, R9-16-612, R9-16-615, and R9-16-617 are valid for two years after issuance, unless revoked.

B. A certificate holder may apply to renew a certification:

1. Within 90 days before the expiration date of the certificate holder's current certification;

2. Within the 30-day period after the expiration date of the certificate holder's certification, if the certificate holder pays the late renewal penalty fee in R9-16-623; or

3. Within the extension time period granted under A.R.S. § 32-4301.

C. An applicant for renewal of a certification shall submit to the Department an application packet, including:

1. The following in a Department-provided format:

a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;

b. The applicant's current certification number and type;

c. The applicant's current employment in the radiation technology field, if applicable, including:

i. The employer's name,

ii. The applicant's position,

iii. Dates of employment,

iv. The address of the employer,

v. The supervisor's name,

vi. The supervisor's email address, and

vii. The supervisor's telephone number;

d. Whether the applicant has, within the two years before the date of the application, had:

i. A certificate issued under this Article suspended or revoked; or

ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;

e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;

f. Attestation that all the information submitted as part of the application packet is true and accurate; and

g. The applicant's signature and date of signature;

2. As applicable:

a. For renewal of certification as a mammographic technologist, documentation that meets the requirements in A.R.S. § 32-2841(E); or

b. For renewal of all other certifications issued under this Article, either:

i. An attestation that the applicant completed continuing education required under A.R.S. § 32-2815(D) and that documentation of completion is available upon request, signed and dated by the applicant; or

ii. A copy of the applicant's current certification from a nationally recognized accreditation body; and

3. The applicable renewal fee and, if applicable, the late renewal penalty fee required in R9-16-623.

D. The Department shall approve or deny an application for recertification according to R9-16-621.

R9-16-621. Review Time-frames

A. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

1. The administrative completeness review time-frame begins on the date the Department receives an application packet required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.
    b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
    c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.
3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
    a. The Department may make one comprehensive written request for additional information or documentation; and

b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.

3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.

4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or permit.

D. An applicant who is denied a certificate or permit may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 6.1. Time-frames

Type of Application	Administrative Completeness Review Time-frame (in Calendar Days)	Substantive Review Time-frame (in Calendar Days)	Overall Time-frame (in Calendar Days)
Application for Examination	30	30	60
Initial Certificate	30	30	60
Renewal Certificate	30	30	60
Student Mammography Permit	30	30	60
Computed Tomography Preceptorship Certificate or Computed Tomography Temporary Certificate	30	30	60
Special Permit	30	30	60
School Approval	60	60	120

R9-16-622. Changes Affecting a Certificate or Certificate Holder; Request for a Duplicate Certificate

A. A certificate holder shall notify the Department in writing, within 30 calendar days after the effective date of a change in:

1. The certificate holder's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address;

2. The certificate holder's name, including a copy of the legal document establishing the certificate holder's new name; or

3. The certificate holder's employer, including the name and address of the new employer.

B. A certificate holder may obtain a duplicate certificate by submitting to the Department:

1. A written request for a duplicate certificate, in a Department-provided format, that

includes:

a. The certificate holder's name and address,

b. The certificate holder's certificate number and expiration date, and

c. The certificate holder's signature and date of signature; and

2. The duplicate certificate fee in R9-16-623.

C. A certificate holder may submit to the Department, either as a separate written document or as part of the renewal application, a signed and dated request to transfer to inactive status or retirement status under A.R.S. § 32-2816(F).

R9-16-623. Fees

A. Except as provided in subsection (C) or (D), an applicant shall submit to the Department the following nonrefundable fees for:

1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, $100;
2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, $100;
3. An initial application or renewal application for certification as a mammographic technologist, $20;
4. A computed tomography preceptorship certificate or computed tomography temporary certificate, $10;
5. An initial application or renewal application for certification as a computed tomography technologist, $20;
6. An initial application or renewal application for certification as a radiologist assistant, $100; and
7. A late renewal penalty fee according to A.R.S. § 32-2816(C), $50.

B. The fee for a duplicate certificate is $10.

C. An applicant for initial certification is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application packet in R9-16-607, R9-16-609, R9-16-612, R9-16-615, or R9-16-617, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

D. As allowed under A.R.S. § 32-2816(F), a certificate holder is not required to submit a fee for renewal of certification if the certificate holder submits to the Department an affidavit stating that the certificate holder:

1. Is retired from the practice of radiologic technology, or
2. Requests to be placed on inactive status.

R9-16-624. Enforcement

A. The Department may, as applicable:

1. Deny, revoke, or suspend a certificate or permit under A.R.S. § 36-2821;
2. Request an injunction under A.R.S. § 36-2825; or
3. Assess a civil money penalty under A.R.S. § 36-2821.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of individuals affected by the violations,
6. The degree of harm to an individual,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder or permittee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

Statutes Pertaining to 9 A.A.C. 16, Article 6

32-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Certificate" means a certificate that is granted and issued by the department.

2. "Certified technologist" means a person holding a certificate that is granted and issued by the department.

3. "Computed tomography technologist" means a person who applies ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

4. "Department" means the department of health services.

5. "Direction" means responsibility for and control of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

6. "Director" means the director of the department of health services.

7. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles or rays.

8. "Leg" means that part of the lower limb between the knee and the foot.

9. "Licensed practitioner" means a person who is licensed or otherwise authorized by law to practice medicine, dentistry, osteopathic medicine, podiatry, chiropractic or naturopathic medicine in this state.

10. "Mammographic technologist" means a person who applies ionizing radiation to the breasts of a human being for diagnostic purposes.

11. "Nuclear medicine technologist" means a person who uses radiopharmaceutical agents on humans for diagnostic or therapeutic purposes as set forth in rules adopted pursuant to section 32-2815.

12. "Practical technologist in bone densitometry" means a technologist who holds a certificate to apply ionizing radiation to a person's hips, spine and extremities through the use of a bone density machine.

13. "Practical technologist in podiatry" means a person holding a practical technologist in podiatry certificate that is granted and issued by the department.

14. "Practical technologist in podiatry certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to the foot and leg for diagnostic purposes while under the specific direction of a licensed practitioner.

15. "Practical technologist in radiology" means a person holding a practical technologist in radiology certificate that is granted and issued by the department.

16. "Practical technologist in radiology certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to specific parts of the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

17. "Radiation therapy technologist" means a person who uses radiation on humans for therapeutic purposes.

18. "Radiologic technologist" means a person who holds a certificate that is issued by the department and that allows that person to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.

19. "Radiologic technology" means the science and art of applying ionizing radiation to human beings for general diagnostic or therapeutic purposes.

20. "Radiologic technology certificate" means a certificate that is issued in radiologic technology to a person with at least twenty-four months of full-time study or its equivalent through an approved program and who has successfully completed an examination by a national certifying body.

21. "Radiologist" means a licensed practitioner of medicine or osteopathic medicine who has undertaken a course of training that meets the requirements for admission to the examination of the American board of radiology or the American osteopathic board of radiology.

22. "Radiologist assistant" means a person who holds a certificate pursuant to section 32-2819 and who performs independent advanced procedures in medical imaging and interventional radiology under the guidance, directions, supervision and discretion of a licensed practitioner of medicine or osteopathic medicine specializing in radiology as set forth in section 32-2819 and the rules adopted pursuant to that section.

23. "Unethical professional conduct" means the following acts, whether occurring in this state or elsewhere:

(a) Intentionally betraying a professional confidence or intentional violation of a privileged communication except as required by law. This subdivision does not prevent the department from exchanging information with the radiologic licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries.

(b) Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401 or hypnotic drugs, derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects or the use of alcohol to the extent that it affects the ability of the certificate or permit holder to practice his profession.

(c) Using drugs for other than accepted therapeutic purposes.

(d) Committing gross malpractice.

(e) Procuring or attempting to procure a certificate or license by fraud or misrepresentation.

(f) Having professional connection with or lending one's name to an illegal practitioner of radiologic technology or any other health profession.

(g) Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

(h) Refusing to divulge to the department, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity. This subdivision does not apply to communication between a technologist or permit holder and a patient with reference to a disease, injury, ailment or infirmity, or as to any knowledge obtained by personal examination of the patient.

(i) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly.

(j) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of radiologic technology.

(k) Having a certificate or license refused, revoked or suspended by any other state, territory, district or country for reasons that relate to the person's ability to safely and skillfully practice radiologic technology or to any act of unprofessional conduct.

(l) Engaging in any conduct or practice that does or would constitute a danger to the health of the patient or the public.

(m) Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

(n) Employing uncertified persons to perform or aiding and abetting uncertified persons in the performance of work that can be done legally only by certified persons.

(o) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate this chapter or a rule adopted by the department.

24. "Unlimited practical technologist in radiology" means a person holding an unlimited practical technologist in radiology certificate that is granted and issued by the department.

25. "Unlimited practical technologist in radiology certificate" means a certificate that was issued to a person in 1977 or 1978, other than a licensed practitioner, who applies ionizing radiation to the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

32-2803. Rules

The director may adopt rules as may be needed to carry out the purposes of this chapter. The rules shall include:

1. Minimum standards of training and experience for persons to be certified pursuant to this chapter and procedures for examining applicants for certification.

2. Provisions identifying the types of applications of ionizing radiation for a practical technologist in podiatry, practical technologist in radiology, practical technologist in bone densitometry, radiologic technologist, radiation therapy technologist, mammographic technologist, nuclear medicine technologist, computed tomography technologist and radiologist assistant and any new radiologic modality technologist and those minimum standards of education and training to be met by each type of applicant.

32-2804. School approval; standards; considerations

A. The department may approve a school of radiologic technology as maintaining a satisfactory standard if its course of study:

1. Is for a period of at least twenty-four months of full-time study or its equivalent and is accredited by the committee on allied health accreditation or meets or exceeds the standards of this chapter.

2. Includes at least four hundred hours of classroom work, including radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy and physiology, radiographic positioning, radiation therapy and professional ethics.

3. Includes at least one thousand eight hundred hours devoted to clinical experience.

4. Includes demonstrations, discussions, seminars and supervised practice.

5. Includes at least eighty hours of regularly scheduled supervised film critiques.

B. An approved school of radiologic technology may be operated by a medical or educational institution or other public or private agency or institution and, for the purpose of providing the requisite clinical experience, shall be affiliated with one or more hospitals that the department determines are likely to provide this experience.

C. In approving a school of radiologic technology, the department shall consider the standards adopted by appropriate professional organizations, including the joint review committee on education in radiologic technology, and may accept the certification of a school of radiologic technology or the accreditation of a hospital to provide requisite clinical experience if the department finds that certification or accreditation was granted on the basis of standards that will afford the same protection to the public as the standards provided by this chapter.

32-2811. Ionizing radiation; prohibitions; limitations; exceptions

A. Except as provided in subsection D of this section, a person may not use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.

B. A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner, except that a person holding a certificate may use ionizing radiation on human beings for diagnostic purposes only while operating in each particular case at the direction of a licensed practitioner who is licensed in any other state, territory or district of the United States. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body

specified in the law under which the licensed practitioner is licensed. The provisions of the technologist's certificate govern the extent of application of ionizing radiation.

C. The provisions of this chapter relating to technologists do not limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.

D. The requirement of a certificate does not apply to:

1. A hospital resident specializing in radiology who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathic medicine, podiatry, dentistry, naturopathic medicine, chiropractic or radiologic technology and who applies ionizing radiation to a human being while under the specific direction of a licensed practitioner.

2. A person engaged in performing the duties of a technologist in that person's employment by an agency, bureau or division of the government of the United States.

3. Dental hygienists licensed in this state and dental assistants holding a valid certificate in dental radiology from a course approved by the state board of dental examiners.

4. Persons providing assistance during an ionizing radiation procedure, apart from such procedures conducted in a health care institution, under the direction of a person licensed to use an ionizing radiation machine.

5. A person who is employed by or acting on behalf of the state department of corrections or a county jail and who uses a low-dose ionizing radiation body scanning device to detect contraband, as defined in section 13-2501, in or on an inmate.

6. A podiatric medical assistant who holds a valid certificate in podiatric radiology from a course approved by the state board of podiatry examiners.

E. Subsection B of this section does not apply to ionizing radiation ordered by a licensed practitioner for other than diagnostic or therapeutic purposes pursuant to section 13-2505, subsection E.

32-2812. Applications for certificate; qualifications; fees; examination; denial

A. An applicant for a certificate shall submit an application for certification or an application for examination for certification, accompanied by a nonrefundable fee established by the director. An applicant who has practiced radiography without certification shall pay a prorated fee retroactively to the earliest date of uncertified practice. The fee for a replacement certificate is $10. The application for examination fee is $70 and shall not be prorated. An application shall contain information that the applicant:

1. Is at least eighteen years of age.

2. Meets one of the following requirements:

(a) In the case of an application for radiologic technologist, radiation therapy technologist or nuclear medicine technologist certification, has successfully completed a course of study at a school of radiologic technology that is approved by the department or an out-of-state school of radiologic technology that is approved by the joint review committee on education in radiologic technology, the American registry of radiologic technologists or the nuclear medicine technology certification board.

(b) In the case of an application for practical technologist in podiatry certification, practical technologist in bone densitometry certification and practical technologist in radiology certification, satisfactorily meets the basic requisites determined by the department pursuant to section 32-2803.

(c) In the case of an application for radiologist assistant certification, has obtained a baccalaureate degree or postbaccalaureate certificate from an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship. An applicant for certification before April 1, 2009 is not required to have a baccalaureate degree or postbaccalaureate certificate, but must have completed an advanced academic program that

encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship.

B. If the application is in proper form and it appears that the applicant meets the eligibility requirements, the applicant shall be notified of the time and place of the next examination.

C. The department may accept, in lieu of its own examination, a certificate issued on the basis of an examination by a certificate-granting body recognized by the department or a certificate, registration or license issued by another state if that state's standards for certification, registration or licensure are satisfactory to the department.

D. The department may deny a certificate to an applicant who has committed an act or engaged in conduct in any jurisdiction that resulted in a disciplinary action against the applicant or that would constitute grounds for disciplinary action under this chapter.

32-2813. Examination; contents; subsequent examinations

A. Examinations for certification shall include the subjects of radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy terminology, radiological mathematics, professional ethics and such other subjects as the department may deem appropriate.

B. The department shall prepare lists of examination questions or problems and administer the examinations.

C. Examinations shall include written questions but may also include practical and oral portions. Following each examination, the papers and the practical and oral examinations shall be graded and the standing of each applicant shall be recorded. The department shall either pass or reject each applicant.

D. An applicant who fails to pass an examination may reapply for examination in the manner prescribed by section 32-2812. The department shall require a candidate who fails the examination three times to successfully complete additional training prescribed by the department before accepting the candidate for reexamination.

32-2814. Initial certificates; special permits; temporary certificates

A. The department shall issue an initial certificate that is valid for two years to each candidate who has paid the prescribed fee and who either has successfully passed the examination or has been accepted pursuant to section 32-2812.

B. The department, on application, may issue a special permit to exempt a person from this chapter if the department finds to its satisfaction that there is substantial evidence that the people in the locality of the state in which such an exemption is sought would be denied adequate medical care because of the unavailability of certified licensed practitioners or persons holding certificates pursuant to this chapter. The department shall issue a special permit for a limited period of time, not to exceed one year, to be prescribed by the department in accordance with the purposes of this chapter. The department may renew a special permit if the permittee's circumstances have not changed.

C. The department may issue a temporary certificate to any person whose certification or recertification is pending and in whose case the issuance of a temporary certificate may be justified by reason of special circumstances.

D. A temporary certificate shall be issued only if the department finds that its issuance will not violate the purposes of this chapter or tend to endanger the public health and safety. A temporary certificate expires thirty days after the date of the next examination if the applicant is required to take the examination or, if the applicant does not take the examination, on the date of the examination. In all other cases, a temporary certificate expires when the determination is made either to issue or to deny the issuance of a certificate. A temporary certificate shall not be valid for more than one year and may not be renewed.

E. A person shall submit an application for certification in a form prescribed by the department.

32-2815. Rules; bone densitometry certification; nuclear medicine certification; continuing education

A. The department shall adopt rules regarding the certification of practical technologists in bone densitometry to allow the certificate holder to apply ionizing radiation to a person's extremities through the use of a bone densitometry machine. The rules shall prescribe:

1. The minimum education and training qualifications for certification. The qualifications prescribed by the department shall allow a person who does not meet the education and training requirements of a radiologic technologist or a practical technologist in radiology to obtain a certificate as a practical technologist in bone densitometry.

2. The application and renewal fees.

B. Subsection A of this section does not prohibit a radiologic technologist or a practical technologist in radiology from operating a bone densitometry machine.

C. A person who wishes to practice as a nuclear medicine technologist must apply to the department for certification as prescribed by rule. The department shall adopt rules to establish minimum educational and training requirements for nuclear medicine technologists.

D. The department shall adopt rules to prescribe the following minimum continuing education requirements for the renewal of the following certificates:

1. Practical technologist in podiatry, two hours every two years.

2. Practical technologist in radiology, six hours every two years.

3. Practical technologist in bone densitometry, two hours every two years.

4. Unlimited practical technologist in radiology, twenty-four hours every two years.

5. Nuclear medicine technologist, twenty-four hours every two years.

6. Radiologist assistant, fifty hours every two years.

7. Radiologic technologist, twenty-four hours every two years.

8. Radiation therapy technologist, twenty-four hours every two years.

E. The department may require an applicant for renewal to document compliance with the appropriate continuing education requirements of subsection D of this section.

32-2816. Certificates; fee; terms; registration; renewal; cancellation; waiver

A. Except as provided in section 32-4301, a certificate issued under this section is valid for two years.

B. The department may renew a certificate for two years on payment of a renewal fee established by the director and submission of a renewal application containing information the department requires to show that the applicant for renewal is a technologist in good standing. The applicant for renewal shall also present evidence satisfactory to the department of having completed the required continuing education in radiologic technology within the preceding two years. If a radiologic technologist is certified by the American registry of radiologic technologists or nuclear medicine technology certification board, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry.

C. A certificate holder who fails to renew the certificate on or before the certificate's expiration as prescribed in subsection B of this section shall pay a penalty fee of fifty dollars for late renewal.

D. A certificate holder who does not renew a certificate within thirty days after the certificate expires and who continues the active practice of radiologic technology without adequate cause satisfactory to the

department is subject to censure, reprimand or denial of right to renew the certificate pursuant to section 32-2821.

E. On the request of a certificate holder in good standing, the department shall cancel a certificate.

F. The department shall waive the renewal fee if a certificate holder submits an affidavit to the department stating that the certificate holder is retired from the practice of radiologic technology or wishes to be placed on inactive status. A retired or inactive technologist who practices is subject to the same penalties imposed pursuant to this chapter on a person who practices radiologic technology without a certificate.

G. The department may reinstate a technologist on retired or inactive status on payment of the renewal fee pursuant to subsection B of this section.

32-2817. Use of title; display of certificate or permit

A. A person holding a certificate may use the title "certified radiologic technologist", "certified nuclear medicine technologist", "certified radiation therapy technologist", "certified computed tomography technologist", "certified mammographic technologist", "certified radiologist assistant", "certified practical technologist in podiatry", "certified practical technologist in bone densitometry" or "certified practical technologist in radiology", as applicable. No other person shall be entitled to use such titles or title or letters after such person's name that indicates or implies that such person is a certified technologist or to represent the person in any way, whether orally or in writing, expressly or by implication, as being so certified.

B. Every technologist or special permit holder shall display a certificate or permit at the technologist's or permit holder's place of employment.

32-2818. Lapsed certification; inactive status; reinstatement

A person who was an unlimited practical technologist in radiology under this chapter from and after December 31, 1992 and whose certificate was not suspended or revoked but who failed to renew the certificate, on application to the department, may be placed on inactive status or reinstated pursuant to section 32-2816.

32-2819. Radiologist assistants; certification; rules; scope of practice

A. A person who wishes to practice as a radiologist assistant must apply to the department for a certificate on a form and in the manner prescribed by the department pursuant to the requirements of section 32-2812.

B. The department shall adopt rules to implement this section. The rules shall include the following:

1. Continuing education requirements.

2. Any other requirements the department considers appropriate to implement this section.

C. Pursuant to rules adopted by the department, a radiologist assistant may do the following under the direct supervision of a radiologist:

1. Perform fluoroscopic procedures.

2. Assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures.

3. Evaluate image quality, make initial image observations and communicate observations to the supervising radiologist.

4. Administer contrast media or other medications prescribed by the supervising radiologist.

5. Perform any other procedures consistent with rules adopted by the department.

D. In adopting rules pursuant to subsection C of this section, the department shall consider guidelines established by the American society of radiologic technologists and the American registry of radiologic technologists.

E. A radiologist assistant shall not interpret images, make diagnoses or prescribe medications or therapies.

F. A radiologist who supervises a radiologist assistant may authorize the assistant to perform only those radiologic procedures described in this section.

G. A person shall not do any of the following without a certificate issued pursuant to this section:

1. Perform the radiologic procedures described in subsection C of this section.

2. Claim to be a radiologist assistant, including using any sign, advertisement, card, letterhead, circular or other writing, document or design to induce others to believe the person is authorized to practice as a radiologist assistant.

H. Subsection G of this section does not apply to either of the following:

1. A person engaging in the scope of practice for which the person holds a valid license or certificate.

2. A person performing a task as part of an advanced academic program.

32-2821. Revocation or suspension of certificate or permit; civil penalties; enforcement; appeals; hearings

A. The director may revoke or suspend a certificate or permit issued under this chapter if the holder of the certificate or permit:

1. Is guilty of any fraud or deceit in activities as a technologist or radiologist assistant or has been guilty of any fraud or deceit in procuring or maintaining a certificate.

2. Has been convicted in a court of competent jurisdiction of a crime involving moral turpitude. If the conviction has been reversed and the holder of the certificate or permit has been discharged or acquitted or if the holder of the certificate or permit has been pardoned or the holder's civil rights have been restored, the certificate may be restored.

3. Is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect, is insane or uses hallucinogens.

4. Has knowingly aided or abetted a person, not otherwise authorized, who is not a certified technologist or radiologist assistant or has not been issued a special permit in engaging in the activities of a technologist or radiologist assistant.

5. Has undertaken or engaged in any practice beyond the scope of the authorized activities of a certified technologist, radiologist assistant or permit holder pursuant to this chapter.

6. Has impersonated a duly certified technologist, radiologist assistant or permit holder or former duly certified technologist, radiologist assistant or permit holder or is engaging in the activities of a technologist, radiologist assistant or permit holder under an assumed name.

7. Has been guilty of unethical professional conduct.

8. Has continued to practice without obtaining a certificate renewal or a special permit renewal.

9. Has applied ionizing radiation to a human being when not operating in each particular case under the direction of a duly licensed practitioner or to any person or part of the human body other than specified in the law under which the practitioner is licensed.

10. Has acted or is acting as an owner, co-owner or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation or the treatment of disease, without being under the direction of a licensed practitioner.

11. Has used or is using the prefix "Dr.", the word "doctor" or any prefix or suffix to indicate or imply that the person is a duly licensed practitioner if this is not true.

12. Is or has been guilty of incompetence or negligence in activities as a technologist.

13. Is or has been afflicted with any medical problem, disability or addiction that the department determines impairs the certificate or permit holder's professional competence.

14. Has interpreted a diagnostic image for a physician, a patient, the patient's family or the public.

15. Has violated any provision of this chapter or rule adopted pursuant to this chapter.

B. A person may appeal the revocation or suspension under subsection A of this section by requesting a hearing pursuant to title 41, chapter 6, article 10. If the revocation or suspension is appealed, the director may not take further action to enforce the revocation or suspension until after the hearing.

C. If the certificate of any person has been revoked or suspended, the department, after the expiration of two years, may consider an application for restoration of the certificate.

D. The director may assess a civil penalty against a person in an amount not to exceed two hundred fifty dollars for each violation of this chapter or a rule adopted pursuant to this chapter. Each day a violation occurs constitutes a separate violation.

E. The director shall issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under this subsection, the department shall consider all of the following:

1. Repeated violations of statutes and rules.

2. Patterns of noncompliance.

3. Types of violations.

4. The severity of violations.

5. The potential for and occurrences of actual harm.

6. Threats to health and safety.

7. The number of persons affected by the violations.

8. The number of violations.

9. The length of time the violations have been occurring.

F. A person may appeal the civil penalty assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. If an assessment is appealed, the director may not take further action to enforce and collect the assessment until after the hearing.

G. Actions to enforce the collection of civil penalties assessed pursuant to this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

H. The department shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

I. The department shall conduct any hearing to revoke or suspend a certificate or permit or impose a civil penalty under this section pursuant to title 41, chapter 6, article 10.

J. The department may issue a nondisciplinary order requiring the certificate holder or permit holder to complete a prescribed number of hours of continuing education in an area or areas prescribed by the department to provide the certificate holder or permit holder with the necessary understanding of current developments, skills, procedures or treatment. The department may also file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a certificate or permit holder.

32-2824. Inspections

A. The department or its duly authorized representatives may enter during scheduled work hours on private or public property for the purpose of:

1. Ensuring that only certified individuals or individuals who are exempt from certification are operating ionizing radiation machines.

2. Determining whether a certified individual is practicing beyond the scope of the person's certificate.

3. Determining whether a certified individual has violated the provisions of this chapter.

4. Auditing ionizing radiation logbooks.

5. Determining compliance with this chapter and the rules adopted pursuant to this chapter.

B. The department may enter areas under the jurisdiction of the federal government only with its permission.

32-2841. Mammographic technologists; computed tomography technologists; certification; renewal

A. A person who wishes to perform diagnostic mammography or screening mammography as defined in section 30-651 shall obtain a mammographic technologist certificate from the department. A person who wishes to perform computed tomography shall obtain a computed tomography technologist certificate from the department. The department shall issue a certificate to an applicant who:

1. Pays a twenty dollar application fee.

2. Holds a current radiologic technology certificate issued by the department.

3. For a mammographic certification, completes the training and education requirements of subsection B of this section and passes an examination as prescribed in subsection D of this section.

4. For a computed tomography technologist certification, provides documentation of two years of experience in computed tomography and completion of twelve hours of computed tomography specific education or passes an examination as prescribed in subsection D of this section.

B. To satisfy the education requirements of subsection A of this section, an applicant shall meet the initial training and education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12.

C. The department shall issue a student mammography permit, preceptorship or temporary certificate to a person who is in training and meets the requirement of subsection A, paragraph 2 of this section if the applicant also provides the department with verification of employment and the name of the radiologist who agrees to be responsible for the applicant's supervision and training. A student mammography permit, preceptorship or temporary certificate is valid for one year from the date it is issued and may not be renewed. If the holder completes all of the requirements of subsection A of this section within the permitted period, the department shall issue a mammographic or computed tomography technologist certificate. The mammographic or computed tomography technologist certificate shall be renewed as prescribed under subsection E of this section.

D. To satisfy the examination requirements of this section an applicant shall pass an examination in mammography or computed tomography administered by the department or, in lieu of its own examination, the department may accept a certificate issued on the basis of an examination by a certificate-granting body recognized by the department.

E. Except as provided in section 32-4301, a certificate that is issued under this section is valid for two years. The department shall notify a certificate holder thirty days before the expiration date of the certificate. An applicant for renewal of a mammographic technologist certificate shall meet the continuing education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12. If a radiologic

technologist is certified by the American registry of radiologic technologists, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry. The applicant shall also pay a twenty dollar renewal fee to the department.

F. A person or facility that employs a person certified under this section shall report any suspected violations of section 32-2821 to the department. The department shall investigate the complaint. If in the course of its investigation the department determines that a person regulated by another regulatory agency of this state may have violated that agency's laws, the department shall report the violation to the other agency for disciplinary action.

32-2842. Mammographic images; physicians; requirements

A physician licensed under chapter 13 or 17 of this title who reads or interprets mammographic images shall meet the following requirements:

1. Have completed forty hours of medical education credits in mammography.

2. Be certified by either the American board of radiology in diagnostic radiology or the American osteopathic board of radiology in diagnostic radiology, as applicable, or meet the requirements of the mammography quality standards act regulations for quality standards of interpreting physicians, 21 Code of Federal Regulations section 900.12.

32-2843. Facilities; requirements

A. A facility that wishes to conduct patient self-referral mammographic screening examinations after January 1, 1994 shall submit the following to the department:

1. The physician-approved guide for accepting self-referrals by patients.

2. A copy of the facility's quality assurance program.

3. The medical physicist's evaluation report of the facility.

B. A facility that does not have a darkroom on-site or that does not develop the films within one hour of exposure shall submit the following to the department:

1. A description of how the facility plans to ensure that the equipment is operating properly at the start of each day.

2. Information regarding the darkroom that develops the film that demonstrates to the department's satisfaction that transportation conditions will not adversely affect a person's ability to interpret the films.

C. The director shall prescribe requirements for the documents required to be submitted to the department under subsections A and B of this section.

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.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 4, Article 10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 10, 2024**

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 4, Article 10

Summary

This Five Year Review Report (5YRR) from the Department of Agriculture (Department) covers twelve (12) rules and one (1) Table in Title 3, Chapter 4, Article 10 related to Industrial Hemp. Specifically, R3-4-1001 defines the terms used in the Article; R3-4-1002 establish eligibility requirements to obtain an industrial hemp license; R3-4-1003 describe the licenses available under the Article; R3-4-1004 describes the the process to obtain an exemption from the licensing fees; R3-4-1005 provides a description and conditions of the program fees; Table 1 lists the program fees for licensing, inspection, and assessments; R3-4-1006 describes the requirements of eligible materials used by hemp producers; R3-4-1007 describes location requirements for the production, processing, and storage of industrial hemp; R3-4-1008 describes compliance requirements for industrial hemp production and processing; R3-4-1011 describes notification requirements for planting, harvesting, transportation, and destruction of industrial hemp crops; R3-4-1012 define violations and unauthorized activity; R3-4-1013 describes processes to mitigate program violations; R3-4-1014 describes license suspension and revocation penalties for violations of the Article.

This is the first 5YRR since the rules were implemented May 31, 2019.

Proposed Action

The Department does not have a proposed course of action at this time.

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

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

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

The Department of Agriculture states that the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared on May 6, 2021. The Department identifies beneficiaries of the industrial hemp program to include hemp growers, nurseries, harvesters, transporters, and processors, as well as customers for hemp products and the State of Arizona. The Department bears minimal costs in implementing the program.

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

The Department has determined that the probable benefits of the rule outweigh the probable costs of the rule, and the rule imposes the least burden and costs to the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective. There are no less intrusive or less costly alternatives for administering the program.

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

   The Department has not received written criticism of the rules in the past five years.

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

   The Department states the rules are clear, concise, and understandable.

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

   The Department states the rules are consistent with other rules and statutes.

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

   The Department states the rules are effective in achieving their objectives.

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

The Department states the rules are enforced as written.

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

The Department states the rules are not more stringent than corresponding federal law.

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

The Department indicates that the rules qualify for an exception under ARS § 41-1037 (A)(3), as the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

11. **Conclusion**

This Five Year Review Report from the Department of Agriculture covers twelve rules and one Table in Title 3, Chapter 4, Article 10 related to Industrial Hemp. As indicated above, the rules are effective in achieving their objectives and consistent with other rules and statutes. The Department does not intend on submitting a Notice of Final Rulemaking to the Council.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

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September 11, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Arizona Department of Agriculture, Title 3, Chapter 4, Article 10, Five Year Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Arizona Department of Agriculture's ("Department") for Title 3, Chapter 4, Article 10 which was due May 31, 2024 and updated on September 10, 2024 to address comments received by GRRC councel.. The updated report includes the summary EIS from the previous rulemaking in 2021 and associated analysis (subsection 8); and the cost/benefit analysis of the rules (subsection 11). As previously indicated, the Department reviewed all the rules in Article 10. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

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

Sincerely,

Paul E. Brierley
Director

cc: Brian McGrew, Industrial Hemp Program Manager

Arizona Department of Agriculture

5 YEAR REVIEW REPORT

Title 3. Agriculture

Chapter 4. Department of Agriculture - Plant Services Division

Article 10. Industrial Hemp

May 31, 2024

Revised September 10, 2024

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

General Statutory Authority: A.R.S. §§ 3-107(A)(1), 3-312

Specific Statutory Authority: A.R.S. § 3-313

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

Rule	Objective
R3-4-1001	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 4, Article 10.
R3-4-1002	The objective of this rule is to establish eligibility requirements to obtain an industrial hemp license issued under Article 10.
R3-4-1003	The objective of this rule is to describe the licenses available under Article 10. Prescribe the process to apply or renew a hemp license, or withdraw from the industrial hemp program.
R3-4-1004	The objective of this rule is to prescribe the process to obtain an exemption from the licensing fees in Article 10 for qualifying researchers and the restrictions for maintaining the exemption.
R3-4-1005	The objective of this rule is to provide a description and conditions of the program fees.
Table 1.	The objective of this rule is to list the program fees for licensing, inspection, and assessments.
R3-4-1006	The objective of this rule is to prescribe the requirements for eligible hemp seeds and propagative material to be used by licensed hemp producers.
R3-4-1007	The objective of this rule is to prescribe the location requirements for the production, processing, and storage of industrial hemp.
R3-4-1008	The objective of this rule is to prescribe compliance requirements for industrial hemp production and processing. Including record keeping, testing, and laboratory requirements for laboratories that provide analysis for compliance purposes.
R3-4-1011	The objective of this rule is to prescribe notification requirements for planting, harvesting, transportation, and destruction of industrial hemp crops. It also prescribes the reporting requirements for hemp processors.
R3-4-1012	The objective of this rule is to define violations and unauthorized activity.
R3-4-1013	The objective of this rule is to prescribe the corrective action processes to mitigate program violations and cases of non-compliance of the rules in Article 10. Th rule also prescribes the approved methods of disposal for non-compliant hemp crops.
R3-4-1014	The objective of this rule is to prescribe the license suspension and revocation penalties for violations of Article 10 and A.R.S. §§ 3-311 through 3-320.

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

The rules in the Article are effective in achieving their objective.

4. **Are the rules consistent with other rules and statutes?** **Yes _X_ No ____**
The rules in the Article are consistent with other rules and statutes.

5. **Are the rules enforced as written?** **Yes _X_ No ___**
The rules in the Article are enforced as written.

6. **Are the rules clear, concise, and understandable?** **Yes _X_ No ___**
The rules in the Article are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No _X_**
The agency has not received any written criticisms of the rules within the last five years.

8. **Economic, small business, and consumer impact comparison:**
The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared on May 6, 2021. The statutory purpose of the industrial hemp program was to "improve the economy and agricultural vitality" of Arizona. The Department bears minimal costs in implementing the Program. Other than the Department, no political subdivision is directly affected by the Program. Beneficiaries of the industrial hemp program are hemp growers, nurseries, harvesters, transporters, and processors as well as customers for hemp products and the State of Arizona. In 2019, there were 359 Program licensees. Slightly less than half of those licensees were hemp growers. Licensing fees were reduced 33% overall at the end of 2020 under an Emergency rulemaking, with the intent to finalize the reduction in this proposed rulemaking. In view of this reduction, the impact to small businesses is minimal, and the benefits of the Program exceed the cost thereof. There are no less intrusive or less costly alternatives for administering the Program. All licensing fees are placed in the trust fund for the benefit of the Program and do not revert to the state general fund. Therefore, the Program has little or no effect on state revenues. Other changes in the proposed rulemaking are intended to align with federal regulations under 7 U.S.C. § 5940 and 7 U.S.C. § 1639o, et seq., and 7 C.F.R. part 990. Alignment with federal regulations is necessary in order for Arizona to obtain U.S. Department of Agriculture (USDA) approval of Arizona's industrial hemp plan. USDA approval of this plan is beneficial to program stakeholders as it allows for eligibility for federal crop insurance and grants. Without USDA approval of the proposed rulemaking, these resources will not be made available to Arizona program participants. Lastly, additional changes made the rules clearer and more concise, to align with current departmental practices and to reduce overly-burdensome regulations.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ____No _X_**
The agency has not received any business competitive analysis of the rules.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
There has not been a previous five-year rule review reports for the rules in Article 10. However, a one-year rule review report was approved by GRRC on February 2, 2021 and the course of action was completed on September 16, 2021. The Department amended the licensing fees to reduce the economic burden, and amended the definition of the chemical compound that determines regulatory compliance so that it is consistent with industry terms as indicated in that report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**
With the rulemaking filed on September 16, 2021, the Department has determined that the probable benefits of the rule outweigh the probable costs of the rule, and the rule imposes the least burden and costs to the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective. The costs associated with the rules allow the Department to provide

compliance oversite of industrial hemp. The intent of the program is to be self-sufficient, relying on little general fund resources. In comparison to other state industrial hemp programs, Arizona aligns with the fees other states charge for participation in an industrial hemp program. In comparison, Oregon Department of Agriculture charges a $350 application fee plus $875 per growing location; Colorado Department of Agriculture charges a $500 application fee, plus a $5 per acre of registered outdoor growing area and/or $0.003 per square foot of registered indoor growing area; California Departement of Food and Agriculture charges an annual $900 registration fee. It is requried by federal law that growers are licensed by the state or USDA to grow hemp. USDA will only provide hemp licensing if the state chooses not to have regulatory primacy. Industrial hemp research facilities are eligible for an exemption from the licensing fees, provided the hemp produced is not allowed on the market. The paper work and compliance costs are necessary to maintain compliance with federal regulations and are the least burdesome while maintaining the regulatory objective.

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

While the rules are required to comply with federal laws 7 U.S.C. § 5940 and 7 U.S.C. §§ 1639o, *et seq.* and federal regulations under 7 CFR §§ 990.1 through 990.7, to maintain primacy in a federal program, they are not more stringent.

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

The licenses issued pursuant to R3-4-1003 do not qualify to be issued as a General Permit pursuant to A.R.S. § 41-1037. The criteria to obtain these licenses are not technically feasible and would not meet applicable statutory requirements pursuant to A.R.S. § 3-314.

14. Proposed course of action

There is no proposed course of action for the rules in Articles 10.

1. "Associate Director" means the Associate Director of the Plant Services Division of the Arizona Department of Agriculture.
2. "Genetically engineered" means the genetic modification of organisms by recombinant DNA techniques, including genetic combinations resulting in novel organisms or genetic combinations that would not naturally occur.
3. "Organisms" means any active, infective, or dormant stage or life form of any entity characterized as living, including vertebrate and invertebrate animals, plants, bacteria, fungi, mycoplasms, mycoplasma-like organisms, as well as entities such as viroid, viruses, or any entity characterized as living related to the foregoing.
4. "Permit" means an application which has been approved by USDA and the Department.
5. "Permit application" means an application filed with USDA, which may be supplemented with requirements from the Department, for the introduction of genetically engineered organisms and products, as provided by 7 CFR 340, revised June 16, 1987. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
6. "Product" means plant reproductive parts including pollen, seeds, and fruit, spores, or eggs.
7. "USDA" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA, APHIS, PPQ).

B. Permit applications. A genetically engineered organism or product shall not be introduced into Arizona, sold, offered for sale, or distributed for release into Arizona's environment unless a permit issued pursuant to the application has been issued by USDA, or the Department has been notified by the USDA that the genetically engineered organisms or product is eligible under the notification procedure, as prescribed by 7 CFR § 340.3, revised August 6, 2007, or it has been determined by the USDA to be of nonregulated status, as prescribed by 7 CFR 340.6, revised May 1997. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.

1. Applicants for the release or use of genetically engineered organisms or products shall follow all permit application procedures required by USDA.
2. In addition to USDA's requirements, permit applications shall demonstrate to the Department that:
   a. Genetically engineered organisms or products shall be handled in such a manner so that no genetically engineered organism or product accidentally escapes into Arizona's environment.
   b. All permit applicants shall comply with Arizona quarantine rules regulating the plants, pests, or organisms being introduced into Arizona.
3. The Department may, if it deems necessary to protect agriculture, public health, or the environment from potential adverse effects from the introduction of a specific genetically engineered organism or product:
   a. Place restrictions on the number and location of organisms or products released, method of release, training of persons involved with the release of organisms or products, disposal of organisms or products, and other conditions of use;
   b. Require measures to limit dispersal of released organisms or spread of inserted genes or gene products;
   c. Require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products;
   d. Request the USDA to deny, suspend, modify, or revoke the permit for failure to comply with this rule.
   e. Request the USDA to suspend the permit if it is determined that an adverse effect is occurring or is likely to occur because of a release authorized by such permit.
4. To the extent possible, the Department shall accept for review and base its decision on the data submitted with the federal application. However, the Department may request additional information from the applicant to assess the risks to animals and plants, including risks of vector transmissions of genetically engineered organisms or products.
5. The Associate Director shall review the application recommendations with the Director who shall, within the time period prescribed on each USDA application, approve, conditionally approve, or deny the permit.
6. The Director shall return the completed application with the resolution to USDA for final action.

Historical Note

Adopted effective November 22, 1993 (Supp. 93-4). Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

ARTICLE 10. INDUSTRIAL HEMP

R3-4-1001. Definitions

In addition to the definitions provided in A.R.S. §§ 3-201, 3-311, and R3-4-101, the following terms apply to this Article.

"0.300%" shall have the same meaning as three-tenths percent.

"Applicant" means a key participant who seeks a license or certification as a grower, nursery, harvester, transporter, or processor under this Article

.

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

"Authorized sampling agent" means an inspector of the Department or independent party that has been trained by an authorized representative of the Department to collect samples of industrial hemp crops to determine compliance with applicable hemp laws.

“Biomass” means the homogenized pieces and parts, including but not limited to stems, leaves and floral parts of hemp.

“Certified laboratory” means the State Agriculture Laboratory or any laboratory certified by the State Agriculture Laboratory to perform compliance analysis of industrial hemp.

“Corrective action plan” means a plan utilizing the methods outlined in R3-4-1013(D)(2) for correcting a negligent violation or noncompliance with applicable hemp laws, which is either proposed by a licensed hemp producer and approved by the Associate Director, or issued by the Associate Director.

“Decarboxylated” means the completion of the chemical reaction that converts THCA into delta-9 THC, the intoxicating component of *Cannabis*. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and 87.7% of THCA ((delta-9 THC) + (0.877 * THCA)).

“Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.

“Delta-9 tetrahydrocannabinol” means the primary psychoactive component of *Cannabis*. For the purposes of this Article, delta-9 THC and THC are interchangeable.

“Department” means the Arizona Department of Agriculture.

“Director” means the Director of the Department.

“Disposal” means an activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green manure; burning plant material; or burying plant material into the earth and covering with soil.

“Division” means the Plant Services Division of the Department.

“Entity” means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

“Geospatial location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

“Harvest Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of *Cannabis* throughout the area.

“Hemp” has the same meaning as industrial hemp.

“Hemp laws” mean, unless otherwise specified herein, A.R.S. Title 3, Chapter 2 and rules adopted thereunder in Article 4.1, A.A.C. R3-4-1001, et seq.; 7 U.S.C. § 5940 (agricultural act of 2014 PL 113-79; 128 Stat. 656, eff. January 5, 2015, https://www.congress.gov/bill/113th-congress/house-bill/2642/text); 7 U.S.C. § 1639o et seq. (agricultural improvement act of 2018, PL 115-334; 132 Stat. 4908, eff. December 20, 2018, https://www.congress.gov/bill/115th-congress/house-bill/2/text); and 7 C.F.R. part 990, (86 FR 5596, eff. March 22, 2021, https://www.ecfr.gov/cgi-bin/text-idx?node=se7.8.990_11&rgn=div8). The rule does not include any later amendments or editions of the incorporated matter.

“Intentionally” means the state of mind defined in A.R.S. § 13-105(10)(a) or any successor statute.

“Key participant” means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

“Knowingly” means the state of mind defined in A.R.S. § 13-105(10)(a) or any successor statute.

“Licensing Agreement” means a contract between the Department and an applicant that indicates the terms and conditions required for a license issued pursuant to this Article.

“Lot” means the same as harvest lot.

“Manmade causes” means the influence to an industrial hemp crop created by a person, including but not limited to, irrigation, fertilization, chemical application, or physical interference.

“Measurement of Uncertainty (MU)” means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

“Natural causes” means the influence to an industrial hemp crop created by elements of nature including, but not limited to, temperature, wind, rain, hail, or flood.

“Performance based sampling” means a sampling method established in substantive policy and posted on the Department’s website that ensures, within a 95% confidence level, a harvest lot is compliant with this Article by not having a total delta-9 THC level above the acceptable limit.

"Program" means the Industrial Hemp Program.

"Propagative material" means any industrial hemp seedlings, explants, transplants, propagules, or other rooted material that is grown in a soilless media.

"Remediation" means the process for achieving compliance of non-compliant *Cannabis*. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

"Responsible party" means an individual that has signing authority of a partnership, limited liability company, association, company or corporation.

"THC" means Tetrahydrocannabinol

.

"THCA" means Tetrahydrocannbinolic Acid.

"Total THC or total delta-9 THC" means the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC which calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1002. Program Eligibility

A. Eligibility requirements. Unless otherwise determined to be ineligible under this Article and not withstanding any other law, a person or responsible party that applies for a program license shall:

1. Possess a valid fingerprint clearance card issued by the Arizona Department of Public Safety pursuant to A.R.S. § 41-1758.07.
   a. Applicants who have had a felony narcotics conviction within 10 years of the date of application shall not be granted a good cause exception under A.R.S. § 41-1758.07.
   b. Applicants who have had a felony narcotics conviction prior to December 11, 2018; and that participated in an agricultural pilot program for the purpose of research into the growth, cultivation and marketing of industrial hemp as authorized by 7 U.S.C. § 5940 (agricultural act of 2014 PL 113-79; 128 Stat. 656, eff. January 5, 2015, https://www.congress.gov/bill/113th-congress/house-bill/2642/text) may petition the state for an exception to the eligibility exclusion in subsection (A)(1)(a). The rule does not include any later amendments or editions of the incorporated matter.
2. Be a citizen of the United States or a legal resident alien. An individual who applies for a program license and is enrolled in an academic program at an accredited college or university, but who does not meet the criteria in this Section may be sponsored by an academic member of that college or university who meets the eligibility criteria in this Section and provides proof of eligibility as required in subsection (B)(2).
3. Be 18 years of age or older at the time of application.

B. Proof of eligibility.

1. Unless otherwise allowed by an exception to the requirements of this Section, the applicant shall provide the Department a legible photo copy, paper or electronic, of the applicant's fingerprint clearance card described in subsection (A)(1), which the Department will validate to ensure the applicant meets the eligibility requirements of this Section.
2. The Department shall accept the documents listed in A.R.S. § 41-1080(A) as evidence of age and United States Citizenship or legal residency.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1003. Licenses; Applications; Renewals; Withdrawal

A. Any person that grows, harvests, transports, or processes industrial hemp in any of the following categories shall obtain the appropriate license from the Department and shall abide by the terms and conditions set forth in the licensing agreement with the Department. Types of licenses include:

1. Grower - An authorized grower license shall allow the licensee to obtain seed or propagative materials pursuant to this Article for planting, possess authorized seed and propagative materials for planting, cultivate the crop, harvest plant parts, possess and store harvested plant parts, and transport plant parts for processing.

2. Nursery - An authorized nursery license shall allow the licensee to propagate eligible seed and propagative materials for planting for a licensed grower. A licensed nursery shall not grow industrial hemp for harvesting purposes, unless also licensed with the Department as a grower.
3. Harvester - An authorized harvester license shall allow the licensee to engage in the activity of harvesting an eligible industrial hemp crop for a licensed grower.
4. Transporter - An authorized transporter license shall allow the licensee to engage in the transport of a harvested industrial hemp crop for a licensed grower.
5. Processor - An authorized processor license shall allow the licensee to engage in the processing, handling, and storage of industrial hemp or hemp seed at one or more authorized locations in the state. The licensee may sell, distribute, transfer, or gift any products processed from harvested hemp that is not restricted in R3-4-1012.

B. At a minimum, applications for a license shall contain the information required in subsections R3-4-1003(B)(1) through (6), plus any additional information that may be required by the Department. Location information shall be retained by the Department for not less than three years. Licensing fees required under R3-4-1005 are due at the time of application.

1. All applicants must provide:
   a. Full name, mailing address, telephone number and email address;
   b. Fingerprint clearance card identification number of the applicant;
   c. If the applicant represents a business entity, the full name of the business, the principal Arizona business location address, the full name, title, and email address of the of the responsible party;
   d. Tax ID or Social Security Number; and
   e. Disclosure and explanation of any instance in which the applicant has been denied, debarred, suspended, revoked, or otherwise prohibited from participating in any public procurement or licensing activity.
2. Applicants for a grower's license must also provide:
   a. Registered planting site or sites: street address or major crossroads, legal description, and geospatial location for each field, greenhouse, building or site where industrial hemp will be grown, updated annually, or within 30 calendar days following a change;
   b. Estimated acreage for each outdoor location and square footage for indoor or each greenhouse locations intended for planting;
   c. Maps or aerial photos depicting each site where industrial hemp will be grown, handled, and stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the geospatial location information;
   d. Geospatial location information of all storage locations for seed or propagative materials, and harvested plants and plant parts;
   and
   e. Maps or aerial photos depicting each site where industrial hemp seed and propagative materials will be stored and labeled with the corresponding geospatial location information.
3. Applicants for a nursery license must also provide:
   a. Geospatial location information of all storage locations for seed or propagative materials;
   b. Geospatial location information of all propagation areas; and
   c. Labeled maps or aerial photos depicting storage and propagation areas.
4. Applicants for a harvester license must also provide the legal description and geospatial location information for each location of the harvesting equipment, together with corresponding labeled maps or aerial photos of the location or locations.
5. Applicants for a transporter license must also provide: legal description, and geospatial location information for each location the transporting vehicles and equipment, together with corresponding labeled maps or aerial photos of the location or locations.
6. Applicants for a processor license must also provide:
   a. Identification of the part of a harvested hemp crop or plant to be received for processing, in the following categories:
      i. Floral and leaf material, or biomass;
      ii. Seed for oil or grain;
      iii. Stalks for fiber or hurds; and
      iv. Seed or propagative materials for planting;
   b. Processing site or sites information that includes: street address or major crossroads, legal description, and geospatial location information for each building or site where hemp will be processed or stored; or where mobile processing equipment will be primarily based, together with labeled maps or aerial photos depicting the processing site information.

C. Application submission dates. Applications may be submitted at any time during the year, but the expiration date of the license shall be on December 31 annually, or biennially for a two-year renewal as authorized in subsection (D). An expired license may be reinstated up to three years after the expiration date, provided the applicant's business information has not changed.

D. Application for one or two-year renewals. At a licensee's discretion, a person that has been licensed by the Department under the industrial hemp program may apply for a one or two year renewal provided:

1. The person was licensed in the industrial hemp program within the previous calendar year;
2. The license of the person was in good standing at the time of renewal;
3. There is no change in the person or responsible party licensed;
4. There is no change in the physical location of the industrial hemp site;
5. The licensee does not owe any civil penalties, fees, or late charges to the Department; and

6. The person submits the associated fee for a one or two-year renewal.

E. Licensing agreements. All approved applicants for a license shall complete a licensing agreement issued by the Department prior to receiving a license. The licensing agreement may include additional terms and conditions as needed to ensure compliance with this Article, applicable state and federal laws, and rules and orders of the Director, but, at a minimum the applicant will agree to:

1. Provide access, for authorized Department inspectors, at any time, to all hemp and hemp seed, planted or stored, and all records to determine compliance with this Article and any state or federal law, rule or order regulating *Cannabis* as an agricultural crop;
2. Maintain all records, as stated in R3-4-1008;
3. Pay all fees required indicated in Table 1;
4. Comply with all pesticide use restrictions;
5. Comply with all seed laws of the state;
6. Defend, indemnify, and hold harmless the Department from liability for the destruction of any crop or harvested plant in violation of this Article;
7. Be solely responsible for all financial or other losses;
8. Be solely responsible for all land use restrictions, applicable city and county zoning, building, and fire codes and ordinances; and
9. Follow all regulatory, notification and reporting requirements.

F. Withdrawals.

1. When a licensee withdraws from the industrial hemp program, any licensing and inspection fees paid or invoiced prior to any notice of withdrawal are not eligible for refund. In order for a licensee to withdraw from the industrial hemp program, the following requirements must be met:
   a. Unless otherwise authorized by the Associate Director, the licensee shall complete and submit a withdrawal notice at least ten business days prior to the withdrawal of the Program; and
   b. Any industrial hemp or hemp seed, planted, harvested, or stored must be inspected by the Department prior to transport off of the property, disposal, or transfer to a new or existing licensee.
2. Withdrawal after submittal of an application but prior to issuance of a license will be prohibited unless the Department determines, in its sole discretion, that such withdrawal is appropriate.

G. Site modification. Anytime a licensed grower, processor or nursery modifies the registered site by changing the location of an existing site or by adding additional sites under the license, or removing a registered site from the licensee's record, the licensee shall submit a site modification application and associated site modification fee listed in Table 1.

There is no site modification fee for the request to remove a registered site from the licensee's record or when modifying or adding a site during the licensee's renewal process.

H. License transfer. The transfer of an industrial hemp license is authorized only if the licensee and eligible program applicant completes and submits a notarized Department issued transfer application and submits any applicable transfer fees listed in Table 1. The receiver of a transferred license shall complete a licensing application, and execute a licensing agreement as required by this Article, and all duties and responsibilities of the licensee shall be transferred to and acknowledged by the receiver in a written agreement between the licensee and receiver. Any license or other fees paid by the licensee shall be credited to the benefit of the receiver.

I. Change in business information. Licensees must complete and submit a Change in Business Information form within ten business days if there is any change in business information including business name, address, or other contact information.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1004. Industrial Hemp Research

A. A person, company, college or university that conducts research into the growth, harvesting techniques, transportation methods, or processing of industrial hemp is required to obtain a license pursuant to this Article.

B. A person, company, college or university conducting not-for-profit research may be exempted from the licensing fee or fees provided that:

1. The applicant submits to the Department a request for an exemption of the licensing fee;
2. The applicant provides a summary of the research to be conducted;
3. The applicant provides a summary of the benefit to the agricultural community that will be gained;
4. The applicant signs into an agreement with the Department that as a result of the research conducted the applicant will not gain any monetary profit;
5. The research will be conducted in compliance with this Article or any other law, rule, or order governing the production of industrial hemp; and
6. The results or summary of the research will be published or made publicly available.

C. Intellectual property. The Department holds no rights to any intellectual property resulting from industrial hemp research.

D. Restrictions.

1. A licensee shall not change not-for-profit research to for-profit research without notifying the Department and paying the required licensing fee.
2. Hemp and hemp products produced under a hemp research exemption, excluding hemp seed, are not eligible to enter the commercial stream of commerce.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1005. Fees

A. All licensing fees are due at the time of application.

B. A grower applicant or licensee is not required to pay separate harvester or transporter licensing fees, unless providing harvesting or transport services for other licensed growers.

C. Inspection and assessment fees are invoiced by the Department and are due within 30 calendar days of the invoice date.

D. Site modification fees. The appropriate fee shall be submitted at the time an applicant submits a site modification application as provided in R3-4-1003(G)

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E. Processor assessment fees are based on tonnage reports, shipping manifests or scale receipts of unprocessed hemp plants or plant parts received.

F. All outstanding inspection and assessment fees invoiced prior to November 15, shall be paid in full prior to the Department's processing of a licensee's renewal application.

G. THC sample analysis fees. Beyond the initial pre-harvest sample collected to determine regulatory compliance of a harvest lot of hemp, a licensee will be required to pay for any analytical fees before results are released. These include:

1. Any pre-harvest re-tests for crops that indicated a result above the threshold for compliance;
2. Post-harvest samples that have been determined to be a regulatory concern by the Department; or
3. By request from the grower that requires official analysis for commerce.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

Table 1. Fee Schedule

License	Licensing Fee	Inspection/Assessment Fee
Grower	$1,000 per license	$25 per one or less than one outdoor acre up to 100 acres
		$5 acre for each additional acre
		$75 per indoor facility up to 3 acres
		$25 per acre for facilities over 3 acres
		$150 per THC sample analysis (G)
Nursery	$650 per license	NA
Harvester	$100 per license	N/A
Transporter	$100 per license	N/A
Processor	$2,000 per license	$5 ton Oil Seed/Grain
		$100 ton floral material
		$150 per THC sample analysis (G)
All	Site modification fee: $300	N/A

Historical Note

New Table 1. Fee Schedule made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Table 1. Fee Schedule amended by emergency rulemaking at 27 A.A.R. 39, with an immediate effective date of December 17, 2020 (Supp. 20-4). Emergency expired. Table 1. Fee Schedule amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1006. Authorized Seed and Propagative Material

A. Authorized seeds and propagative material. Seeds and propagative materials authorized for use by a licensee is not a guarantee a crop will produce a total delta-9 THC concentration of not greater than 0.300%. Seeds and propagative material that are used to produce an industrial hemp crop or plant shall:

1. Be produced from an industrial hemp crop or plant; and
2. Originate from either:

a. A person, business, college or university licensed or certified in a state or federal program authorized to produce industrial hemp; or
b. A foreign source that is authorized by the country of origin to export industrial hemp seed or propagative material to produce an industrial hemp crop.

B. Each licensed grower or nursery is responsible for the acquisition of seed or propagative materials used for the growth of industrial hemp. The licensee shall keep and maintain the following information:
1. A copy of the seed or propagative material producer's certificate, license or equivalent documentation authorizing the production of industrial hemp;
2. An official analysis of the crop or plant that produced the seed or propagative material that indicates the crop or plant contained a total delta-9 THC concentration of not greater than 0.300% on a dry weight basis;
and
3. Phytosanitary certificates or nursery certificates issued by a plant regulatory official for any propagative materials to ensure compliance with A.R.S. § 3-211 and Article 2.

C. Labeling requirements. All Industrial Hemp seed or propagative material sold within or into Arizona must be labeled as to variety/strain or hybrid name, and origin.
1. For purposes of labeling, the number or other designations of hybrid industrial hemp shall be used as a variety name.
2. All Industrial Hemp seed for planting purposes sold within or into Arizona is subject to the Arizona seed laws under A.R.S. §§ 3-231 et seq. and Article 4.

D. Shipment of hemp plants for planting purposes.
1. Hemp plants for planting purposes produced by a licensed nursery for intrastate or interstate shipment shall:
   a. Have been produced from authorized hemp material as indicated in R3-4-1006(A);
   b. Have been produced in compliance with the laws, rules and order of the Director for the production of industrial hemp;
   c. Be transported with a copy of the nursery producer license; a copy of the receiving grower license; and a manifest or bill of lading indicating the amount in the shipment and physical destination of the shipment; and
   d. Only be sold or distributed to an entity or individual licensed to produce hemp.
2. Hemp plants produced by a licensed nursery for the interstate shipment of hemp plants for planting purposes shall, in addition to the requirements in R3-4-1006(D)(1):
   a. Be accompanied by a certificate issued by the Department that attests the material was produced in compliance with laws, rules and orders of the Director regulating the production of industrial hemp in the state; and
   b. Ensure compliance with all plant quarantine requirements of the destination state and certification as indicated in R3-4-301 as applicable.

E. Restrictions.
1. A person that receives seed or propagative materials that does not comply with this Article or any other phytosanitary, seed or labeling law of the state shall immediately notify the Department and hold the seed or propagative material until a disposition is provided by the Department.
2. The Department may direct a licensee to place a shipment of seed or propagative material on hold to ensure compliance with this Article and any other law or regulation that may apply to the shipment of agricultural seed and plants for planting purposes.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1007. Location Requirements; Signage

A. Location requirements.
1. A Licensed grower or processer shall not grow, process, or store industrial hemp in any residential dwelling.
2. A Licensee is responsible for maintaining compliance with all applicable city and county land use restrictions, zoning laws, building, and fire codes and ordinances.
3. A registered location shall be made available for inspection at the request of an inspector during normal business hours.
4. A licensed grower or processor shall not grow, process, or store any forms of *Cannabis* that are not classified as industrial hemp within a single structure at the registered location.

B. Signage. The use of the Arizona Department of Agriculture logo or likeness is not permitted on signage. A licensed grower or processor shall conspicuously post signage at the perimeter of the registered location that includes the following information:
1. The statement, "Arizona Department of Agriculture Industrial Hemp Program - No Trespassing Allowed";
2. Licensee's name or company name and license number; and
3. The Arizona Department of Agriculture, Industrial Hemp Program phone number.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1008. Compliance; Recordkeeping; Audits

A. General compliance requirements.

1. All licensees are subject to audits to ensure compliance with the recordkeeping requirements in subsection (B);
2. An authorized Department inspector shall be allowed access to all growing, storage, and processing locations of a licensee's industrial hemp crop, hemp seed, propagative material, harvested material, handling and processing equipment to conduct a visual inspection and determine if a violation of this Article may exist.

B. Recordkeeping. All licensees may be audited to ensure compliance with all recordkeeping requirements. A licensee shall comply with the recordkeeping requirements in this subsection at a minimum. Additional recordkeeping requirements may be established as set by policy and updated annually.

1. All records documenting the geospatial location, growth, propagation, harvesting, storage, agronomic data, shipping, receiving, transportation, distribution, processing, sale, purchase, third party analysis or research of all plants, seeds and materials shall be kept within the state of Arizona and made available for inspection on request.
2. An in-state agent must be maintained for receipt and storage of records.
3. All records shall be maintained for not less than five years.

C. Sampling and testing. All licensees are subject to the collection of a representative sample of any *Cannabis* plant, hemp crop or harvested hemp in possession of the licensee or licensee's agent to determine the total concentration of delta-9 THC as reported by a certified laboratory to ensure compliance with this Article and any state or federal law, rule or order regulating *Cannabis* as an agricultural commodity. Unless otherwise specified in an alternative performance-based sampling policy, crops shall be sampled within 30 days prior to the intended date of harvest and samples must be collected from mature flowering plants. All sampling agents must have undergone official sampling training by an authorized representative of the Department for the collection of *Cannabis* samples for determination of compliance with the program. A licensed grower shall not harvest an industrial hemp crop prior to the collection of an official sample for compliance purposes.

1. Sampling method. The Department shall publish a policy on the procedures used by the Department to sample a *Cannabis* plant or crop; and may publish a policy or policies for alternative, performance-based methods that have the potential to ensure, at a 95% level of confidence, that the *Cannabis* plant or crop will not test above the acceptable hemp total delta-9 THC level, such policy or policies may be updated annually as dictated by changing circumstances.
2. Only an authorized Department inspector, or other authorized sampling agent, may collect an official sample to determine compliance with this Article.
3. When collecting an official sample, an authorized Department inspector, or other authorized sampling agent, shall:
   a. Ensure the licensee or authorized representative of the licensee is present during the collection of the official sample;
   b. Collect a representative sample of the crop, plants or harvested crop;
   c. Split the official sample as follows:
      i. One-third for retention by the Department or to provide to a certified laboratory for compliance with this Article;
      ii. One-third for confirmation of analytical results if required; and
      iii. One-third that is provided to the licensee for retention or to utilize for additional analysis by a third party laboratory. Any results provided to the licensee by a third party laboratory do not supersede official results.
   d. Label all official samples with an official sample number, sample date, collector name, location ID, and grower license ID number;
   e. Apply official custody seals to all official samples; and
   f. Complete an official chain of custody form that is signed and dated by the inspector and licensee or the licensee's representative.
4. Sample transport and submission. The Department shall not be liable for samples that are detained by any federal, state or local law enforcement agency.
   a. If a certified laboratory receives a sample with a broken custody seal or incomplete or missing chain of custody, that sample shall be null and void;
   b. All official samples retained by the Department are the property of the Department; and
   c. The Department is not liable to reimburse the licensee for official samples collected.
5. Laboratory Standards. Certified laboratories conducting testing of hemp must conduct analytical testing for purposes of detecting the total calculable amount of delta-9 THC and shall meet the following standards:
   a. Laboratory quality assurance must ensure the validity and reliability of test results;
   b. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate and that the laboratory can successfully perform the testing;
   c. The demonstration of testing validity must ensure consistent and accurate analytical performance; and
   d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Article.
   e. At a minimum, analytical testing of samples for total calculable amount of delta-9 THC levels must use post-decarboxylation or other similarly reliable methods approved by the U.S. Secretary of Agriculture. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC). The test result must reflect the total calculable amount of delta-9 THC. Testing methodologies meeting these requirements include, but are not limited to, gas chromatography and high-performance liquid chromatography.
   f. The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.

g. Certified laboratories must report the measurement of uncertainty (MU) of the methodology, in reference to the U.S. Department of Agriculture's Laboratory Testing Guidelines, U.S. Hemp Production Program, published on January 15, 2021, or its successor document in reference to the AOAC International (Association of Official Agricultural Chemists), Standard Method Performance Requirements (SMPRs®) for Quantitation of Cannabinoids in Plant Materials of Hemp (Low THC Varieties *Cannabis* sp.) SMPR 2019.003 found at the website: https://www.aoac.org/resources/smpr-2019003/. Certified laboratories must also report the MU as a ± value and report the total delta-9 value in the same unit of measure used to report the MU.

h. Any sample test result showing with at least 95% confidence that the total delta 9 THC content of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Article.

6. DEA Registration. Certified laboratories must also be registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13 no later than December 31, 2022.

7. Sample results. A copy of any result produced by a certified laboratory shall be provided to the licensee, but such result is the property of the state.

D. Crop compliance.

1. Compliant crops. When a crop is found to be compliant with the regulations governing the production of industrial hemp, a grower will be provided documentation authorizing the movement of the harvest lot. Upon receiving authorization from the Department the licensed grower shall not comingle the harvest lot with any other compliant or non-compliant harvest lot. The grower shall:
   a. Harvest the compliant harvest lot within 30 business days;
   b. Notify the Department if there is a delay in the 30 business day harvest window due to inclement weather or other natural causes; and
   c. Notify the Department prior to shipping or transporting the harvest lot as provided in R3-4-1011(D).
2. Non-compliant crops. Non-compliant crops with a total delta-9 THC concentration greater than 0.3% shall not be allowed into the stream of commerce. When a crop is found to be non-compliant with the regulations governing the production of industrial hemp, a grower will be required, within 15 business days of notification of non-compliance, to either voluntarily dispose of the crop by a method prescribed in R3-4-1013(F) and submit a notice of destruction under R3-4-1011(E), together with supporting evidence of disposal. Alternatively the grower may submit a corrective action plan under R3-4-1013(D) to remediate the crop to achieve compliance with the regulations governing the production of industrial hemp. A corrective action plan may be issued by the Department, or if submitted by the grower, must be approved by the Department. A corrective action plan will only be approved if the total delta-9 THC concentration is greater than 0.3% and less than 1.0%. Failure to dispose of the crop or comply with approved corrective action plan may result in a notice of violation under R3-4-1012. Upon receiving a notification of noncompliance from the Department, the licensed grower shall not move or transport the non-compliant crop from the hemp site, unless otherwise permitted by the Department to remediate the crop. Non-compliant crops shall not be comingled with any other compliant or non-compliant harvest lot. Harvest lots with a total delta-9 THC concentration greater than 1.0% constitutes a violation and must be disposed of by method indicated in R3-4-1013(F).

E. Volunteer hemp plants. It shall be the responsibility of the licensee to monitor and destroy volunteer hemp plants.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1009. Reserved

Historical Note

Section reserved at 25 A.A.R. 1447 (Supp. 19-2).

R3-4-1010. Reserved

Historical Note

Section reserved at 25 A.A.R. 1447 (Supp. 19-2).

R3-4-1011. Notifications; Reports

A. All notifications and reports for licensees shall be made on forms provided by the Department unless otherwise indicated in this Section or as directed by the Associate Director.

B. Planting Report. Within five business days after planting a harvest lot of hemp, a grower must complete and submit a planting report that includes, at a minimum the following:

1. The contact information of the licensee, including license number;
2. A unique harvest lot identification number assigned by the grower or nursery;
3. The geospatial location information where a harvest lot was planted (the “site”);
4. The variety name of the harvest lot;
5. The actual area planted with each lot; and

6. The estimated date of harvest or transplanting.

C. Grower Notice of Intent to Harvest. Within 30 calendar days prior to harvest, a grower must complete and submit a Notice of Intent to Harvest form for each harvest lot to be sampled that includes, at a minimum the following:
1. The contact information of the grower, including license number;
2. The unique harvest lot identification number assigned by the grower as initially indicated on the planting report;
3. The geospatial location or locations information of the harvest lot to be sampled (the "site");
4. The variety name of the harvest lot;
5. The size of the area to be harvested; and
6. The intended date of harvest.

D. Notice of Intent to Transport. Within three business days prior to transporting a lot of harvested hemp for processing, a grower must complete and submit a Notice of Intent to Transport form for each harvest lot transported to a processor that includes, at a minimum the following:
1. The contact information of the grower, including license number;
2. The unique harvest lot identification number assigned by the grower as initially indicated on the planting report;
3. The geospatial location or locations information of the harvest lot to be transported;
4. The variety name of the harvest lot;
5. The amount of harvested hemp to be transported;
6. The intended date of transport; and
7. The contact information of the receiver.

E. Notice of Destruction. Within three calendar days after a grower has found a harvest lot significantly damaged, completely destroyed, or has disposed of a harvest lot, a grower must complete and submit a Notice of Destruction form that includes, at a minimum the following:
1. The contact information of the grower, including license number;
2. The unique harvest lot identification number assigned by the grower as initially indicated on the planting report;
3. The geospatial location or locations information of the harvest lot subject to damage, destruction, or disposal (the "site");
4. The variety name of the harvest lot;
5. The size of the area that was subject to damage, destruction, or disposal; and
6. The date the damage or destruction was discovered, or date of disposal.

F. Grower and nursery annual reports. By December 31 of each year, a grower or nursery shall provide the Department a report of the following:
1. The sale or distribution of any industrial hemp grown under the grower's license;
2. The name and address of the person or entity receiving the industrial hemp; and
3. The amount of the industrial hemp sold or distributed

.

G. Processor notifications. All shipments of industrial hemp received into a processing facility must be reported to the Department.
1. For the importation of hemp material for processing, a licensed processor shall notify the Department of the shipment, within three business days of receipt of the shipment. The notification shall include the following information:
   a. A copy of the shipping manifest that indicates the name, physical address, and phone number of the shipper, and the total weight of the hemp commodity in the shipment;
   b. A copy of the documentation issued by a regulatory official that attests the hemp commodity was produced with an acceptable concentration of total delta-9 THC;
   c. A copy of the industrial hemp grower's certificate, license or equivalent documentation authorizing the production of industrial hemp in that state;
   and
   d. A phytosanitary certificate, if required, a certificate of inspection, or certificate of origin issued by a plant regulatory official.
2. For the invoicing of processor assessment fees listed in Table 1, a notification shall be filed with the Department within 30 calendar days of receipt of the shipment or shipments that contain the following information:
   a. The grower's license number;
   b. The harvest lot number issued by the Department or an authorizing state;
   c. The amount of material in the shipment; and
   d. The date the shipment was received.

F. Other notifications. A licensee shall notify the Department within three business days from receipt of results of any third party analysis that determined a hemp crop or plant sample contained a total delta-9 THC concentration greater than 1.0%.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1012. Unauthorized Activity; Violations

A. A licensee commits a violation of this Article by:

1. Failing to provide a legal description of land on which a licensee grows, processes, stores or researches industrial hemp or hemp seed;
2. Failing to obtain the proper license with the Department;
3. Producing or distributing *Cannabis* sativa, with a total delta-9 THC concentration greater than 1.0% on a dry weight basis, unless otherwise permitted by state or federal law, rule or order;
4. Violating a term or condition of the signed licensing agreement or corrective action plan; or
5. Violating any law, rule, or order in the regulation of industrial hemp.

B. False Statement. Any person who materially falsifies any information contained in an application to participate in the program established under this Article shall be ineligible to participate in the program.

C. No unauthorized person shall:
1. Grow, cultivate, handle, store, harvest, transport, import or process industrial hemp
;
2. Trespass on a property registered as an industrial hemp site;
3. Disturb, damage or destroy an industrial hemp plant or crop on a registered location; or
4. Tamper, damage or destroy posted signage as required under R3-4-1007(B).

D. No authorized program licensee shall:
1. Offer for sale, trade, transfer possession of, gift, or otherwise relinquish possession of industrial hemp plants, plant parts, or hemp seed that is capable of germination to an unauthorized person;
2. Destroy an industrial hemp crop, stored industrial hemp or hemp seed without prior notification to the Department; or
3. Import or export industrial hemp plants or plant parts for processing, or seed or propagative material for planting purposes, without notifying the Department and complying with all import or export regulatory requirements.

E. Intentional, Knowing, or Negligent Violations. Any violation of state or federal law rule or order that is determined to be committed intentionally or knowingly ("culpable mental state greater than negligence") shall be reported to the state Attorney General, the U.S. Attorney General and any relevant state and local law enforcement agencies.

Negligent violations are not subject to federal, state, tribal, or local government criminal enforcement action.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1013. Corrective Actions

A. In addition to being subject to possible license suspension, license revocation, and monetary civil penalty procedures under R3-4-1014, a person who is found by the Department to have violated any law, rule or Director's Order governing that person's participation in the program may be subject to a corrective action plan.

B. The Associate Director may request that the licensee submit a corrective action plan, or may impose a written and dated corrective action plan for a negligent violation or non-compliance of any law, rule or Director's Order governing a person's participation in the hemp program.

C. Corrective action plans shall include, at a minimum, the following information:
1. The requirements a person must fulfill to correct a violation or non-compliance of this Article as indicated in subsection (D);
2. A reasonable date by which the person shall complete violation or non-compliance corrections; and
3. For violations pursued under A.R.S. § 3-319, a requirement for periodic reports from the violator to the Department about the violator's compliance with the corrective action plan, laws, rules or Director's Orders for a period of not less than two years from the date of the violation.

D. Corrective Action Plan.
1. Hemp crops or harvested hemp shall not be removed from the licensee's registered hemp site if found non-compliant by having a total delta-9 THC concentration of greater than 0.300%, but less than 1.0% on a dry weight basis, unless granted authorization by the Associate Director to complete the measures in an approved corrective action plan.
2. In addition to one or more of the components listed in A.R.S. § 3-317, the Department may prescribe one or more of the following actions as part of a corrective action plan:
   a. Stripping stalks and disposal of floral material;
   b. Sterilization of seed and disposal of floral material;
   c. THC remediation of leaf and floral material as prescribed by the Associate Director;
   d. Blending and milling of the entire plant/crop to a homogenized state, then resampled for compliance;
   e. Education and training; and
   f. Other corrective measures prescribed by the Associate Director.
3. Failure to complete the prescribed corrective measure within the timeframe indicated in the corrective action plan or to complete any component of a corrective action plan shall constitute a second violation of this Article.
4. The cost of implementing a corrective action plan is the burden of the licensee.

E. Repeat negligent violations. A person that violates this Article, the laws governing the production of industrial hemp, or any order issued by the Associate Director three times in a five-year period shall be ineligible for an industrial hemp license for a period of five years beginning on the date of the third violation.

All negligent violations within one year counts as one negligent violation.

F. Methods of disposal. Disposal of any industrial hemp crop or plant, whether such disposal is pursuant to voluntarily action by the licensee or pursuant to a Department order of disposal, shall be accomplished by one or more of the following methods:

1. Plowing under;
2. Mulching or composting;
3. Disking;
4. Bush Mower or chopper;
5. Deep burial; and
6. Burning or incinerating.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

R3-4-1014. Penalties

A. Civil penalties. Civil penalties shall be imposed under A.R.S. § 3-319.

B. License suspension. A person that violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department may have their licensing privileges suspended until completion of any corrective actions prescribed in R3-4-1013.

C. License revocation. A person that intentionally violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department, or who commits a third negligent offense within a five year period may be subject to one or more of the following penalties:

1. Revocation of all licenses issued under this Article;
2. Seizure and destruction of all hemp crops, seed, and harvested industrial hemp of the licensee, at the cost of the licensee; and
3. Ineligibility for a license under this Article for a period not less than five years.

D. Intentional or knowing violations committed by unlicensed individuals shall be punished according to A.R.S. §§ 3-319 and 13-3405.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 1570, with an immediate effective date of September 16, 2021 (Supp. 21-3).

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.

3-312. Legislative findings; purpose; authorization

A. The legislature finds and determines that developing and using industrial hemp can improve the economy and agricultural vitality of this state and that the production of industrial hemp can be regulated so as not to interfere with strict regulation of marijuana in this state.

B. The purposes of this article are:

1. To promote the economy and agriculture in this state by allowing institutions of higher learning and the department to develop and regulate industrial hemp as part of an agricultural pilot program for the purpose of research into the growth, cultivation and marketing of industrial hemp as authorized by the agricultural act of 2014 (P.L. 113-79; 128 Stat. 649; 7 United States Code section 5940).

2. To allow the commercial growth, cultivation and marketing of industrial hemp if the commercial growth, cultivation and marketing of industrial hemp is authorized by federal law, while maintaining strict control of marijuana.

C. Industrial hemp is an agricultural product that is subject to regulation by the department.

D. Industrial hemp propagation, processing, manufacturing, distribution and market research are authorized in this state under a preapproved agricultural pilot program. Hemp seed that is authorized for an agricultural pilot program shall be certified solely through the department. Unauthorized hemp seed may not be planted. Hemp seed that is derived from previously authorized hemp seed is considered authorized hemp seed for the purposes of this article.

E. If authorized under federal law, the commercial production, processing, manufacturing, distribution and commerce of industrial hemp in this state is allowed outside of the agricultural pilot program.

3-313. Rulemaking; fees; intent

A. For the purposes of carrying out this article, the director shall:

1. Adopt rules pursuant to title 41, chapter 6 to oversee the licensing, production and management of industrial hemp and hemp seed in this state pursuant to this article.

2. Adopt fees by rule.

3. Authorize qualified applicants to propagate, harvest, transport or process, or any combination thereof, industrial hemp according to rules adopted by the director.

B. The legislature intends that the fees adopted pursuant to subsection A, paragraph 2 of this section be used to fund the department's activities in licensing, testing, inspecting and supervising industrial hemp production.

DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 13

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 9, 2024

SUBJECT: **DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 13

Summary

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to twelve (12) rules in Title 13, Chapter 13, Article 1 regarding School Bus Minimum Standards and two (2) rules in Article 2 regarding Minimum Standards for School Buses Operated on Alternative Fuel.

In the prior 5YRR for these rules, which was approved by the Council in August 2019, the Department proposed to amend numerous rules as outlined in Section 10 of the Department's report. However, the Department indicated it would hold off on rulemaking until the Arizona School Bus Advisory Council provides final recommendations to the Department. The Department indicates no formal rulemaking was taken to address issues in the prior 5YRR since that time. However, the Department issued substantive policy statements in 2022 and 2024 which are included in the final materials for the Council's reference. As of August 27, 2024 the substantive policy statement titled "HPDCVE-2, School Bus Driver Hours Limitations" has been rescinded and is no longer enforced by the Department.

Proposed Action

The Department indicates it intends to have a rulemaking before the Council to address the issues identified in more detail in the report by December 2026. However, the Department indicates this date is difficult to determine for several reasons. First, the Department is statutorily required to consult with the Student Transportation Advisory Council (STAC), established by A.R.S. § 28-3053 and pursuant to A.R.S. §§ 28-900(A) and 28-3228(B)(1) and (C). The Department indicates it began a rulemaking process with the STAC in the fall of 2018 and participated with working groups established by the STAC in 2019. However, the Department indicates those working groups failed to meet after mid-year 2019, having completed no usable work. In 2020, the Department indicates the COVID-19 pandemic shut down all activity by the STAC. Furthermore, beginning in 2020, and over the several years, the terms of the STAC members expired and no new appointees were added to fill the vacancies. As a result, the STAC has no members at the time of this report. The Department states, as the STAC has no members to form a quorum to meet, the Department cannot fulfill its statutory requirement to consult with the STAC and is therefore statutorily prevented from moving forward with any proposed rulemaking.

Second, the Department indicates a compounding factor to promulgating final rules in a timely manner is the frequency by which the STAC meets. In previous years, the STAC was only statutorily mandated to meet once a year. In 2022, A.R.S. § 28-3053(C)(1) was amended to mandate the STAC meet at least twice annually. As the Department has no statutory authority over the frequency by which the STAC meets, the Department indicates a twice annually schedule will with high probability extend the rulemaking timeframe.

The Department indicates it sought legal counsel on if it could move forward with a rulemaking without the statutory consultation from the STAC. The Department's attorney advised the Department cannot statutorily move forward without meeting the requirement to consult with the STAC.

The Department indicates, over the last several years while a rulemaking waiver and Docket Opening were valid, the Department internally invested significant time and resources creating updated drafts of the rules in preparation of a seated STAC. However, the Department reached a ceiling of internal knowledge on some topic areas and needs to consult with experts in certain fields who are members of the STAC; such as, members with expertise in all-electric vehicles (A.R.S. § 28- 3053(A)(12)).

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

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

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

The Department indicates that the rules govern the minimum standards for school bus driver/instructor certification, and the maintenance/repair and inspection of school buses. The Department does not specify that the school bus driver needs to be a full-time employee, thus providing employers choices. The Department states that all drivers still must meet the full requirements of the minimum standards, and the employer shall still administer all training and tests. The Department believes that while the cost of a new school bus and the cost of a quality repair and maintenance program is substantially high, it argues that a school bus with its cargo of children should not have lower standards in comparison to any other commercial vehicle on the roadways. The Department states that the transportation environment has changed dramatically, and employers now have options to buy school buses of various sizes and propulsion. The Department states that its primary concern is that a school bus's design and operation does not pose undue exposure of harm to the children passengers.

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 ensures that the benefits of the rules for student safety outweigh the costs of the rules through its statutorily required consultation with the Student Transportation Advisory Council and by attending meetings/conferences with the regulated community. For example, conducting instruction and Q&A sessions at the annual Transportation Administrators of Arizona conference, which includes school transportation administrators, school bus drivers, school bus mechanics and school bus manufacturers. Based on these interactions, the Department evaluates the rules and adjusts (removes or adds requirements) if safety is not compromised.

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

The Department indicates it received several written criticisms in the last five years, which are outlined in Section 7 of the Department's report. Council staff believes the Department has adequately responded to the comments.

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

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

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

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- R13-13-101 & 102
    - These rules are inconsistent with A.R.S. § 32-4302, which allows for out of state certifications to be recognized in Arizona for employment under certain

conditions. The rules need to be amended to reference this statute as an option and the requirements to be certified.

- R13-13-101, 102, 106, 107, 108 & 301
    - These rules incorporate by reference federal codes and require an update to the most current version.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- All rules
    - Required amendments to the rules as identified in the 2019 report were not made. The details of these items are explained in Item 10 and excluded in detail from this item for brevity.
- R13-13-101
    - Add or update definitions for electronic file formats for video and audio recording; incorporated by reference updates; G-forces; incident; fingerprint cards; online services; record; statutory reference updates for safety glass, school, school district.
- R13-13-102
    - Fingerprint clearance cards need to be specified as Level One cards.
    - Allowances for out of state CDL to be accepted under A.R.S. § 32-4302 including testing and driving history.
    - Federal code incorporated by reference updates.
    - Specify requirements if a driver or applicant fails the physical performance test three consecutive times in a 90-day period.
    - Include a requirement for the employer to notify the Department of when a physical fitness test is being conducted. This will allow the Department to audit those tests while currently in the rules the employer is not required to notify the Department.
    - The rules currently call for a physical fitness test once every 2 years; a statement needs to be included that states the driver is required to maintain that level of fitness throughout the entire 2 years. If the driver cannot maintain that level of fitness, the employer should prevent the driver from operating the bus until such time as the driver can pass a new physical fitness test. That new passage is intended to address issues the Department has observed where a driver has developed a temporary medical condition (such as a broken bone and using a cane or walker) but the Department had no mechanism to prevent them from driving until the condition was remedied.
    - Add a new statement permitting the Department to order a driver to take a spot physical fitness test if the Department has reasonable belief the driver is no longer in compliance with the physical fitness standards.
    - Remove the specific number of questions and points per question on the tests to allow the tests to be more easily adapted and modified to safety needs.

- Add a requirement that CPR and first aid must be maintained to maintain driver certification. The rules currently state it is only required upon initial certification. The listing of CPR providers is outdated and inadequate and needs to be expanded to include numerous other recognized sources; such as, EMT, paramedics, nurses, medical doctors, any government agency with certification to conduct that type of training etc.
- Add A.R.S. § 15-925 drivers into the denial, cancellation, suspension section as well as other subsections referencing the new Article 3 for those drivers.
- Add probation as a condition under the denial, cancellation or suspension. The Department recognizes that sometimes the situation doesn't warrant a full denial, cancellation or suspension as the situation is temporary.
- Add a new reason for the Department to deny, cancel, suspend or put on probation a driver in (K)(1)(d) by stating "*Demonstrating behavior that endangers or potentially endangers the educational welfare or personal safety of students, teacher or school bus drivers or other co-workers.*" The Department has encountered situations where a violation of statute or rule hasn't occurred yet, but the actions of the driver were suspicious or reasonably inappropriate. Case example: a male driver taking pictures of underage girls on a school bus is not an endangering sexual offense in statute/rule and the Department has no mechanism to corrective action on the driver in the current rules. The Department argues that such potential activity in the case example is suspicious and has no apparent justified reason. Some activity could potentially be a precursor to a crime, may be an indicator of crimes the driver may have already committed but hasn't been identified/apprehended for, or that may discourage a student from riding the bus affecting the student's educational welfare. At a minimum, the Department believes it has a statutory duty to protect students by investigating the situation and making a determination based on the evidence and totality of the circumstances.
- Add a requirement for drivers to update their mailing address when updating their driver license with the Department of Transportation (ADOT) under A.R.S. § 28-448. The Department currently does not receive any notification when a driver makes address updates with ADOT.

- R13-13-103
  - Add throughout references for out of state drivers under A.R.S. § 32-4032 and the requirements for those persons to be certified.
  - In similar to Rule 102, remove the number of test questions and points per question to make modification of the tests easier and more relevant.
- R13-13-104
  - (B)(15) Remove outdated terms like CD player and add a requirement to activate the noise suppression switch. Specify the bus is not required to stop at an exempt crossing.
  - (C) Specify the 60 and 70 hour limits are compensated time.
  - (D)(9) removed outdated reference to two speed axles.
  - (D)(29) Specify requirements if the driver intends to leave the engine running when exiting the driver compartment.

    - (D)(31) Specify that any school employee who may ride on the bus or that assists students in riding the bus shall participate in the evacuation drill. The current rule is not clear on this besides the driver and the Department believes having the teachers and/or aides on the bus be aware of evacuation procedures is a sound safety requirement. Change every passenger to every student that rides or may ride the bus. Limiting the drill to only students who ride the bus to/from school excludes students that may ride the bus for field trips or other activities who should also be aware of evacuation procedures.
    - (E) Add the defined term incident to the rule.
    - (E) Add a requirement the employer provide at the Department's request all unaltered, unredacted interior and exterior video, still-image and audio recordings taken by the bus's recording system and the bus driver. The Department has statutory authority to investigate school bus collisions and incidents and in the modern environment video/picture/audio can be a major investigative tool to aid in determining what occurred.
    - (E)(7) Specify the citation as a traffic citation. The current use of the word citation is vague. The Department is not interested in every citation a person may receive that is unrelated to the occupation of driving a school bus; such as, expired meter parking citation, residential city code violation for excessive trash and so forth.
- R13-13-105
    - The Department expects this rule to receive some amendment; however, it will need to discuss this rule with manufacturing experts and the Student Transportation Advisory Council.
- R13-13-106
    - This rule is almost 20 years out of date. The list of engineering and design changes in this rule is so substantially extensive that listing every change in this report would be unduly cumbersome and otherwise inexpedient. Every item is being extensively reviewed to modern standards. The following are highlights:
        - All federal and other engineering incorporated by reference need to be updated.
        - Brakes are being broken into subsections for general brakes, hydraulic brakes and air brakes.
        - Tow and eye hooks specification were added.
        - Clutch was removed as it is not a safety item.
        - Cooling system was removed as it is not a safety item.
        - Electrical system was refined to reference low voltage battery (12 volt)system. Hybrid and all-electric buses will be addressed in new rules in Article 2. Battery tray construction, G-force loads, hinging and securement methods were updated.
        - Alternator systems were updated to address electrical load for wheelchair lifts as well as permitting both belt and direct-drive alternators.
        - Wiring color was addressed to prevent confusion with hybrid and all-electric bus wiring systems.
        - Wiring fuse box locations, actions and systems were specified as well as a wiring diagram.

        - Added a requirement for daytime running lamps.
        - Diesel or gas tailpipes including after-treatment system exhaust specifications were updated. Additional specifications for where the exhaust may not exit were added; such as, near exits, fuel filler doors, any passenger door.
        - Remove the oil filter as it is not a safety item.
        - Steering systems; remove the text and replace with a reference to 49 CFR 393.209.
        - Suspension, Shock Absorbers. Remove the paragraph that states shock absorbers are not required for tandem axles.
        - • Tires: Specify that multi-piece (split rims) wheels or tube tires are not permitted. Incorporate 49 CFR 571.120 on tires for commercial vehicles. Specify same-size spare tires; specify minimum tread depth; specify retread tires are only permitted on rear non-steering wheels; specify no tire shall be used beyond six years from date of manufacture.
        - Transmission: Remove the outdated three forward speeds and one reverse requirement. Specify a shift interlock is required to prevent accidentally shifting the bus into gear.
- R13-13-107
    - This rule is almost 20 years out of date. The list of engineering and design changes in this rule is so substantially extensive that listing every change in this report would be unduly cumbersome and otherwise inexpedient. Every item is being extensively reviewed to modern standards. The following are highlights:
        - Update incorporated by reference items.
        - Update the introduced to Arizona dates in the opening paragraph to correspond to the date of final rules.
        - Several items are duplicative to Rule 106 and were shifted to that rule to keep the rules more concise.
        - Belt cutter: removed the limiting wording of *with passenger seatbelts* as the driver still requires one even if the passenger seats do not have belts.
        - Add an optional child alert notification system to specify that the system shall not conflict with any other existing components of the bus and additionally if equipped with a notification system the system shall not have an override or bypass capacity.
        - Color: Remove text and incorporate by reference the National Congress on School Transportation, National School Transportation Specifications and Procedures. Add an allowance for the top of the bus to be painted white.
        - Electrical wiring: Specify for inspection purposes all wire splices shall be documented on the wiring diagram and that all wiring shall exceed the rated load by at least 25%. Permit 12 volt and USB type power sources in the driver compartment to operate modern equipment; such as, tablet with route map.
        - Emergency exits: add incorporated by reference for 49 CFR 571.217.
        - Noise suppression switch: Specify the switch needs to be spring loaded so that it will return to the inactive position once the driver releases pressure

from it so that it doesn't inadvertently remain in the active position. Specify the switch shall not deactivate any emergency communications device; such as, the two-way radio.
        - Front and rear bumper specifications for thickness, corner wrapping and mounting and material.
        - Seats: Incorporate by reference 49 CFR 571.3, 571.222. Specify seat back height at 24 inches above the seat reference point to prevent forward movement of an occupant. Specify if track seating is installed, the manufacturer shall supply a minimum and maximum seat spacing dimension label permanently affixed to the bus.
        - Service Door: Specify the scissor door exemption in 21 A.A.R. 3211 dated December 18, 2015 expires with the new rules and all buses with scissor doors no longer meet minimum standards.
        - Step Treads: In response to criticism of using only metal, remove the metal plate requirement and allow for elastomer floor covering.
        - Undercoating was removed as it is not a safety item. If undercoating is applied, it shall not cover any exhaust components.
        - Windows: Incorporate by reference 49 CFR 571.222 on window sizing and 49 CFR 393.60 on tinted or frost-free glazing for passenger windows and rear doors.
        - Windshield Washer System and Wipers: Specify both sides of the windshield are required for the washer. Remove antiquated text specifying air or electric motors for the wipers.
- R13-13-108
    - Remove *minor* defects. Modern commercial vehicle standards no longer consider minor defects as an out-of-service violation.
    - (B) Update the introduced to Arizona dates to align with the promulgation of the new rules.
    - Brakes: Incorporate by reference 49 CFR 393.40 for defective brake component determined to be out-of-service.
    - Emergency Door: Add that the header pad is missing, misaligned or damaged.
    - Emergency Exit: Add missing or illegible instruction stickers.
    - Fire extinguisher: Add not properly mounted.
    - Fuel System: Specify liquid or gaseous and incorporate by reference 49 CFR 396.3. Specify any fuel leakage from CNG or LPG systems detected audibly, visually or by smell and verified by a testing device.
    - Horn: Specify the primary horn operated by the center of the steering wheel.
    - Seats: Specify missing one or more screw/bolts or incorrect size screw/bolt; driver seat not meeting requirements for adjustment; loose seat cushions; exposed frame; any diminished seat or barrier material that comprises the integrity of compartmentalization and occupant protection incorporating by reference 49 CFR 571.222.
    - Floor: Specify uneven joints.
    - Head Lamps: Incorporate by reference 49 CFR 393.24.

    - Lamps (all types): Specify for LED style that no more than 50% of the light emitting diodes in a fixture can be inoperative.
    - Lettering and Numbering: While this was a minor violation, it is being moved to be a major violation for missing emergency exit interior or exterior signage.
    - Service Door: Add air leak at service door valve.
    - Tires: Add age greater than six years.
    - Windshield Washer System: Remove missing and replace with not operating as designed.
- R13-13-109
    - Specify the days as business or calendar days.
- R13-13-110
    - Amend the opening paragraph to remove No later than 180 days after the effective date of these rules. This is left over from when the rules were first promulgated around 2008.
    - Specify items should be replaced according to the manufacturer's instructions. Outdated and expired first aid equipment is not usable.
- R13-13-112
    - Specify the Department may conduct an inspection audit of any activity or test prescribed in this chapter. In order for the Department to meet its statutory duty to enforce the minimum standards in Chapter 13, a mechanism to audit any activity or test in these rules is required given the schools are given leeway to conduct tests independently and only report the results of the tests back to the Department; for example, driver physical fitness tests.
    - Specify the employer shall make records available within 30 business days upon request.
- R13-13-201
    - Update incorporated by reference items.
- R13-13-202
    - Update incorporated by reference items.
- R13-13-203
    - Add a new rule setting the minimum standards, inspection, operation and maintenance of all-electric bus systems.
- R13-13-204
    - Add a new rule setting the minimum standards for drivers of electric school buses; includes instruction and testing.
- R13-13-205
    - Add a new rule setting the minimum standards, inspection, operation and maintenance of hybrid, bio-diesel and hydrogen fuel cell buses.
- Article 3
    - Add a new article for A.R.S. § 15-925 vehicles. Including new minimum standards for equipment, operation, driver and instructor certification.

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

The Department indicates the rules are currently enforced as written except for rule R13-13-108(B) as the Department is no longer enforcing the minor defect violations as an out-of-service criteria and intends to remove these in the next rulemaking. The Department is standardizing this subsection to be consistent with major defect out-of-service violations similar to all other commercial vehicles.

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

The Department indicates there are no corresponding federal laws.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates these rules require a certification of the drivers and instructors. The Department states a general permit would not meet the applicable safety requirements for individual drivers and instructors. Competency and proficiency in bus operation, emergency procedures and physical fitness of a single driver or instructor cannot be broadly applied across an employment pool of drivers and instructors. Each individual is required to be tested and demonstrate their capability to safely operate a bus and safely handle students in emergency and non-emergency situations considering the bus driver may be the only adult on the bus with the children. Instructors must meet the same requirements as the drivers in order to properly demonstrate actions, techniques and procedures. As such, the Department states a general permit is not technically feasible or would not meet the applicable statutory requirements. *See* A.R.S. § 41-1037(A)(3).

The Department also indicates these rules require a certification of each school bus. A general permit would not meet the applicable safety requirements for individual school buses. The operational soundness of a single school bus cannot be broadly applied across every school bus in a fleet. Components on school buses are subject to wear, fatigue and failure based on use and age which has great variability. Therefore, each school bus must be individually inspected.

As such, the Department states a general permit is not technically feasible or would not meet the applicable statutory requirements. *Id.*

Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to twelve (12) rules in Title 13, Chapter 13, Article 1 regarding School Bus Minimum Standards and two (2) rules in Article 2 regarding Minimum Standards for School Buses Operated on Alternative Fuel.

The Department indicates it intends to have a rulemaking before the Council to address the consistency, effectiveness, and enforcement of the rules by December 2026. However, the Department indicates this date is difficult to determine for several reasons. First, the Department is statutorily required to consult with the Student Transportation Advisory Council (STAC), established by A.R.S. § 28-3053 and pursuant to A.R.S. §§ 28-900(A) and 28-3228(B)(1) and (C). However, at this time, STAC has no members to form a quorum to meet. As such, the Department cannot fulfill its statutory requirement to consult with the STAC and is therefore statutorily prevented from moving forward with any proposed rulemaking.

Second, the Department indicates a compounding factor to promulgating final rules in a timely manner is the frequency by which the STAC meets. In previous years, the STAC was only statutorily mandated to meet once a year. In 2022, A.R.S. § 28-3053(C)(1) was amended to mandate the STAC meet at least twice annually. As the Department has no statutory authority over the frequency by which the STAC meets, the Department indicates a twice annually schedule will with high probability extend the rulemaking timeframe.

Council staff recommends approval of this report.

June 6, 2024

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

RE: Department of Public Safety, 13 A.A.C. 13, School Buses Five-year Review Report

Chair Klein:

Please find enclosed the Five-year Review Report for 13 A.A.C. 13, Schools Buses which is due on July 31, 2024.

The Department does not intend for any rules to expire under A.R.S. § 41-1056(J):

The Council has not previously rescheduled these rules under A.R.S. § 41-1056(H).

The Department hereby certifies compliance with A.R.S. § 41-1091. Two Substantive Policy statements are identified in the report.

For questions about this report, please contact Paul Swietek, rulewriter, at (602) 223-2049 or pswietek@azdps.gov.

Sincerely,

Kenneth Hunter

Jeffrey Glover, Colonel
Director

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 13, School Buses
June 7, 2024
Amended August 27, 2024

A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department does not intend for any rule to expire.

B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department is in compliance with A.R.S. § 41-1091.

The Department issued a Notice of Substantive Policy Statement, Policy No. CVETFD-1, Effective October 1, 2022, (28 A.A.R. 2499, dated September 23, 2022) to address new legislation in 2022 creating A.R.S. § 15-925. There are no current rules that address the new statute and schools are now purchasing these vehicles necessitating an interim standard of inspection. Until such time as the Department can consult with the Student Transportation Advisory Council and implement new rules, the statement indicates the Department's interim intent to authorize, inspect and enforce the provisions in the new statute.

The Department issued a Notice of Substantive Policy Statement, Policy No. HPDCVE-2, Effective April 26, 2024 (30 A.A.R. 821, April 26, 2024) to provide clarification on limitations of driver working hours. Until such time as the Department can consult with the Student Transportation Advisory Council and implement new rules, the statement indicates the Department's interim philosophy to enforce the provision of Section 104(C).

Policy statement No. HPDCVE-2 was rescinded on August 27, 2024. A notice to the public was filed with the Secretary of State to rescind the notice on the same day and is likely to appear in the Administrative Register on September 20, 2024. The Department met in-person with representatives for a school district regarding the interpretation of classifying some hours as uncompensated hours in the statement. After consideration, the Department rescinded the policy statement, but will retain the language in its draft rule revisions for future debate and discussion with the Student Transportation Advisory Council.

Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056(A) and R1-6-301:

1. Authorization of the rule by existing statutes:

A.R.S. § 41-1713(A)(4) General authority to make rules necessary for the operation of the Department.

A.R.S. § 28-900 states the Department in consultation with the Student Transportation Advisory Council shall adopt rules as necessary to improve the safety and welfare of school bus passengers.

A.R.S. § 28-3228 states the Department in consultation with the Student Transportation Advisory Council shall adopt rules that establish minimum standards for the certification of school bus drivers.

A.R.S. § 15-106 states the requirements for an identity-verified fingerprint card as specified in A.R.S. § 28-3228(D).

A.R.S. § 15-925 states these motor vehicles shall be operated in accordance with the safety rules adopted by the Department pursuant to A.R.S. §§ 28-900 and 3228.

2. The objective of the rule:

Rule	Objective
101	To define words that are used in the rules.
102	To establish the minimum standards for the certification of school bus drivers.
103	To establish the minimum standards for the certification of classroom and behind-the-wheel instructors.
104	To establish the minimum standards for the safe operation of a school bus by a school, school bus driver and passenger.
105	To establish the minimum standards for the body of a school bus used to transport special needs passengers including those who use a wheelchair, to minimize serious bodily injury in the event of an accident or incident.
106	To establish the minimum standards for the chassis and related systems of a school bus in order to minimize the probability of accidents and minimize serious bodily injury in the event of an accident or incident.
107	To establish the minimum standards for the body and related systems of a school bus to minimize the probability of accidents and minimize serious bodily injury in the event of an accident or incident.
108	To establish inspection requirements before a school bus is introduced into Arizona to transport passengers and for determining the presence of major defects on existing Arizona school buses.
109	To establish the time frame requirements for making a certification determination.
110	To establish the minimum medical and safety supplies and equipment that must be in first-aid and bodily-fluid clean up kits on a school bus in order to ensure the safety and welfare of school bus passengers.
111	To provide a rehearing or review of the Department's decision by the Office of Administrative Hearings.
112	To establish the standards for the Department to conduct audits and observations for the purpose enforcing the provisions of this chapter.

201	To establish the minimum standards for the installation and use of compressed natural gas fuel systems for the purpose of minimizing the probability of accidents and minimizing serious bodily injury in the event of an accident or incident.
202	To establish the minimum standards for the inspection and maintenance of compressed natural gas systems for the purpose of minimizing the probability of accidents and minimizing serious bodily injury in the event of an accident or incident.

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

Rule	Explanation
All rules.	Required amendments to the rules as identified in the 2019 report were not made. The details of these items are explained in Item 10 and excluded in detail from this item for brevity.
	New required amendments not included in the 2019 report.
101	Add or update definitions for electronic file formats for video and audio recording; incorporated by reference updates; G-forces; incident; fingerprint cards; online services; record; statutory reference updates for safety glass, school, school district.
102	• Fingerprint clearance cards needs to be specified as Level One cards. • Allowances for out of state CDL to be accepted under A.R.S. § 32-4302 including testing and driving history. • Federal code incorporated by reference updates. • Specify requirements if a driver or applicant fails the physical performance test three consecutive times in a 90-day period. • Include a requirement for the employer to notify the Department of when a physical fitness test is being conducted. This will allow the Department to audit those tests while currently in the rules the employer is not required to notify the Department. • The rules currently call for a physical fitness test once every 2 years; a statement needs to be included that states the driver is required to maintain that level of fitness throughout the entire 2 years. If the driver cannot maintain that level of fitness, the employer should prevent the driver from operating the bus until such time as the driver can pass a new physical fitness test. That new passage is intended to address issues the Department has observed where a driver has developed a temporary medical condition (such as a broken bone and using a cane or walker) but the Department had no mechanism to prevent them from driving until the condition was remedied. • Add a new statement permitting the Department to order a driver to take a spot physical fitness test if the Department has reasonable belief the driver is no longer in compliance with the physical fitness standards. • Remove the specific number of questions and points per question on the tests to allow the tests to be more easily adapted and modified to safety needs.

	• As a requirement that CPR and first aid must be maintained to maintain driver certification. The rules currently state it is only required upon initial certification. The listing of CPR providers is outdated and inadequate and needs to be expanded to include numerous other recognized sources; such as, EMT, paramedics, nurses, medical doctors, any government agency with certification to conduct that type of training etc. • Add A.R.S. § 15-925 drivers into the denial, cancellation, suspension section as well as other subsections referencing the new Article 3 for those drivers. • Add probation as a condition under the denial, cancellation or suspension. The Department recognizes that sometimes the situation doesn't warrant a full denial, cancellation or suspension as the situation is temporary. • Add a new reason for the Department to deny, cancel, suspend or put on probation a driver in (K)(1)(d) by stating "*Demonstrating behavior that endangers or potentially endangers the educational welfare or personal safety of students, teacher or school bus drivers or other co-workers.*" The Department has encountered situations where a violation of statute or rule hasn't occurred yet, but the actions of the driver were suspicious or reasonably inappropriate. Case example: a male driver taking pictures of underage girls on a school bus is not an endangering sexual offense in statute/rule and the Department has no mechanism to corrective action on the driver in the current rules. The Department argues that such potential activity in the case example is suspicious and has no apparent justified reason. Some activity could potentially be a precursor to a crime, may be an indicator of crimes the driver may have already committed but hasn't been identified/apprehended for, or that may discourage a student from riding the bus affecting the student's educational welfare. At a minimum, the Department believes it has a statutory duty to protect students by investigating the situation and making a determination based on the evidence and totality of the circumstances. • Add a requirement for drivers to update their mailing address when updating their driver license with the Department of Transportation (ADOT) under A.R.S. § 28-448. The Department currently does not receive any notification when a driver makes address updates with ADOT.
103	• Add throughout references for out of state drivers under A.R.S. § 32-4032 and the requirements for those persons to be certified. • In similar to Rule 102, remove the number of test questions and points per question to make modification of the tests easier and more relevant.
104	• (B)(15) Removed outdated terms like CD player and adding a requirement to activate the noise suppression switch. Specify the bus is not required to stop at an *exempt* crossing. • (C) Specify the 60 and 70 hour limits are compensated time.

	• (D)(9) removed outdated reference to two speed axles. • (D)(29) Specify requirements if the driver intends to leave the engine running when exiting the driver compartment. • (D)(31) Specify that any school employee who may ride on the bus or that assists students in riding the bus shall participate in the evacuation drill. The current rule is not clear on this besides the driver and the Department believes having the teachers and/or aides on the bus be aware of evacuation procedures is a sound safety requirement. Change *ever passenger* to *every student* that rides or may ride the bus. Limiting the drill to only students who ride the bus to/from school excludes students that may ride the bus for field trips or other activities who should also be aware of evacuation procedures. • (E) Add the defined term *incident* to the rule. • (E) Add a requirement the employer provide at the Department's request all unaltered, unredacted interior and exterior video, still-image and audio recordings taken by the bus's recording system and the bus driver. The Department has statutory authority to investigate school bus collisions and incidents and in the modern environment video/picture/audio can be a major investigative tool to aid in determining what occurred. • (E)(7) Specify the citation as a traffic citation. The current use of the word citation is vague. The Department is not interested in every citation a person may receive that is unrelated to the occupation of driving a school bus; such as, expired meter parking citation, residential city code violation for excessive trash and so forth.
105	The Department expects this rule to receive some amendment; however, it will need to discuss this rule with manufacturing experts and the Student Transportation Advisory Council. See Item #14.
106	This rule is almost 20 years out of date. The list of engineering and design changes in this rule is so substantially extensive that listing every change in this report would be unduly cumbersome and otherwise inexpedient. Every item is being extensively reviewed to modern standards. The following are highlights: • All federal and other engineering incorporated by reference need to be updated. • Brakes are being broken into subsections for general brakes, hydraulic brakes and air brakes. • Tow and eye hooks specification were added. • Clutch was removed as it is not a safety item. • Cooling system was removed as it is not a safety item. • Electrical system was refined to reference low voltage battery (12 volt) system. Hybrid and all-electric buses will be addressed in new rules in Article 2. Battery tray construction, G-force loads, hinging and securement methods were updated.

	• Alternator systems were updated to address electrical load for wheelchair lifts as well as permitting both belt and direct-drive alternators. • Wiring color was addressed to prevent confusion with hybrid and all-electric bus wiring systems. • Wiring fuse box locations, actions and systems were specified as well as a wiring diagram. • Added a requirement for daytime running lamps. • Diesel or gas tailpipes including after-treatment system exhaust specifications were updated. Additional specifications for where the exhaust may not exit were added; such as, near exits, fuel filler doors, any passenger door. • Remove the oil filter as it is not a safety item. • Steering systems; remove the text and replace with a reference to 49 CFR 393.209. • Suspension, Shock Absorbers. Remove the paragraph that states shock absorbers are not required for tandem axles. • Tires: Specify that multi-piece (split rims) wheels or tube tires are not permitted. Incorporate 49 CFR 571.120 on tires for commercial vehicles. Specify same-size spare tires; specify minimum tread depth; specify retread tires are only permitted on rear non-steering wheels; specify no tire shall be used beyond six years from date of manufacture. • Transmission: Remove the outdated three forward speeds and one reverse requirement. Specify a shift interlock is required to prevent accidentally shifting the bus into gear.
107	This rule is almost 20 years out of date. The list of engineering and design changes in this rule is so substantially extensive that listing every change in this report would be unduly cumbersome and otherwise inexpedient. Every item is being extensively reviewed to modern standards. The following are highlights: • Update incorporated by reference items. • Update the introduced to Arizona dates in the opening paragraph to correspond to the date of final rules. • Several items are duplicative to Rule 106 and were shifted to that rule to keep the rules more concise. • Belt cutter: removed the limiting wording of *with passenger seatbelts* as the driver still requires one even if the passenger seats do not have belts. • Add an optional child alert notification system to specify that the system shall not conflict with any other existing components of the bus and additionally if equipped with a notification system the system shall not have an override or bypass capacity. • Color: Remove text and incorporate by reference the National Congress on School Transportation, National School Transportation Specifications and Procedures. Add an allowance for the top of the bus to be painted white.

	• Electrical wiring: Specify for inspection purposes all wire splices shall be documented on the wiring diagram and that all wiring shall exceed the rated load by at least 25%. Permit 12 volt and USB type power sources in the driver compartment to operate modern equipment; such as, tablet with route map. • Emergency exits: add incorporated by reference for 49 CFR 571.217. • Noise suppression switch: Specify the switch needs to be spring loaded so that it will return to the inactive position once the driver releases pressure from it so that it doesn't inadvertently remain in the active position. Specify the switch shall not deactivate any emergency communications device; such as, the two-way radio. • Front and rear bumper specifications for thickness, corner wrapping and mounting and material. • Seats: Incorporate by reference 49 CFR 571.3, 571.222. Specify seat back height at 24 inches above the seat reference point to prevent forward movement of an occupant. Specify if track seating is installed, the manufacturer shall supply a minimum and maximum seat spacing dimension label permanently affixed to the bus. • Service Door: Specify the scissor door exemption in 21 A.A.R. 3211 dated December 18, 2015 expires with the new rules and all buses with scissor doors no longer meet minimum standards. • Step Treads: In response to criticism of using only metal, remove the metal plate requirement and allow for elastomer floor covering. • Undercoating was removed as it is not a safety item. If undercoating is applied, it shall not cover any exhaust components. • Windows: Incorporate by reference 49 CFR 571.222 on window sizing and 49 CFR 393.60 on tinted or frost-free glazing for passenger windows and rear doors. • Windshield Washer System and Wipers: Specify both sides of the windshield are required for the washer. Remove antiquated text specifying air or electric motors for the wipers.
108	• Remove *minor* defects. Modern commercial vehicle standards no longer consider minor defects as an out-of-service violation. • (B) Update the introduced to Arizona dates to align with the promulgation of the new rules. • Brakes: Incorporate by reference 49 CFR 393.40 for defective brake component determined to be out-of-service. • Emergency Door: Add that the header pad is missing, misaligned or damaged. • Emergency Exit: Add missing or illegible instruction stickers. • Fire extinguisher: Add not properly mounted. • Fuel System: Specify liquid or gaseous and incorporate by reference 49 CFR 396.3. Specify any fuel leakage from CNG or LPG systems detected audibly, visually or by smell and verified by a testing device.

	• Horn: Specify the primary horn operated by the center of the steering wheel. • Seats: Specify missing one or more screw/bolts or incorrect size screw/bolt; driver seat not meeting requirements for adjustment; loose seat cushions; exposed frame; any diminished seat or barrier material that comprises the integrity of compartmentalization and occupant protection incorporating by reference 49 CFR 571.222. • Floor: Specify uneven joints. • Head Lamps: Incorporate by reference 49 CFR 393.24. • Lamps (all types): Specify for LED style that no more than 50% of the light emitting diodes in a fixture can be inoperative. • Lettering and Numbering: While this was a minor violation, it is being moved to be a major violation for missing emergency exit interior or exterior signage. • Service Door: Add air leak at service door valve. • Tires: Add age greater than six years. • Windshield Washer System: Remove *missing* and replace with *not operating as designed.*
109	Specify the days as business or calendar days.
110	• Amend the opening paragraph to remove *No later than 180 days after the effective date of these rules.* This is left over from when the rules were first promulgated around 2008. • Specify items should be replaced according to the manufacturer's instructions. Outdated and expired first aid equipment is not useable.
112	• Specify the Department may conduct an inspection audit of any activity or test prescribed in this chapter. In order for the Department to meet its statutory duty to enforce the minimum standards in Chapter 13, a mechanism to audit any activity or test in these rules is required given the schools are given leeway to conduct tests independently and only report the results of the tests back to the Department; for example, driver physical fitness tests. • Specify the employer shall make records available within 30 business days upon request.
201	Update incorporated by reference items.
202	Update incorporated by reference items.
203	Add a new rule setting the minimum standards, inspection, operation and maintenance of all-electric bus systems.
204	Add a new rule setting the minimum standards for drivers of electric school buses; includes instruction and testing.
205	Add a new rule setting the minimum standards, inspection, operation and maintenance of hybrid, bio-diesel and hydrogen fuel cell buses.
Article 3	Add a new article for A.R.S. § 15-925 vehicles. Including new minimum standards for equipment, operation, driver and instructor certification.

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

Rule	Statute	Explanation
102, 103	A.R.S. § 32-4302	The statute allows for out of state certifications to be recognized in Arizona for employment under certain conditions. The rules need to be amended to reference this statute as an option and the requirements to be certified.
101	49 CFR 40, 382	These incorporated by reference federal codes require an update to the most current version.
102	49 CFR 40, 382, 382.401	
106	49 CFR 393.40, 393.47, 393.209, 571.101, 571.105, 571.106, 571.120, 571.121	
107	49 CFR 393 Subpart B, 393.60, 571.3, 571.111, 571.125, 571.217, 571.222	
108	49 CFR 393.24, 393.40, 396.3, 571.111, 571.222	
301	49 CFR 393.75, 571.3, 571.222	

5. Are the rules enforced as written? No

Rule	Explanation
108(B)	The Department is no longer enforcing the minor defect violations as an out-of-service criteria and intends to remove these in the next rulemaking. The Department is standardizing this subsection to be consistent with major defect out-of-service violations similar to all other commercial vehicles.

6. Are the rules clear, concise and understandable? Yes

The Department believes the rules are concise, clear and understandable and meet recognized spelling and grammatical standards. The Department has not received any complaints or noticed any deficiencies in the regulated community understanding and applying the rules.

Rule	Explanation
N/A	

7. Has the agency received written criticisms of the rules within the last five years? Yes

Rule	Criticism	Action
105	Criticism related to language changes to *wheelchair unfolding* versus *falling*; shoulder belt restraint	No formal rulemaking action taken. Refer to Item #14 for a more detailed explanation.

	anchorage and height adjuster extensions for wheelchair passengers, battery size and securing.	The Department in its informal internal rule revisions has address the two-way radio issue. First, requiring the noise suppression switch to be spring loaded so that it returns to the inactive position when the driver releases their finger/hand from it. The rules do not prohibit direct wiring to a power source so long as they are properly fused or connected with a circuit breaker. The Department will consult with the vendors when formal rulemaking occurs to get a full understanding of the issue. The Department in its informal internal rule revisions has agreed and addressed the polymer stair treads. Proposed language is "…an elastomer floor covering having a minimum overall thickness of 3/16 inch. Any design that provides equal or greater traction is acceptable." "The step covering shall be permanently bonded to a durable backing material that is resistant to corrosion."
107	A vendor criticized the lack of wiring specifications for two-way radios due to safety reasons. It was further related that wiring two-way radios to a power source so they are operable without an ignition key should be allowable due to the potential for emergency situations occurring when the ignition switch is off or the noise suppression switch is activated. A vendor was asking for an allowance for polymer-backed stair treads.	

8. Economic, small business and consumer impact comparison:

Driver/Instructor Certification:
Chapter 13 does not specify a fee for a driver or instructor to receive a certification or recertification. In Section 102 the rule states the applicant or driver must have a valid identity verified fingerprint clearance card. The clearance card is required pursuant to A.R.S. §§ 15-106 and 28-3228(D).

The clearance card has an associated fee; however, the Student Transportation Unit (STU) and Chapter 13 do not set the fees for the clearance card. The STU collects the fee imposed by the Department's Clearance Card Section which processes the fingerprint/clearance card and then passes that payment through to the Clearance Card Section.

The STU does not charge or collect a fee for any other portion of the certification or recertification for an applicant, existing driver or instructor process.
The fees for the identity verified fingerprint clearance card are established by the Department's Clearance Card Section under A.R.S. § 41-1758.06(A). That section is self-funded through fees. The fees for the Arizona Board of Fingerprinting are under A.R.S. § 41-1758.01(A)(3) and the Clearance Card Section passes that collected fee through to the Board. The Federal Bureau of Investigation (FBI) establishes their fees and communicates what they are for regular employees and volunteers and the Clearance Card Section passes that collected fee through to the FBI.

The Department does not specify if the fee payment must come from the employee or employer. Meaning, it is the employer's decision if they will cover the fee cost for the employee or if they will require the employee to pay the fee out of their own funds.

The following are the established fees for the identity verified fingerprint clearance card:

- Paid Employee

DPS Clearance Card Section	$51.75
Arizona Board of Fingerprinting	$4.00
FBI	$11.25
Total:	$67.00

- Volunteer (Unpaid) Employee

DPS Clearance Card Section	$51.75
Arizona Board of Fingerprinting	$4.00
FBI	$9.25
Total:	$65.00

Employers assume administrative costs in administering the application and recertification process; such as, driving training/tests, drug screens and physical fitness tests as well as conducting the required evacuation drills.

The Department does not specify that the school bus driver need be a full-time employee providing employers choices. Employers may also use contracted drivers, part-time employees and volunteers, but all shall still meet the full requirements of the minimum standards and the employer shall still administer all training and tests.

School Bus Inspections:
The Department does not charge a fee for the inspection or reinspection of a school bus.

The Department does not place a mileage or age cap on school buses. As long as a school bus continues to meet the minimum standards in these rules for the year it was introduced and state and federal laws regarding commercial vehicle standards it is certified for continuous use. This provides schools the choice to either replace (new buses typically cost substantially over $100,000) or repair (costs vary depending on the repair and regular maintenance) the school bus potentially lowering their economic burden.

Employers (both taxpayer funded public schools and private schools) assume the costs for purchasing new school buses that meet minimum standards as well as the maintenance and repair of the school buses. These costs can be quite substantial. The cost of a vehicle maintenance/repair program, depending on size of the fleet, can easily exceed millions of dollars per year factoring the cost of labor, parts, equipment and a facility (unless the facility belongs to a contractor). Some employers do contract maintenance and repair with outside providers.

While the cost of a new school bus and the cost of a quality repair and maintenance program is substantially high, the Department argues that a school bus with its cargo of children should not have lower standards in comparison to any other commercial vehicle on the roadways.

Modern School Bus Systems:
The transportation environment has changed dramatically. Employers now have options to buy school buses of various size and propulsion. For example, some employers may reduce diesel fuel costs by purchasing all-electric, hybrid or fuel cell school buses. While some of these new forms of buses may have higher up-front costs (cost of the bus plus support like battery chargers), employers will need to conduct the cost-benefit analysis to determine if those costs in comparison to traditional diesel buses make sense. For that reason, the Department does not dictate in the rules a preference for one form of school bus over another and instead takes the position to allow options to the employers. The Department's primary concern is that the school bus's design and operation does not pose undue exposure of harm to the children passengers.

Additionally, there have been great advancements in electronic systems; such as, driver-operated touch screen systems (such as active route maps), video camera systems and other alert systems (such as abandoned/forgotten child). The addition of this electronic technology has safety value and is likely to increase new school bus prices, but the Department is not able to determine an impact estimate. Manufacturers have already unilaterally begun adding new systems such as those listed into the new builds of their buses. As that is a manufacturer decision in a free market, the Department does not have influence to lower the cost of a new school bus.

The Department does not specify or recommend nor set contracts for any school bus manufacturer or re-seller of used school buses. This allows any manufacturer or re-seller of used school buses, whether a big or small business, to equally build or refurbish and sell school buses in Arizona if the school bus meets the minimum standards and state and federal

laws regarding commercial vehicle standards. The choice of which manufacturer or re-seller to buy from is strictly at the discretion of the employer. As mentioned previously, the Department's primary concern is that the school bus's design and operation does not pose undue exposure of harm to the children passengers.

9. Has the agency received any business competitiveness analysis of the rules? No.

   The Department has not received any such analysis.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report? No.

Rule	Action Needed	Action Taken
101	Update to address changes to ARS 28-959(E) safety glass and ARS 15-101(4),(21),(22),(23) regarding charter school, private school, school and school district.	No formal rulemaking action taken. Refer to Item #14 for explanation. The Department is addressing these items in its informal internal rule revision process. Rule 108 The inspection sticker now only includes a year of inspections; no action. Minor defects is proposed for removal leaving only Major defects for consistency with federal commercial vehicle standards. Rule 109 Time frames are being clarified to state business or calendar days. Rule 112, the Department questioned if it had statutory authority under ARS 28-900, 28-3228 and 41-1009 to conduct onsite audits. The Department consulted the Arizona Attorney General's Office. The Attorney General's opinion is the
104	Update to address changes to ARS 28-7901 for safety rest area and ARS 11-1024 for service animal.	
105	• Wheelchair lifts need to meet the specifications in 49 CFR 571.403 and 404. • Service door entrance padding and visible/audible signals, circuit breaker locations, wheelchair lift documentation and securement should be evaluated against the National School Transportation Specifications and Procedures and Code of Federal Regulations (CFR) for commercial vehicles. • Occupant restraint language should be evaluated against 49 CFR 571.222.	
106	Every item in this rule needs to be evaluated against current National School Transportation Specifications and CFR for commercial vehicles.	
107	Every item in this rule needs to be evaluated against current National School Transportation Specifications and CFR for commercial vehicles.	
108	Identification number decal be retained for the bus's service life.	

	Remove minor defects as an out of service criteria. Every item in this rule needs to be evaluated against current National School Transportation Specifications and CFR for commercial vehicles.	Department does have statutory authority to conduct the audits under the listed statutes. Therefore, there is no need to amend the rule.
109	Clarification of the time frames in ARS 41-1072 et. seq.	
112	There was a question on if the Department had the necessary statutory authority to conduct an onsite audit.	

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

The Department ensures the benefits of the rules for student safety outweigh the costs of the rules through its statutorily-required consultation with the Student Transportation Advisory Council and by attending meetings/conferences with the regulated community; for example, conducting instruction and Q&A sessions at the annual Transportation Administrators of Arizona annual conference (www.taa-online.org) which includes school transportation administrators, school bus drivers, school bus mechanics and school bus manufacturers. Based on those interactions, the Department evaluates the rules and adjusts (remove or add requirements) if safety is not compromised.

The Department specifies these are minimum standards. Employers have the option to be more restrictive.

Driver Certification
At the time of this report, there are 5,530 active school bus driver certifications. In the last five years, the Department cancelled 78 certifications and suspended 26 certifications.

The top reasons for these cancellations and suspensions were for:

- Abandoning/forgetting a child on a school bus. This is a serious risk for severe injury or death given summertime temperatures exceeding 100 degrees or winter temperatures below freezing in various parts of the state.
- Texting on cellphones (distracted driving).
- Failure to abide by traffic laws. (For example but not limited to, speed limits, red lights, stop signs etc.)
- Not reporting a collision.
- Eating/drinking (distracted driving).

Additionally, the Department has alleviated burden by transitioning from manual paper processes and applications to an online system.

School Bus Inspections
In 2023, there were 363 reportable school bus collisions and 65 reportable incidents to the Department.

In 2023, the Department inspected 6,988 school buses. This count fluctuates year to year based on new school buses added versus school buses retired from service.

In 2023, the Department placed 1,261 (18%) school buses out-of-service for violations. The top out-of-service violations were:

- Brake system air leaks and other brake issues; for example, incorrectly adjusted air brake actuators.
- Emergency exit alarms not working, instructions on how to open the emergency exits were missing or broken handles on emergency exits.
- Tire sidewall damage.
- Suspension parts failures; for example, broken spring shackles, broken springs, failed ball joints, loose steering components.
- Broken seats or insufficient padding on the seats to protect from impact with the metal seat frame.

Other common out-of-service violations include non-functioning exterior lights (including the amber and red 4-way flashing lights indicating children loading/unloading as well as standard turn signals and brake lights); non-functioning horn; tire tread worn below the wear marks or the tire bead separated from the wheel rim; exhaust leaks.

Due to the minimum structural integrity standards, school buses have limited injuries to students. In one Arizona case, a school bus failed to stop for a red light and was hit broadside by a Humvee. In this case no students sustained injuries beyond one student receiving a bloody nose. The Department believes from its experience that if more students were transported in school buses meeting these minimum standards, the risk of injury or death would be minimized. In an Arizona December 2023 case, a junior high girls flag football team was being transported to a game in a passenger van. The van was involved in a head-on collision. Due to the passengers being unrestrained, two girls suffered bi-lateral femur fractures along with other serious injuries. The Department asserts from its experience had they been travelling in a traditional school bus the injuries would not have been as serious.

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

Rule	Federal Law	Explanation
N/A		

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

    These rules require a certification of the drivers and instructors. A general permit would not meet the applicable safety requirements for individual drivers and instructors. Competency and proficiency in bus operation, emergency procedures and physical fitness of a single driver or instructor cannot be broadly applied across an employment pool of drivers and instructors. Each individual is required to be tested and demonstrate their capability to safety operate a bus and safety handle students in emergency and non-emergency situations considering the bus driver may be the only adult on the bus with the children. Instructors must meet the same requirements as the drivers in order to properly demonstrate actions, techniques and procedures.

    These rules require a certification of each school bus. A general permit would not meet the applicable safety requirements for individual school buses. The operational soundness of a single school bus cannot be broadly applied across every school bus in a fleet. Components on school buses are subject to wear, fatigue and failure based on use and age which has great variability. Therefore, each school bus must be individually inspected.

14. Proposed course of action:

    While a requirement of this section, it is difficult for the Department to determine a month and year by which it intends to have final rules to the Council. To comply with the requirements of this section, a date of December 2026 is selected due to several factors. These factors also include the reasons why a rulemaking did not take place in the last five years.

    The Department's primary barrier to promulgating final rules is the statutory requirement to consult with the Student Transportation Advisory Council (STAC), established by A.R.S. § 28-3053 and pursuant to A.R.S. §§ 28-900(A) and 28-3228(B)(1) and (C).

    The Department began a rulemaking process with the STAC in the fall of 2018 and participated with working groups established by the STAC in 2019. Those working groups failed to meet after mid-year 2019 having completed no useable work. In 2020, Covid shut down all activity by the STAC. Beginning in 2020 and over the several years, the terms of the members of the STAC expired and no new appointees were added to fill the vacancies. As a result, the STAC has no members at the time of this report. As the STAC has no members to form a quorum to meet, the Department cannot fulfill its statutory requirement to consult with the STAC and is therefore statutorily prevented from moving forward with any proposed rulemaking.

    Since the 2019 five-year review, the Department had obtained a rulemaking wavier and filed a *Docket Opening* with the Secretary of State with the following *Administrative Register* references:

- 25 A.A.R. 894, dated April 12, 2019
- 26 A.AR. 569, dated March 27, 2020
- 28 A.A.R. 3902 dated December 23, 2022
- 30 A.A.R. 2024, dated June 7, 2024

A compounding factor to promulgating final rules in a timely manner is the frequency by which the STAC meets. In previous years, the STAC was only statutorily mandated to meet once a year. In 2022, A.R.S. § 28-3053(C)(1) was amended to mandate the STAC meet at least twice annually. As the Department has no statutory authority over the frequency by which the STAC meets, a twice annually schedule will with high probability extend the rulemaking timeframe.

The Department did seek legal counsel on if it could move forward with a rulemaking without the statutory consultation from the STAC. The Department's attorney advised the Department cannot statutorily move forward without meeting the requirement to consult with the STAC.

Over the last several years while a rulemaking wavier and Docket Opening were valid, the Department internally invested significant time and resources creating updated drafts of the rules in preparation of a seated STAC. However, the Department reached a ceiling of internal knowledge on some topic areas and needs to consult with experts in certain fields who are members of the STAC; such as, members with expertise in all-electric vehicles (A.R.S. § 28-3053(A)(12).

13 A.A.C. 13 Supp. 18-3

Arizona Administrative CODE

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This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

Title 13

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 13. PUBLIC SAFETY

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY - SCHOOL BUSES

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. 18-3 replaces Supp. 15-4, 35 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.

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 13. PUBLIC SAFETY

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY - SCHOOL BUSES

Editor's Note: When this Chapter was recodified, the Department included Sections R13-13-111 and R13-13-112 in its conversion table but did not include the text of these Sections. Therefore, the Section text was not included in the recodification in Supp. 14-3. The text of these Sections have been added in Supp. 18-3 to reflect the Department's original intent to recodify these two Sections. Exhibits A and B were inadvertently recodified in Supp. 14-3. It was the Department's intent not to recodify these Exhibits therefore they have been removed in Supp. 18-3.

Editor's Note: This Chapter was recodified from 17 A.A.C. 9 under A.R.S. § 41-1011(C) at 20 A.A.R. 2083. Section cross-references were revised to conform to this Chapter's numbering scheme (Supp. 14-3). Original rules filed under 17 A.A.C. 9 were adopted by the Department of Administration in consultation with the Department of Public Safety and the School Bus Advisory Council at 2 A.A.R. 1141 (Supp. 96-1).

ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

Article 1, consisting of new Sections R13-13-101 through R13-13-112, recodified from 17 A.A.C. 9, Article 1, R17-9-101 through R17-9-112, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

Section

ARTICLE 2. MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON ALTERNATIVE FUEL

Article 2, consisting of new Sections R13-13-201 and R13-13-202, recodified from 17 A.A.C. 9, Article 2, R17-9-201 through R17-9-208, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

Section

ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

R13-13-101. Definitions

In this Chapter, unless otherwise specified:

"Accident" means any unexpected occurrence involving a moving or non-moving school bus that results in any bodily injury or fatality to a passenger or non-passenger, damage to personal or real property outside the school bus, or damage to the school bus that affects the integrity of the school bus or results in a major defect as described in R13-13-108(B).

"Alternately flashing signal lamps" means a system of red or red and amber lamps that are mounted horizontally to both the front and rear of the school bus body and used to inform the public that the school bus is preparing to stop or has stopped to load or unload passengers. Alternately flashing signal lamps can be either a four-lamp system as described in R13-13-107(17)(c)(i) or an eight-lamp system as described in R13-13-9-107(c)(ii).

"Alteration" means any addition, modification, or removal of any equipment or component after a school bus is inspected by the Department, which may affect the operations of the school bus; compliance with the statutes or rules applicable to school buses; or the health, safety, or welfare of any individual.

"Applicant" means an individual who submits an application to the Department to obtain a certificate to operate a school bus.

"ASE" means National Institute of Automotive Service Excellence.

"Auxiliary fan" means a device mounted inside the school bus body used to supplement the heating, defrosting, or air-conditioning systems by circulating air in the school bus.

"Behind-the-wheel instructor" means an individual qualified under R13-13-103 to provide behind-the-wheel training to applicants.

"Behind-the-wheel training" means the complete physical control of a school bus by an applicant while accompanied by and under direct observation of a behind-the-wheel instructor.

"Belt cutter" means a hand-held instrument containing a blade used to sever a seat belt or a wheelchair-securement device.

"Certificate" means a written authorization issued by the Department to operate a school bus in Arizona.

"Chassis" means the part of a school bus that consists of all base components, including the frame, front and rear suspension, exhaust system, brakes, engine, engine hood or cover, transmission, front and rear axles, front fenders, drive train and shaft, fuel system, engine air intake and filter, clutch and accelerator pedals, steering wheel, tires, heating and cooling system, battery, and controls and instruments to operate the school bus.

"Chassis cowl" means those parts of a Type C school bus that are located in front of the cowl and attached before a school bus manufacturer adds the school bus body.

"Citation" has the same meaning as at A.R.S. § 28-1872.

"Classroom instructor" means an individual qualified under R13-13-103 to provide classroom training to:

Applicants to operate a school bus,

Individuals becoming qualified to teach classroom training,

Individuals becoming qualified to teach techniques of behind-the-wheel training, or

School bus drivers taking refresher training.

"Classroom training" means the courses required by the Department of an applicant before the applicant is certified or of an individual seeking qualification as a classroom or behind-the-wheel instructor.

"Commercial driver license" has the same meaning as at A.R.S. § 28-3001.

"Controlled substances and alcohol testing" means a determination of an applicant's or school bus driver's use of marijuana, cocaine, phencyclidine, opiates, amphetamines, and alcohol prescribed by 49 CFR 382, October 2006 (no later amendments or editions), and conducted in accordance with the procedures at 49 CFR 40, October 2006 (no later amendments or editions), both published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department; and a determination of an applicant's or school bus driver's use of marijuana, cocaine, phencyclidine, opiates, amphetamines, barbiturates, benzodiazepines, methadone, and propoxphene as required by these rules and conducted in accordance with a procedure that is generally accepted in the scientific community to be accurate and reliable.

"Cowl" means the portion of the chassis in a Type C school bus that separates the school bus engine from the school bus driver's compartment.

"Cutaway van" means a chassis to which a completed driver's compartment is attached before a school bus manufacturer adds a school bus body.

"dB(A)" means decibels A scale, a term denoting that noise level has been adjusted to duplicate human hearing.

"Driver's compartment" means the part of a school bus body that is separated from the passenger compartment by a barrier and contains the controls and instruments for the operation of the school bus.

"Emergency-brake system" means mechanical components used to slow or stop a school bus after a failure of the service-brake system.

"Emergency exit" means an opening in a school bus, including a door, push-out window, or roof hatch, used to unload passengers in the event of an occurrence that requires immediate evacuation of the school bus.

"Employer" means a private business or school district that hires applicants and certified school bus drivers to operate school buses.

"Fingerprint clearance card" has the same requirements as in A.R.S. § 41-1758.03.

"Frame" means the structural foundation upon which a school bus chassis is constructed.

"Frontage road" means a street that parallels an interstate highway and furnishes access to streets and property that would otherwise be unreachable from the interstate highway.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum total loaded weight of a school bus, calculated in accordance with R13-13-106(27).

"Health care professional" means:

A physician licensed to practice medicine under A.R.S. § 32-1401 et seq., osteopathy under A.R.S. § 32-1800 et seq., or chiropractic under A.R.S. § 32-900 et seq.;

A physician licensed to practice medicine, osteopathy, or chiropractic in a state contiguous to Arizona;

A physician employed by the United States government and licensed by a state or territory of the United States;

A physician assistant licensed under A.R.S. § 32-2501 et seq.; or

A registered nurse practitioner licensed under A.R.S. § 32-1601 et seq.

"Highway" has the same meaning as at A.R.S. § 28-101.

"Identification" means the signs, lettering, or numbers placed on the interior or exterior of a school bus body, including the glass areas, but does not include the lettering, numbers, or logos of a manufacturer or distributor of the manufacturer's product.

"Identity verified fingerprint clearance card" has the same requirements as A.R.S. § 15-106.

"Ignition power-deactivation switch" means a device that when set causes the engine of a motor vehicle to stop operating if the transmission is placed into gear or the parking-brake system is released.

"Interstate highway" means the designation given by the federal government to the system of highways connecting two or more states of the United States.

"Lamp" means a device that is covered by a lens and used to produce artificial light.

"Major defect" means a condition that exists to the interior or exterior of a school bus that causes the Department or owner to place the school bus out of service while the defect is being corrected.

"Manufacturer" means an entity engaged in the manufacturing or assembling of a school bus chassis, school bus body, or school bus chassis and body.

"Medical practitioner" has the same meaning as at A.R.S. § 32-1901.

"Minor defect" means a condition that exists to the interior or exterior of a school bus that is not a major defect and allows the school bus to remain in operation while the defect is being corrected.

"Off-duty" means the time a school bus driver is not on-duty.

"On-duty" means the period between the time a school bus driver begins to work for the employer or is required to be ready to work for the employer until the time the school bus driver is relieved from work and all responsibility for performing work for the employer. The time on-duty is used only to determine when a school bus driver must be provided time off-duty. Time on-duty may be compensated by the employer or an entity other than the employer or may be uncompensated. On-duty includes:

All time at an employer's place of business, waiting to be dispatched;

All time performing an operations check of a school bus in accordance with R13-13-108, or servicing or conditioning a school bus;

All time driving a school bus, including loading or unloading the school bus, and remaining in readiness to drive a school bus;

All time, at the direction of the employer, travelling but not driving a school bus or assuming any other responsibility to the employer. If the school bus driver is afforded at least eight consecutive hours off-duty upon arrival at the school bus driver's destination after travelling but not driving a school bus or assuming any other responsibility to the employer, the school bus driver shall be considered off-duty for the entire period travelling but not driving the school bus or assuming any other responsibility to the employer;

All time repairing, obtaining assistance, or remaining in attendance upon a disabled school bus;

All time preparing required reports and records;

All time providing a breath or urine sample, including travel time to and from the collection site, to comply with the testing requirements of this Chapter;

All time performing any other work for the employer; and

All time performing any compensated work for any entity other than the employer.

"Out of service" means a school bus cannot be used to transport passengers.

"Owner" means the public or governmental agency or institution or private company in whose name a school bus is titled.

"Parking-brake system" means mechanical components used to prevent the movement of a school bus while loading or unloading a passenger or when the school bus is parked.

"Passenger" means an individual who rides in a school bus but does not participate in the operation of the school bus.

"Passenger compartment" means that part of the school bus body that is separated from the school bus driver's compartment by a barrier and holds the passengers to be transported.

"Physical examination" means an evaluation of an applicant's or school bus driver's medical status performed by a health care professional according to this Article.

"Physical examination form" means the Arizona Department of Transportation, Motor Vehicle Division, Medical Examination Report, which is used to record the results of a physical examination and may be obtained from the Department or Arizona Department of Transportation, Motor Vehicle Division.

"Physical performance test" means an evaluation of an applicant's or school bus driver's reflexes, agility, and strength performed according to this Article.

"Physical performance test form" means the document used to record the results of a physical performance test and may be obtained from the Department.

"Push-out window" means safety glass enclosed in a frame on a school bus that moves to the outside of the school bus when force is applied to the window from inside the school bus.

"Refresher training" means the courses required by the Department of each school bus driver to maintain certification as a school bus driver in Arizona.

"Restraining barrier" means a structure located in front of any school bus seat that restricts the forward motion of a passenger.

"Rub rail" means a horizontal steel bar attached to the outside of a school bus body used to reinforce the sides of the school bus.

"Safety glass" has the same meaning as at A.R.S. § 28-959(F).

"School" means a school as defined by A.R.S. § 15-101(19), accommodation school as defined by A.R.S. § 15-101(1), charter school as defined by A.R.S. § 15-101(3), or private school as defined by A.R.S. § 15-101(18).

"School bus" has the same meaning as at A.R.S. § 28-101.

"School bus body" means a structure assembled upon a chassis designed to carry a school bus driver and passengers.

"School bus driver" means an individual who is certified by the Department as meeting the requirements at A.R.S. § 28-3228 and R13-13-102 to operate a school bus in Arizona.

"School district" has the same meaning as at A.R.S. § 15-101 (20).

"Service-brake system" means mechanical components used to slow or stop a school bus.

"Service door" means a metal structure used to close the opening of a service entrance.

"Service entrance" means an opening in a school bus used to load or unload passengers.

"Special needs school bus" means a school bus that is designed to transport disabled passengers, some of whom may use a wheelchair, and is constructed with a service entrance and a special-service entrance.

"Special-service entrance" means an opening in a school bus that accommodates a wheelchair lift for the loading or unloading of a passenger who uses a wheelchair.

"Special-service entrance door" means a metal structure used to close the opening of a special-service entrance.

"Street" has the same meaning as at A.R.S. § 28-101.

"Traffic control signal" has the same meaning as at A.R.S. § 28-601.

"Training" means the instruction, courses, classes, or workshops provided by the Department or the employer that are required to obtain or maintain certification as a school bus driver or qualification as a classroom or behind-the-wheel instructor, or qualification to administer the physical performance test in Arizona.

"Transport" or "transporting" means a school bus driver sets a school bus in motion to carry passengers or objects authorized by the school district to be carried in a school bus.

"Type A school bus" means a conversion bus constructed utilizing a cutaway front section vehicle with a left side driver's door. This definition includes two classifications: Type A-1, with a Gross Vehicle Weight Rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 pounds and less than or equal to 21,500 pounds.

"Type B school bus" means a school bus constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B-1, with a GVWR of 10,000 pounds or less, and Type B-2, with a GVWR greater than 10,000 pounds.

"Type C school bus," also known as a conventional style school bus, means a school bus constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. A Type C school bus may have a cutaway truck chassis or truck chassis with cab with or without a left side door and with a GVWR greater than 21,500 pounds.

"Type D school bus," also known as a rear engine or front engine transit-style school bus, means a school bus constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

"Van" means a covered or enclosed truck.

"Wheelchair" means a mobility aid consisting of a frame, seat, and three or four wheels, which is used to support and carry a disabled passenger.

"Wheelchair lift" means an electric hydraulic mechanism and platform in a school bus used to raise and lower a passenger in a wheelchair.

"Wheelchair-lift platform" means a horizontal surface upon which a wheelchair sits while being raised or lowered.

"Wheelchair-passenger restraint" means a combination of a pelvic and an upper torso restraint, including buckles and fasteners, designed to secure a passenger in a wheelchair within a school bus.

"Wheelchair-passenger restraint anchorage" means equipment for fastening wheelchair-passenger restraints to the interior of a school bus.

"Wheelchair-securement anchorage" means equipment for fastening a wheelchair-securement device to a school bus floor.

"Wheelchair-securement device" means a strap or webbing, including buckles and fasteners, used for fastening a wheelchair to a wheelchair-securement anchorage.

"Wheelchair-securement system" means components used to fasten a wheelchair to the interior of a school bus, including a wheelchair-securement anchorage and a wheelchair-securement device.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-101 recodified from R17-9-101 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 2306, effective July 24, 2018 (Supp. 18-3).

R13-13-102. Certification of School Bus Drivers

A. Certification requirements: An individual shall not operate a school bus in Arizona without being certified by the Department. An applicant for certification shall:

1. Be a minimum of 18 years of age;
2. Possess a valid identity verified fingerprint clearance card.
3. Submit all of the following to the Department through the employer:
   a. An application signed and dated by the applicant that states the applicant's:
      i. Name, home address, and home phone number;
      ii. Any alias ever used by the applicant;
      iii. Social Security number;
      iv. Date of birth;
      v. Arizona commercial driver license number;
      vi. Date of previous application for certification, if any;
      vii. Intended employer's name;
      viii. Convictions for a felony or misdemeanor, if any, in this state or any other state;
      ix. Total points accumulated against the applicant's driving record during the two years immediately preceding the date of application using the point system contained in A.A.C. R17-4-404; and

x. Identity verified fingerprint clearance card number.

b. Completed physical examination form, completed physical performance test form, and results of controlled substances testing; and

c. A verification made under penalty of perjury that all submitted information is true and complete;

4. Possess a current Arizona commercial driver license under A.R.S. § 28- 3101;
5. Possess any Arizona driver license endorsement required under A.R.S. § 28-3103;
6. Meet the driving record requirements listed in this Article; and
7. Complete the training requirements listed in this Article.

B. Physical examination

1. An applicant or school bus driver shall submit to a physical examination that is conducted by a health care professional in accordance with the physical examination form. An applicant or school bus driver is qualified to be certified as a school bus driver only if the health care professional conducts the physical examination in accordance with the physical examination form and concludes that the applicant or school bus driver has no condition that would interfere with the applicant's or school bus driver's ability to:
   a. Operate a school bus safely,
   b. Evacuate a school bus during an emergency or during a drill required under R13-13-104(D), and
   c. Perform the operations checks required under R13-13-108(D).
2. An applicant or school bus driver who is insulin dependent shall obtain the waiver described in A.A.C. R17-5-208.
3. An applicant shall submit the completed physical examination form and, if applicable, a copy of the waiver required under subsection (B)(2), to the Department through the employer.
4. The initial physical examination of an applicant, conducted in accordance with the physical examination form, expires 24 months from the date of the physical examination unless a shorter time is specified by the health care professional who administers the physical examination. A school bus driver shall submit to a physical examination before the expiration date of the previous physical examination and send the completed physical examination form to the Department through the employer before the end of the month in which the previous physical examination expires.
5. If a health care professional determines that further testing of an applicant or school bus driver is needed by an ophthalmologist or optometrist, the health care professional shall refer the applicant or school bus driver to:
   a. An ophthalmologist licensed under A.R.S. § 32-1401 et seq.,
   b. An optometrist licensed under A.R.S. § 32-1701 et seq.,
   c. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by a state contiguous to Arizona, or
   d. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by any state or territory of the United States and employed by the United States government.
6. In addition to the physical examinations required by this Article, the Department or the employer may require a physical examination of an applicant or school bus driver for an impairment that would affect the ability to perform the activities listed in subsection (B)(1). The Department or employer shall base its decision to require an additional physical examination upon consideration of the appearance or actions of the applicant or school bus driver or of medical information received by the Department regarding the applicant or school bus driver. The applicant or school bus driver shall submit results of a physical examination conducted under this subsection to the Department through the employer within 30 days of the date of the physical examination.

C. Controlled substances and alcohol testing

1. An applicant or school bus driver shall submit to alcohol and controlled substances testing as required by A.R.S. § 28-3228(C)(2) and as prescribed by this Article and 49 CFR 382 October 2006 (no later amendments or editions). The testing shall be conducted in accordance with the procedures at 49 CFR 40 October 2006 (no later amendments or editions), both published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department, except for the changes in 49 CFR 40 and 49 CFR 382 listed in subsections (C)(1)(a) through (C)(1)(i).
   a. 49 CFR 40.3
      i. "Employee," means an applicant or a school bus driver as defined at R13-13-101.
      ii. "Employer" has the same meaning as at R13-13-101.
   b. 49 CFR 382.107
      i. "Commercial motor vehicle" has the same meaning as at A.R.S. § 28-3001(3).
      ii. "Driver" means a school bus driver as defined at R13-13-101.
      iii. "Employer" has the same meaning as at R13-13-101.
      iv. "Performing a safety-sensitive function" means any time during which a school bus driver is on-duty except when the school bus driver is being compensated by an entity other than the employer.
      v. "Safety-sensitive function" means any activity for which a school bus driver is on-duty except when the school bus driver is performing an activity for and being compensated by an entity other than the employer.
   c. 49 CFR 382.207. In both sentences, the word "four" is changed to "eight."
   d. 49 CFR 382.301(b), (c), and (d): Delete these subsections.
   e. 49 CFR 382.303(a) and (b): Change the word "occurrence" to "accident," as defined in R13-13-101, and delete the words "operating on a public road in commerce."
   f. 49 CFR 382.303(a)(1) and (b)(1): Delete the words ", if the accident involved the loss of human life"
   g. 49 CFR 382.303(a)(2) and (b)(2): Delete the words ", if the accident involved:"
   h. 49 CFR 382.303(a)(2)(i) and (ii) and (b)(2)(i) and (ii): Delete these subsections.
   i. 49 CFR 382.303(c): In the table, in the column headed "Test must be performed by employer," change "No" to "Yes."
2. In addition to the testing required by 49 CFR 382, an applicant shall submit to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodi-

azepines, barbiturates, methadone, and propoxphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.

3. In addition to the testing required by 49 CFR 382, a school bus driver shall submit annually to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.
4. The employer shall ensure that a school bus driver is tested for use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, or propoxyphene or alcohol when required to do so by these rules or when requested by the Department.
5. The employer shall submit any and all negative results of testing done under subsection (C) to the Department within 30 days of the date of testing or within 12 months of the school bus driver's previous test, whichever is sooner, by providing the Department a copy of the report submitted to the employer by the entity that conducted the testing.
6. The employer shall immediately notify the Department by telephone of any and all positive results of testing done under subsection (C) and shall submit to the Department within five days a copy of the report submitted to the employer by the entity that conducted the testing.

D. Physical performance test

1. An applicant shall pass a physical performance test that consists of the following eight standards:
   a. Climbing and descending the steps of a school bus three times in 30 seconds;
   b. Alternately activating the throttle and the service-brake system of a school bus 10 times in 10 seconds;
   c. Depressing and holding the clutch, if applicable, and service-brake system of a school bus for three seconds, five consecutive times;
   d. Opening and closing a manually operated service door three times without stopping. If the school bus has an automatic service door, operate the manual override of the service door;
   e. Operating at least two hand controls, one on each side of the steering wheel, within eight seconds while maintaining control of a moving school bus;
   f. Starting in a seat-belted position, exit a school bus from the rear-most floor-level emergency exit within 20 seconds;
   g. Carrying or dragging a 125-pound object 30 feet in 30 seconds; and
   h. Lowering a 30-pound object from a floor-level emergency exit to the ground and lifting the same object from the ground to the school bus floor.
2. A school bus driver who is certified on the effective date of this subsection shall pass the physical performance test within one year from the effective date of this subsection.
3. A school bus driver shall pass the physical performance test again no later than 24 months after previously passing the physical performance test.
4. An applicant or school bus driver who fails the physical performance test may take the test again after 24 hours. An applicant or school bus driver may take the physical performance test no more than three times in 90 days. If an applicant fails the physical performance test on the third attempt, the Department shall not further consider the applicant for certification unless the applicant complies again with the requirements of this Section.
5. The employer shall ensure that a school bus driver who fails the physical performance test does not operate a school bus until the school bus driver passes the physical performance test.
6. If a school bus driver takes and fails the physical performance test three times, the Department shall cancel the school bus driver's certification.
7. An employer shall ensure that the physical performance test is administered by a person who has completed Department-authorized training, using the largest type of school bus that an applicant or school bus driver may be required to operate.
8. A person who administers the physical performance test shall either pass or fail the applicant or school bus driver taking the test, complete the physical performance test form, and submit the completed form to the Department and the employer within seven days of the physical performance test.

E. Driving record

1. During the 24 months before the date of application or during any 24-month period while certified as a school bus driver, an applicant or school bus driver shall not accumulate eight or more points against a driving record in this state using the point system contained in A.A.C. R17-4-404.
2. During the 10 years before the date of application, an applicant shall not have repeatedly received citations for violation of traffic law.

F. Training requirements of a school bus driver

1. Before being certified by the Department as a school bus driver, an applicant shall complete a minimum of 14 hours of classroom training in the following:
   a. State and federal traffic laws,
   b. Behind-the-wheel driving operations,
   c. School bus driver's responsibilities to passengers and school,
   d. Inspections and operations checks,
   e. Records and reports,
   f. Special needs transportation, and
   g. Accidents and emergencies.
2. An employer shall ensure that classroom training is taught by a classroom instructor who is qualified under R13-13-103.
3. At least seven days before classroom training, the classroom instructor shall notify the Department in writing of the date, time, and location of classroom training. The classroom instructor shall notify the Department by any means available at least 24 hours before the date, time, or location of classroom training is changed or canceled.
4. After completion of classroom training, the classroom instructor shall administer to the applicant a written examination standardized by the Department.
   a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in subsection (F)(1).
   b. Each question has a value of two points. To pass the examination an applicant shall receive a score that equals or exceeds 80% of the total possible score.
   c. If an applicant is unable to read or speak English, the employer shall arrange to have the examination administered orally to the applicant in the language with which the applicant is most familiar.
   d. If an applicant does not pass the examination on the first attempt, the applicant may take an examination two more times within 12 months of the first

attempt. A different examination shall be administered to an applicant who is taking an examination for the second or third time. The period between examinations shall be a minimum of 24 hours. If the applicant fails the examination on the third attempt, the applicant shall be considered further only if the applicant complies again with the requirements in this Section.

5. The classroom instructor shall submit the following information in a written report to the Department and the employer within seven days from the date of the conclusion of a classroom training course:
   a. Instructor's name,
   b. Instructor's identification number,
   c. Date of training,
   d. Location of training,
   e. Number of hours of training taught by the classroom instructor,
   f. Each applicant's name, and
   g. Each applicant's examination score.
6. In addition to the report required under subsection (F)(5), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a classroom training course, a classroom-training course log that includes:
   a. Instructor's name,
   b. Instructor's identification number,
   c. Date of the training course,
   d. Name of each applicant attending the training course,
   e. Subject matter taught in each hour, and
   f. Which hours of training were attended by each applicant.
7. In addition to the classroom training, an applicant shall complete behind-the-wheel training consisting of a minimum of 20 hours operating a school bus in Arizona.
   a. An employer shall ensure that behind-the-wheel training is taught by a behind-the-wheel instructor who is qualified under R13-13-103.
   b. During behind-the-wheel training, a behind-the-wheel instructor shall be present and observing the applicant while the applicant is operating the school bus.
   c. The employer shall ensure that no one except the applicant, behind-the-wheel instructor, employer, and Department employees are aboard the school bus while the applicant actually operates the school bus.
   d. The behind-the-wheel instructor shall maintain and submit to the employer within seven days from the conclusion of the applicant's behind-the-wheel training, a behind-the-wheel training log that includes:
      i. Instructor's name,
      ii. Instructor's identification number,
      iii. Applicant's name,
      iv. Date of each behind-the-wheel training session, and
      v. Actual number of hours at each training session that the applicant operates a school bus.
   e. At the conclusion of behind-the-wheel training, the behind-the-wheel instructor shall use a copy of the Proof of Completion of Behind-the-wheel Training and Driving Test form to administer to the applicant the driving test described on the form. The driving test shall measure the applicant's ability to operate a school bus safely and in a manner consistent with state law. The behind-the-wheel instructor shall either pass or fail the applicant and submit the completed form to the Department and the employer within seven days of the driving test.

G. First aid and cardiopulmonary resuscitation
1. Before being certified, an applicant shall complete classroom instruction in cardiopulmonary resuscitation and basic first aid. The instruction in cardiopulmonary resuscitation shall include performing cardiopulmonary resuscitation on adults, children, and infants.
2. The instruction shall be conducted by an individual currently certified as an instructor in first aid and cardiopulmonary resuscitation by a program approved by a nationally recognized organization such as the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, or Arizona Bureau of Mines; by an emergency medical technician licensed in Arizona; or by an agency of the U.S. government.
3. An applicant shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card issued to the applicant or other written documentation as proof of completion of the first-aid and cardiopulmonary resuscitation training.
4. A school bus driver shall renew first-aid and cardiopulmonary resuscitation training before expiration of the current training. Renewal instruction shall be provided by an individual described in subsection (G)(2). The school bus driver shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card or other written documentation as proof of renewal of training.

H. The Department shall process an application for certification as a school bus driver under R13-13-109.

I. Refresher training
1. A school bus driver shall have refresher training no later than 24 months following completion of the training required by subsection (F). Refresher training shall consist of a minimum of 6 1/2 hours of classroom training in the topics listed in subsection (F)(1).
2. After completing the first refresher training, the school bus driver shall complete a minimum of 6 1/2 hours of classroom training in the topics listed in subsection (F)(1) every 24 months following the last refresher training.
3. An employer shall ensure that refresher training is taught by a classroom instructor who is qualified under R13-13-103.
4. A classroom instructor shall teach refresher training and shall submit the following information in a written report to the Department and the employer within seven days from completion of the refresher training:
   a. Instructor's name,
   b. Instructor's identification number,
   c. Date of training,
   d. Location of training,
   e. Number of hours of training taught by the classroom instructor,
   f. Each school bus driver's name, and
   g. Each school bus driver's certification number.
5. In addition to the report required under subsection (I)(4), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a refresher training course, a refresher-training course log that includes:
   a. Instructor's name,

b. Instructor's identification number,
c. Date of the refresher training course,
d. Name and certification number of each school bus driver attending the refresher training course,
e. Subject matter taught in each hour, and
f. Which hours of refresher training were attended by each school bus driver.

J. Records
1. The employer shall maintain qualification and training records of an applicant who is certified and of a school bus driver who terminates employment, and qualification records of an applicant who is denied certification, for 24 months from the date of certification, termination of employment, or denial of certification.
2. The employer shall maintain records of testing required under subsection (C) in accordance with 49 CFR 382.401, October 2006 (no later amendments or editions), published at the U. S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department. In this subsection, "controlled substances," as used in 49 CFR 382.401, means marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene.
3. The employer shall transfer the records of a school bus driver to a subsequent employer upon written request by the subsequent employer or school bus driver.
4. Qualification records include:
   a. Application,
   b. Driving record,
   c. Copy of physical examination form, and
   d. Physical performance test form.
5. Training records include:
   a. A copy of the classroom-training course log required under subsection (F)(6) that shows the applicant's attendance,
   b. A copy of the refresher-training course log required under subsection (I)(5) that shows the school bus driver's attendance,
   c. The classroom training examination score,
   d. The applicant's behind-the-wheel training log,
   e. The Proof of Completion of Behind-the-wheel Training and Driving Test form,
   f. A copy of the first-aid card and cardiopulmonary resuscitation card or other written documentation of completion of first-aid and cardiopulmonary resuscitation training, and
   g. A copy of the school bus driver certification card issued by the Department.

K. Denial, cancellation, or suspension of certificate
1. Based on an assessment of the totality of the circumstances, the Department may deny a certificate to an applicant or may cancel or suspend a certificate of a school bus driver for:
   a. Failing to meet or comply with the requirements of this Article;
   b. Being convicted of or subject to an outstanding warrant for any felony;
   c. Being convicted of or subject to an outstanding warrant for any misdemeanor reasonably related to the occupation of a school bus driver including, but not limited to:
      i. Citation for any moving motor vehicle violation, including but not limited to, violations of A.R.S. § 28-1591 et seq.;
      ii. Driving under the influence (A.R.S. § 28-1381 et seq.);
      iii. Any sexual offense (A.R.S. § 13-1401 et seq.);
      iv. Any abuse of a child (A.R.S. § 13-3623); or
      v. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.).
   d. Demonstrating behavior that endangers the educational welfare or personal safety of students, teachers, or school bus drivers or other co-workers;
   e. Providing false, incomplete, or misleading information to the Department;
   f. Driving or being in actual physical control of a school bus under a circumstance listed in A.R.S. § 28-1381(A);
   g. Under A.R.S. §§ 28-3301 through 28-3322, having a commercial driver license canceled, suspended, revoked, or denied; or
   h. Having a verified positive result to any controlled substance or alcohol test required by subsections (C)(1), (2), or (3), at any time.
2. The Department shall cancel or suspend a certificate of a school bus driver for:
   a. Having a fingerprint clearance card that is invalid, suspended, canceled or revoked pursuant to A.R.S. § 28-3228 and A.R.S. Title 41, Chapter 12, Article 3.1; or
   b. Operating a school bus in violation of A.R.S. § 41-1758.03(D) or A.R.S. § 41-1758.07(D) which preclude a person from driving any vehicle to transport employees or clients of the employer as part of the person's employment including students, teachers or other co-workers.
3. Any conviction, violation, warrant, or other misconduct described in this Section shall be considered, whether or not the school bus driver was operating a school bus at the time of the conviction, violation, warrant, or other misconduct.
4. An applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended may request a hearing within 30 days from the date of receipt of the notice of the denial, cancellation, or suspension. The hearing shall be conducted according to the procedures contained in A.R.S. Title 41, Chapter 6, Article 10.
5. The Department shall inform an applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended of the amount of time that must elapse before the applicant or the school bus driver may reapply for certification. The Department shall include this information in the notice of denial, cancellation, or suspension and the notice of final order, if any, served on the applicant or school bus driver. In determining the amount of time that must elapse before reapplication, the Department shall consider:
   a. The seriousness of the offense leading to denial, cancellation, or suspension;
   b. The frequency with which the offense occurred; and
   c. The amount of time required to correct the offense.

L. If a school bus driver is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a school bus driver transfers employment from one employer to a second employer, within 14 days of the transfer the second employer shall provide written notice to the Department of the:
1. School bus driver's name,
2. School bus driver's certification number,

3. Name of the transferring employer, and
4. Effective date of the transfer.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-102 recodified from R17-9-102 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 2306, effective July 24, 2018 (Supp. 18-3).

R13-13-103. Qualification of Classroom and Behind-the-wheel Instructors

A. To be qualified as a classroom instructor, an individual shall:
1. Submit to the Department through the employer, the following two letters:
   a. A letter from, signed, and dated by the individual that states the individual's:
      i. Name, home address, and home phone number;
      ii. Social Security number;
      iii. Date of birth;
      iv. Current employer's name, address, and phone number;
      v. Dates of all previous letters submitted under this subsection; and
   b. A letter from the current employer recommending that the individual be considered as a classroom instructor; and
2. Pass a written examination standardized by the Department:
   a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R13-13-102(F)(1).
   b. Each question has a value of two points. To pass the examination, an individual shall receive a score that equals or exceeds 90% of the total possible score.
   c. If an individual taking the written examination is unable to read or speak English, the employer shall arrange to have the examination administered orally in the language with which the individual is most familiar.
   d. If an individual does not pass the examination, the individual may take a second examination that is different from the first examination.
   e. If an individual fails to pass the second examination, the individual may receive further consideration by submitting again the letters required by subsection (A)(1) and taking the written examination required by this subsection.
   f. The employer shall submit each individual's examination score to the Department within seven days from the date of the examination.

B. To remain qualified as a classroom instructor, a classroom instructor shall teach a minimum of 12 hours of classroom or refresher training every 24 months from the date the classroom instructor is first recognized by the Department as qualified.

C. To be qualified as a behind-the-wheel instructor, an individual shall:
1. Be certified continuously as a school bus driver in Arizona for the 12 months immediately before submitting the letters described in subsection (C)(2) and be employed as a certified school bus driver at the time of qualification as a behind-the-wheel instructor;
2. Submit to the Department through the employer, the following two letters:
   a. A letter from, signed, and dated by the individual that states the individual's:
      i. Name, home address, and home phone number;
      ii. Social Security number;
      iii. Commercial driver license number;
      iv. Current employer's name, address, and phone number;
      v. Dates of all previous letters submitted under this subsection; and
   b. A letter from the current employer recommending that the individual be considered as a behind-the-wheel instructor; and
3. Pass a written examination standardized by the Department.
   a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R13-13-102(F)(1).
   b. Each question has a value of two points. To pass the examination, an individual shall receive a score that equals or exceeds 80% of the total possible score.
   c. If an individual is unable to read or speak English, the employer shall arrange to have the examination administered orally in the language with which the individual is most familiar.
   d. If an individual does not pass the examination, the individual may take a second examination that is different from the first examination.
   e. If an individual fails to pass the second examination, the individual may receive further consideration by submitting again the letters required by subsection (C)(2) and taking the written examination required by this subsection.
   f. The employer shall submit each individual's examination score to the Department within seven days from the date of the examination.

D. To remain qualified as a behind-the-wheel instructor, a behind-the-wheel instructor shall maintain certification as a school bus driver in this state and teach a minimum of 12 hours of behind-the-wheel training every 24 months from the date the behind-the-wheel instructor is first recognized by the Department as qualified.

E. Records
1. The employer shall maintain the following records for each classroom and behind-the-wheel instructor for 24 months from the date the instructor is first recognized by the Department as qualified.
   a. Letter submitted under subsection (A)(1)(a) or (C)(2)(a),
   b. Letter of recommendation submitted under subsection (A)(1)(b) or (C)(2)(b), and
   c. Examination score.
2. The Department shall maintain the documents required under R13-13-102(F)(5) and (I)(4) for 24 months.

F. The Department shall not recognize an individual as qualified to be a classroom or behind-the-wheel instructor if the individual:
1. Fails to meet or comply with the requirements of this Article;
2. Is convicted of or subject to an outstanding warrant for a felony;

3. Is convicted of or subject to an outstanding warrant for a misdemeanor reasonably related to the occupation of a school bus driver, including:
   a. Civil traffic violation (A.R.S. § 28-1591 et seq.);
   b. Driving under the influence (A.R.S. § 28-1381 et seq.);
   c. Any sexual offense (A.R.S. § 13-1401 et seq.);
   d. Any abuse of a child (A.R.S. § 13-3623); or
   e. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.);
4. Provides false, incomplete, or misleading information to the Department;
5. Drives or is in actual physical control of a school bus under a circumstance listed in A.R.S. § 28-1381(A); or
6. Under A.R.S. §§ 28-3301 through 28-3322, has a commercial driver's license canceled, suspended, revoked, or denied.

G. If a classroom or behind-the-wheel instructor is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a classroom or behind-the-wheel instructor transfers employment from one employer to a second employer, within seven days of the transfer the second employer shall provide written notice to the Department of the:
1. Name of the classroom or behind-the-wheel instructor,
2. Identification number of the classroom or behind-the-wheel instructor,
3. Name of the transferring employer, and
4. Effective date of the transfer.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-103 recodified from R17-9-103 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-104. Minimum Standards for School Bus Operation

A. A school bus driver shall perform operations checks of a school bus as required by R13-13-108.

B. Loading or unloading of passengers:
1. As of February 16, 1996, an eight-lamp system as described in R13-13-107(17) shall be installed on a school bus before it is introduced into Arizona. When preparing to stop a school bus on a street or highway, the school bus driver shall activate the alternately flashing amber lamps of an eight-lamp system or the alternately flashing red lamps of a four-lamp system for a minimum distance of 100 feet, in accordance with A.R.S. § 28-930(B). Whenever the school bus is stopped on a street or highway to load or unload passengers, the school bus driver shall deactivate the alternately flashing amber lamps and activate the alternately flashing red lamps of an eight-lamp system, and extend the stop arm and open the service door.
2. When a school bus driver stops the school bus to load or unload passengers, the school bus driver shall set the parking brake and place the transmission in neutral.
3. The distance between stops for the purpose of loading or unloading passengers shall be no less than 600 feet, unless the school determines that more frequent stops are necessary for safety. The school bus driver shall stop the school bus as near the right edge of the traveled portion of the street or highway as possible.
4. A school bus driver shall not load or unload passengers on the traffic side of the bus.
5. When a school bus driver loads or unloads passengers who must cross a street or highway at a location other than an intersection, the passengers shall cross at least 10 feet in front of the front bumper of the school bus. The school bus driver shall not permit passengers who must cross a street or highway to be unloaded from the school bus until all traffic to the front and rear of the school bus is stopped. The school bus driver shall not move the school bus until all passengers have crossed the street or highway.
6. In intersections that use lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 100 feet of the traffic control signal so the passengers may cross with the traffic control signal, either before or after the school bus proceeds.
7. In intersections without lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 50 feet of the intersection so the passengers may cross at the intersection, either before or after the school bus proceeds.
8. A school bus driver shall not stop a school bus on an interstate highway for the purpose of loading or unloading passengers, except that:
   a. A school bus stop may be established on a frontage road that parallels an interstate highway if no passenger is allowed to cross a divided highway.
   b. A school bus may stop in a safety rest area as defined by A.R.S. § 28-7901(8) that is part of or adjacent to an interstate highway.
9. A school bus driver shall load or unload passengers on school grounds only in an area designated by the school and marked with a sign as a school bus loading area.
10. During loading or unloading of passengers at a designated school bus loading area at a school, the school shall restrict the loading area to school buses, passengers, and school employees assisting in the loading or unloading of passengers.
11. A school shall allow passengers in a designated school bus loading area only when the passengers are being loaded on or unloaded from a school bus.
12. A school shall designate all school bus loading areas at locations that prevent backing of the school bus.
13. In areas at a school not designated as a school bus loading area, a school bus driver shall not back upon or adjacent to the school grounds unless an individual authorized by the school bus driver directs the backing procedure while standing at the rear of the school bus in a position visible to the school bus driver. This provision does not apply to a school bus garage or school bus storage area where passengers are not allowed.
14. Immediately before a school bus driver engages in backing a school bus, the school bus driver shall sound the horn to warn motorists and pedestrians of the backing procedure. This provision does not apply if the school bus is equipped with an alarm that operates automatically when the school bus is backing.
15. In addition to the requirements for railroad grade crossings contained in A.R.S. § 28-853, a school bus driver shall comply with the following:
   a. Use hazard warning lights as described in A.R.S. § 28-947(D) within a minimum of 100 feet of a rail-

road grade crossing to warn motorists of an intended stop.

b. Shut off any radio, compact-disc player, and other source of sound within 50 feet of a railroad grade crossing.

c. Stop the school bus, with or without passengers aboard, at a railroad grade crossing when traffic at the railroad grade crossing is not directed by a police officer.

d. While stopped at a railroad grade crossing at which traffic is not directed by a police officer, activate the noise suppression switch, completely open the service door and the window to the left of the driver and, by hearing and sight, determine that it is safe to cross. Before proceeding, close the service door. Deactivate the noise suppression switch after crossing the tracks.

e. Do not stop to load or unload passengers within 200 feet of a railroad grade crossing. This provision does not prohibit stops at a railroad station or on a highway that parallels the railroad tracks.

16. When a school bus driver loads a wheelchair passenger on a school bus, the school bus driver shall secure both the wheelchair and the wheelchair passenger using the systems described in R13-13-105(E).

C. An employer shall not allow or require a school bus driver to drive a school bus nor shall a school bus driver drive a school bus:

1. For more than 10 hours after having been off-duty for a minimum of eight consecutive hours;
2. For any period after having been on-duty for 15 hours after having been off-duty for a minimum of eight consecutive hours;
3. After having been on-duty 60 hours in any seven consecutive days if the employer does not operate school buses for seven consecutive days; or
4. After having been on-duty 70 hours in any eight consecutive days if the employer operates school buses every day of the week.

D. Other requirements:

1. A school bus driver shall wear a seat belt whenever the school bus is in motion.
2. While operating a school bus, a school bus driver shall wear closed-toe, closed-heel shoes that will not interfere with driving the school bus safely or performing other duties of the school bus driver.
3. A school bus driver shall comply with all state traffic laws while operating a school bus except that the school bus driver shall not exceed 65 miles per hour or the posted speed limit, whichever is less, when operating the school bus on an interstate highway.
4. Any person boarding or attempting to board a school bus, whether or not a passenger, shall comply with all instructions given by a school bus driver. If a passenger or a non-passenger boards or attempts to board a school bus and refuses to comply with the school bus driver's instructions, the school bus driver may seek emergency assistance to remove the passenger or non-passenger from the school bus, or prevent the passenger or non-passenger from boarding.
5. All passengers shall sit with their backs against the seat backs, their legs facing towards the front of the school bus, and all parts of their bodies clear of all aisles whenever the school bus is in motion.
6. A school bus driver shall not transport in a school bus more passengers than the rated capacity stated by the school bus manufacturer.
7. A school bus driver shall close the service doors of a school bus before operating the school bus. The service doors shall remain closed whenever the school bus is in motion.
8. A school bus driver shall not place the transmission in neutral or coast with the clutch disengaged on a downhill grade.
9. The driver of a school bus equipped with a two-speed axle shall not shift the axle while descending any hill posted with grade warning signs.
10. A school bus driver shall ensure that a school bus is not fueled in a closed building, while the school bus engine is running or while passengers are on board.
11. A school bus driver or passenger shall not use tobacco in any form on a school bus.
12. A school bus driver shall not carry on a school bus or consume any beverage containing any alcohol while on-duty with the employer or within eight hours before going on-duty with the employer.
13. A school bus driver shall not eat or drink on a school bus unless the school bus is completely stopped.
14. A school bus driver shall not at any time carry on a school bus or use a controlled substance.
15. A passenger shall not carry on a school bus or consume while being transported in a school bus, any beverage containing any alcohol.
16. A passenger shall not carry on a school bus or consume while being transported in a school bus, any dangerous or narcotic drug, as defined in A.R.S. § 13-3401, unless:
    a. A medical practitioner authorized by the state to write a prescription for the dangerous or narcotic drug has prescribed the dangerous or narcotic drug for the passenger who is carrying or consuming it;
    b. The school district governing board establishes written policies and procedures regarding the administration of a dangerous or narcotic drug by a trained district employee to a passenger who is being transported in a school bus; and
    c. The parent or legal guardian of a passenger to whom a dangerous or narcotic drug is administered while being transported in a school bus provides prior written authorization for the dangerous or narcotic drug to be administered to the passenger by a trained district employee.
17. A school bus driver shall not assume responsibility for transporting any medication, whether prescription or over-the-counter, that belongs to a passenger.
18. A school bus driver shall not transport animals, insects, or reptiles in a school bus with the exception of service animals, as defined at A.R.S. § 11-1024(J), which assist disabled passengers.
19. Except for eyeglasses, a passenger or school bus driver shall not carry or transport glass objects on a school bus.
20. A school bus driver or passenger shall not carry on or transport in a school bus an explosive device, gun, knife, or other weapon as defined by school-district policy.
21. A passenger shall not place any part of the passenger's body out of a school bus window or door except when exiting the school bus.
22. When instruments or equipment related to musical or athletic events are transported on a school bus, the school bus driver shall transport them as follows:

a. Instruments or equipment shall not occupy seating space if needed for a passenger,
b. Instruments or equipment shall not be placed in the school bus driver's compartment or step-well of the school bus,
c. Instruments or equipment shall be under the passenger's control at all times or secured in the school bus, and
d. Instruments or equipment shall not block an aisle or emergency exit of the school bus at any time.

23. A passenger who carries onto a school bus an object other than an instrument or equipment related to musical or athletic events shall control the object at all times or secure the object in the school bus. If the passenger is not able to control or secure the object in the school bus, the passenger shall not carry the object onto the school bus.
24. A school bus driver shall ensure that all objects inside the school bus are under a passenger's control or secured in a manner that prevents the objects from causing physical injury to others or affecting the safe operation of the school bus.
25. A school bus driver shall not drive a school bus with a trailer or other vehicle attached to the school bus.
26. A school bus driver shall stop the school bus and check the wheels and tires for wear, damage, and inflation after every two continuous hours of driving.
27. All school buses shall have and school bus drivers shall use a two-way voice communication system. The two-way voice communication system shall only be used to assist the school bus driver with passenger transportation.
28. Except as provided in subsection (D)(27), a school bus driver shall not use audio headsets, earphones, earplugs, Bluetooth devices, cellular phones, personal digital assistants, or other interactive wireless devices, whether or not hands-free, when the school bus is in operation.
29. Except when complying with R13-13-108(D), if a school bus driver leaves the driver's compartment, the school bus driver shall set the parking-brake system, place a standard transmission in either first or reverse gear, place an automatic transmission in park or neutral, and turn off the ignition and remove the ignition key from an ignition that uses a key, or set the ignition power-deactivation switch of an ignition that does not use a key.
30. Each time a school bus driver unloads passengers and it appears that no passengers remain on the school bus, the school bus driver shall inspect the interior of the school bus for passengers remaining and objects left on the school bus. If the school bus is equipped with a child alert notification system as described in R13-13-106(6), the school bus driver shall complete all procedures required by the child alert notification system, in addition to the school bus driver's inspection of the interior of the school bus.
31. At least twice during every school year, a school shall conduct an evacuation drill of a school bus at the school that includes every passenger who rides a school bus and is in school on the day of the evacuation drill. At least 14 days before an evacuation drill, a school shall submit to the Department a written notice stating the date, time, and location of the evacuation drill. Each school bus driver shall participate in a minimum of two evacuation drills during every school year. Evacuation drills shall include:
    a. Practice and instruction in the location, use, and operation of the emergency exits, fire extinguishers, first aid equipment, windows as a means of escape, and communication systems;
    b. Practice and instruction in when and how to approach, load, unload, and move away from the school bus a minimum of 100 feet;
    c. Instructions on how weather-related hazards affect emergency procedures; and
    d. Instructions on the importance of orderly conduct.
32. A white, flashing, strobe lamp as described in R13-13-107(17)(f) may be used only during conditions that produce low visibility or that are hazardous.
33. An owner shall ensure that no lock, except as provided in R13-13-107(10)(h), is installed on any school bus emergency exit or service door.
34. A school bus driver shall ensure that nothing obstructs or interferes with the use of any school bus emergency exit or service door.
35. A school bus driver, passenger, or school administrator shall immediately report to the employer any violation of these rules or state statutes that the school bus driver, passenger, or school administrator reasonably believes threatens the health, safety, or welfare of a passenger.

E. Reports and recordkeeping:

1. Immediately following any accident involving a school bus, the school bus driver shall report the accident to the employer.
2. Immediately upon receiving notification of any accident involving a school bus, the employer shall notify the Department of the accident by telephone. The employer shall submit written verification of the accident to the Department within 72 hours of the telephone notification.
3. Immediately upon becoming aware of a violation of these rules or state statutes that a reasonable person could conclude caused injury to or threatened the health, safety, or welfare of a passenger, the employer shall notify the Department of the violation by telephone. The employer shall submit a written report of the violation to the Department within 72 hours of the telephone notification.
4. No later than 14 days after an evacuation drill, a school district shall submit to the Department a written report of the evacuation drill identifying the school district, participating school, date, and number of participants.
5. From the date on which a record is created, the employer shall maintain for three years the following written records for each school bus driver:
    a. On a daily basis, the period of time each school bus driver is on-duty for the employer including the date, each start and quit time, and the total number of hours on-duty for the employer.
    b. On a daily basis, the total number of hours on-duty for an entity other than the employer during the previous seven days.
6. A school bus driver who performs any compensated work for an entity other than the employer shall provide the employer, in writing, the name and telephone number of the entity and the number of hours the school bus driver works each day for the entity.
7. A school bus driver who receives a citation, whether on-duty or off-duty, shall immediately inform the employer by telephone about the citation and shall submit a copy of the citation to the employer within five days.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-

13-104 recodified from R17-9-104 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-105. Special Needs Standards

A. General requirements:
1. A school bus introduced to Arizona on or after May 31, 2008 used for transporting disabled passengers shall comply with the minimum standards applicable to school buses and the specifications contained in this Section. A school bus introduced to Arizona before May 31, 2008 used for transporting disabled passengers shall comply with the minimum standards in this Section or shall be maintained in accordance with the manufacturer's original specifications.
2. Any school bus that is used for transporting a passenger who uses a wheelchair shall be equipped with a wheelchair lift.
3. A wheelchair lift shall be located on the side of the bus body opposite the school bus driver. The wheelchair lift shall not be attached to the exterior sides of the school bus and shall be confined within the school bus body when not extended.
4. Any school bus that is used for transporting disabled passengers shall be equipped with a belt cutter that is accessible only to the school bus driver. The belt cutter shall be secured in a location within reach of the school bus driver while belted into the driver's seat. The school bus may be equipped with additional belt cutters. Additional belt cutters shall be accessible only to the school bus driver or adult aides or attendants.

B. Special-service entrance:
1. A school bus used for transporting disabled passengers shall have a special-service entrance of a width and depth to accommodate a wheelchair lift. The special-service entrance shall have a minimum clear opening of 30 inches horizontally to allow for the passage of a wheelchair.
2. The special-service entrance shall be located on the side of the bus opposite the school bus driver and far enough to the rear of the school bus to prevent the special-service entrance door from obstructing the service door when the special-service entrance door is open.
3. A drip molding shall be installed above the special-service entrance to divert water from the special-service entrance.
4. The frame surrounding the special-service entrance shall provide support and strength at least equal to at the conventional service and emergency doors.

C. Special-service entrance doors:
1. A school bus used for transporting passengers in wheelchairs shall provide a special-service entrance door not to exceed 50 inches in width.
2. Two doors may be used for a special-service entrance on a school bus, if the doors are equipped with a positive latching mechanism to prevent accidental opening.
3. The special-service entrance door shall be constructed to open toward the exterior of the school bus. A Type A school bus is exempt from this provision if its special-service entrance door is provided by the school bus chassis manufacturer.
4. The special-service entrance door shall have a fastening device attached to the school bus body to hold the special-service entrance door in an open position.
5. The special-service entrance door shall be weather-sealed by a waterproof cushion affixed to the door or door frame.
6. Door materials, panels, and structural strength of a special-service entrance door shall be equivalent to the standards contained in R13-13-107 for a service door and an emergency door. Color, rub rail extensions, if installed, lettering, and all exterior features shall match adjacent sections of the school bus body.
7. The window in the special-service entrance door shall be made of safety glass, mounted in a waterproof manner that is equal to the mounting of the other windows, and aligned with the side windows of the school bus.
8. A pressure switch shall be installed in the special-service entrance door frame that will actuate a visible signal located in the school bus driver's compartment when the ignition is in the "on" position to warn the school bus driver when the special-service entrance door is not closed.
9. A switch shall be installed in the special-service entrance door frame so the wheelchair lift will not operate when the special-service entrance door is closed.

D. Wheelchair lift:
1. A wheelchair lift shall be capable of lifting a minimum load of 800 pounds.
2. When the wheelchair-lift platform is raised to the maximum position, it shall be held in position by the wheelchairlift.
3. Controls shall be provided that enable an individual authorized by the school bus driver to activate the wheelchair lift from either inside or outside the school bus.
4. The wheelchair lift shall be equipped so it may be manually raised or lowered in the event of a power failure to the wheelchair lift.
5. The wheelchair lift shall contain a safety device to prevent the wheelchair-lift platform from falling.
6. The wheelchair lift shall be constructed so it allows the wheelchair-lift platform to rest completely on the ground.
7. All edges of the wheelchair-lift platform shall be designed to restrain the wheelchair and prevent the feet of an individual in the wheelchair from becoming caught during the raising or lowering process.
8. A barrier shall be attached along the outer non-loading edges of the wheelchair-lift platform that will prevent the wheelchair from rolling off the wheelchair-lift platform when the wheelchair-lift platform is placed in any position other than completely extended on ground level.
9. A self-adjusting, skid-resistant plate shall be installed on the loading edge of the wheelchair-lift platform to reduce the incline from the wheelchair-lift platform to ground level. This plate shall be used as a restraining barrier on the loading edge of the wheelchair-lift platform. The wheelchair-lift platform shall be skid-resistant.
10. A school bus may be provided with a battery to be used exclusively to operate the wheelchair lift. If a battery is installed for this purpose, an appropriate size circuit breaker meeting the wheelchair lift manufacturer's specifications shall be installed between the battery and the wheelchair lift motor. The circuit breaker shall be located as close to the power source as possible, but not within the school bus driver's compartment.
11. The wheelchair lift shall be equipped with an adjustable switch that limits the electrical power to the wheelchair-lift motor and a bypass valve to prevent pressure from building in the hydraulic system when the wheelchair-lift platform reaches the maximum up or down position.
12. A ramp may be carried on a school bus for use during an occurrence that requires evacuating the school bus. The

ramp shall not be stored within the passenger compartment of the school bus.

E. Wheelchair and wheelchair-passenger securement:
1. Each wheelchair in a school bus shall be secured in a forward-facing position. Medical equipment and supplies required to accommodate a disabled passenger shall be secured in a school bus by means of alterations approved by the Department in accordance with R13-13-108(G).
2. Each wheelchair-securement system location in a school bus shall have a minimum clear floor area of 30 inches in width from the interior school bus wall to the aisle and a minimum of 48 inches in length. A wheelchair shall not be placed in a position that prevents passage through the special-service entrance.
3. Each wheelchair-securement system shall have four full-length tracks, with an L-track four-point tie-down configuration.
4. The wheelchair-securement system shall provide a minimum of four wheelchair-securement anchorages attached to the school bus floor with a minimum of two anchorages located at the rear of the space designated for a wheelchair and a minimum of two anchorages located at the front of the space.
5. The wheelchair-securement system shall provide a minimum of one wheelchair-securement device located in each of the rear anchorages and a minimum of one wheelchair-securement device located in each of the front anchorages.
6. A wheelchair space shall have a minimum of one wheelchair-passenger shoulder restraint anchorage attached to the interior wall of the school bus and a minimum of two wheelchair-passenger restraint anchorages located at the rear of the space.
7. Each wheelchair space shall have one wheelchair-passenger restraint. A school bus equipped with a wheelchair-passenger restraint shall have the following information available on the school bus:
   a. A telephone number where information may be obtained about installation, repair, and parts; and
   b. Instructions regarding use of the restraint, including a diagram showing the proper placement of the wheelchair and positioning of securement devices and occupant restraints, including correct belt angles.

F. Dome light: A dome light shall be placed in the interior ceiling of the school bus to illuminate the wheelchair lift area. The dome light shall be activated by a pressure switch located in the special-service entrance door or by a manually operated switch located in the interior of the school bus no more than one foot from the special-service entrance door. This switch shall be used exclusively for the dome light.

G. Aisles: All aisles leading to an emergency door from any wheelchair space shall be a minimum of 30 inches in width. The emergency door opening shall be a minimum of 30 inches in width.

H. Seating arrangements: All fixed seats in a special-needs school bus shall be forward facing.

I. Emblems: A school bus used for transporting disabled passengers shall display two International Symbol of Accessibility emblems. One emblem shall be placed below the upper window on the emergency door or below the window on the special-service entrance door, and the second emblem shall be placed below the windshield on the side of the bus or on the bumper opposite the school bus driver. The emblems shall be made of blue, reflective material and be a minimum of 6 inches and a maximum of 12 inches in width and height and shall contain a reflective white wheelchair impression with a minimum of 1/8 inch reflective white border around the outer edges of the emblems.

J. Types A and B school buses used to transport disabled passengers shall comply with the specifications contained in this Section except:
1. A ramp may be installed in place of a wheelchair lift;
2. If a ramp is used, it shall be of a strength and rigidity to support a wheelchair, passenger, and an individual attending the wheelchair passenger. The ramp shall be equipped with a barrier on each longitudinal side to prevent the wheelchair from leaving the ramp;
3. The floor of the ramp shall be covered with nonskid material; and
4. A ramp shall not be carried in the passenger compartment of a school bus.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-105 recodified from R17-9-105 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4).

R13-13-106. Minimum Standards for School Bus Chassis

The chassis of a school bus introduced to Arizona on or after May 31, 2008 shall meet the requirements of this Section. The chassis of a school bus introduced to Arizona before May 31, 2008 shall meet the requirements of this Section or shall be maintained in accordance with the manufacturer's original specifications.
1. Air cleaner: An engine intake air cleaner shall be installed in the school bus that meets engine specifications defined by the school bus manufacturer.
2. Axles: The front and rear axles and suspension assemblies shall have a gross axle weight rating consistent with that stated by the chassis manufacturer on a notice located in the school bus driver's compartment.
3. Back-up alarm: If installed, an alarm that emits a warning sound when the school bus is backing shall conform to the following:
   a. The alarm-signaling device shall be of electronic, solid state design and shall emit an audible sound of a minimum of 97 dB(A) measured at 4 feet, 0° access from the source of the sound.
   b. The alarm-signaling device shall be wired into the backup light circuits and shall emit sound automatically when the gear shift lever is in "reverse" position.
   c. The alarm-signaling device shall be attached to the school bus chassis or body behind the rear axle.
4. Brakes:
   a. A school bus with a manufacturer-designed passenger capacity of 60 or less shall be equipped with a service-brake system that uses compressed air or hydraulic assist.
   b. A school bus with a manufacturer-designed passenger capacity greater than 60 shall be equipped with a service- brake system that uses compressed air.
   c. In addition to the service-brake system, a school bus shall be equipped with a parking-brake system to keep the school bus from moving when parked.

d. The service brakes in a compressed-air system shall be adjusted using the following criteria:

Type	Outside Diameter of Air Chamber	Brake Adjustment Limit
6	4 1/2 inches	1 1/4 inches
9	5 1/4 inches	1 3/8 inches
12	5 11/16 inches	1 3/8 inches
16	6 3/8 inches	1 3/4 inches
20	6 25/32 inches	1 3/4 inches
24	7 7/32 inches	1 3/4 inches
30	8 3/32 inches	2 inches
36	9 inches	2 1/4 inches

e. The service brakes in a "long stroke" clamp type brake system shall be adjusted using the following criteria:

Type	Outside Diameter of Air Chamber	Brake Adjustment Limit
12	5 11/16 inches	1 3/4 inches
16	6 3/8 inches	2 inches
20	6 25/32 inches	2 inches
24	7 7/32 inches	2 inches
24*	7 7/32 inches	2 1/2 inches
30	8 3/32 inches	2 1/2 inches

*For 3" maximum stroke type 24 chambers

f. The service-brake system in a compressed-air system shall contain an emergency-brake system that will activate when the air loss in the service-brake system reaches 20 to 40 pounds per square inch.

g. A school bus using a compressed-air or hydraulic-assist service-brake system shall be equipped with a signal located in the school bus driver's compartment that emits a continuous audible or visible warning to the school bus driver when:
   i. The air pressure available in a compressed-air braking system is 60 pounds per square inch or less, or
   ii. There is a loss of fluid flow from the main hydraulic pump or loss of electric source powering the back-up system in a hydraulic-assist system.

h. A school bus using a compressed-air service-brake system shall be equipped with one or two illuminated gauges located in the school bus driver's compartment that show the pounds per square inch of compressed air available for the operation of the brake.

i. A compressed-air brake system with a dry reservoir shall have a one-way valve that will prevent the loss of compressed air between the dry reservoir and the source of compressed air.

j. A brake system with a wet reservoir shall have a valve located at the bottom of the wet reservoir that operates automatically or can be operated remotely or manually to eject the moisture from the reservoir.

k. Compressed-air or hydraulic-assist brake lines and booster-assist lines shall be installed in a manner that prevents heat, vibration, and chafing damage.

l. The brake systems of Types C and D school buses shall be installed so the chassis components can be visually inspected to detect brake lining wear without removal of any of the chassis components.

5. Front bumper: The front bumper shall be positioned at the forward-most part of the school bus and extend to the outer edges of the school bus.

6. Child alert notification system: A school bus may be equipped with an electronic or mechanical child alert notification system. If a school bus is equipped with a child alert notification system, the device shall be installed in a manner that does not interfere with any other existing operating or electrical component. A child alert notification system in a school bus shall not have an override or bypass capability.

7. Clutch: The clutch torque capacity shall be equal to or greater than the engine torque output.

8. Color: The chassis, including wheels and front bumper, shall be painted black. The hood and fenders shall be painted National School Bus Yellow as described in R13-13-107(6).

9. Cooling system: A school bus shall be equipped with a cooling system that maintains the engine temperature operating range required to prevent damage to the school bus engine.

10. Drive shaft: Each section of the drive shaft to the rear driving axle shall be protected by a metal guard around its circumference to reduce the possibility of the drive shaft penetrating through the school bus floor or dropping to the ground.

11. Electrical system:
   a. Battery:
      i. The battery shall have a minimum cold-cranking capacity rating equal to the cranking current required by the engine for 30 seconds at 0° F. and a minimum reserve capacity rating of 120 minutes at 25 amperes.
      ii. The battery shall have a higher capacity than specified in subsection (11)(a)(i) if optional equipment installed on the school bus requires the higher capacity.
      iii. Because all batteries are to be secured in a sliding tray in the bus body as required by R13-13-107, chassis manufacturers shall mount batteries temporarily on the chassis frame, except that a van conversion or cutaway front-section chassis may be secured in accordance with the manufacturer's standard configuration. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack, and shall be of sufficient gauge to carry the required amperage.
   b. Alternator:
      i. All alternators shall conform to the recommended practices of Standard J180, January 2002 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, which is incorporated by reference and on file with the Department.
      ii. All Type A-2 and Type B buses with a GVWR of 15,000 pounds or less shall have an alternator with a minimum of 130 amps.
      iii. All Type A-2 and Type B buses with a GVWR over 15,000 pounds, and all Type C and D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting Standard J180, which is incorporated by reference in

subsection (b)(i), having a minimum output rating of 130 amps, and shall produce a minimum current output of 50% of the rating at engine idle speed. The alternator may be either pad-mounted or hinge-mounted.

iv. Buses equipped with an electrically powered wheelchair lift or air conditioning may be equipped with a device that monitors the electrical system voltage and advances the engine idle speed when the voltage drops to, or below, a pre-set level.

v. A belt-driven alternator shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components.

vi. A direct-drive alternator may be installed instead of a belt-driven alternator.

vii. If the school bus is equipped with an air conditioning system, the alternator shall have a minimum charging rate of 160 amperes per hour.

viii. The alternator on a school bus shall contain a regulator to control the voltage to the battery.

c. Wiring:

i. All wiring shall conform to the recommended practices of Standard J1292, October 1981 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.

ii. All wiring shall use a standard color or number coding and each chassis shall contain a wiring diagram that details the wiring of the chassis.

iii. The chassis shall be equipped with a connection to provide electrical power to the school bus. The connection shall be located on the chassis cowl or on the engine compartment of a school bus designed without a chassis cowl. The connection shall contain terminals for the main 100 ampere body circuit, tail lamps, right-turn signal, left-turn signal, stop lamps, backup lamps, and instrument panel lights. The instrument panel lights shall have a rheostat control.

12. Engine horsepower: The gross vehicle weight rating of a school bus shall not exceed 185 pounds for each engine horsepower as published by the manufacturer on a notice located on the school bus engine.
13. Exhaust system:
    a. The exhaust pipe, muffler, and tailpipe shall be located under the school bus body and attached to the chassis.
    b. The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.
    c. The exhaust system on a gasoline-powered chassis shall be insulated from the fuel tank and fuel tank connections by a shield at any point where the exhaust system is 12 inches or less from the fuel tank or fuel tank connections.
14. Frame:
    a. A school bus frame shall be of a design and strength capable of supporting the gross vehicle weight of the school bus.
    b. A school bus frame shall not be altered for any purpose.
    c. Holes in top or bottom flanges of frame rails are not permitted except as provided by the manufacturer. There shall be no welding to the frame rails except by the chassis or body manufacturer or the manufacturer's certified agent.
    d. The school bus frame shall not be cracked, loose, sagging, or broken.
    e. Brackets securing the cab or the body of the school bus to the frame shall not be loose, broken, or missing.
    f. The frame rail flanges shall not be bent, cut, or notched, except as specified by the manufacturer.
    g. All accessories mounted to the school bus shall be secured as specified by the manufacturer.
    h. Holes shall not be drilled in the top or bottom rail flanges, except as specified by the manufacturer.
15. Front fenders of a Type C school bus: The outer edges of the front fenders shall be wider than the outer edges of the front tires when the front wheels are in the straight-ahead position.
16. Fuel system:
    a. The fuel tank shall be vented to the outside of the school bus body so fuel spillage will not contact any part of the exhaust system.
    b. On a Type B, Type C, or Type D school bus, no portion of the fuel system that is located outside of the engine compartment, except the filler tube, shall extend above the top of the chassis frame.
    c. A fuel filter with replaceable element shall be installed between the fuel tank and engine.
    d. The fuel line that supplies fuel to the engine shall be located at the top of the fuel tank.
17. Horn: A school bus shall be equipped with at least one horn capable of producing a sound level between 82 and 102 dB(A) when tested according to the Standard J377, March 2001 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
18. Instruments and instrument panel:
    a. The chassis shall be equipped with the following instruments:
        i. Speedometer;
        ii. Odometer that will give accrued mileage to seven digits, including tenths of miles;
        iii. Voltmeter or ammeter;
        iv. Oil pressure gauge;
        v. Water temperature gauge;
        vi. Fuel gauge;
        vii. Upper beam head lamp indicator;
        viii. Brake system signal as required by R13-13-106(4)(f);
        ix. Turn signal indicator; and
        x. Air pressure or hydraulic gauge.
    b. The instruments shall be mounted on the instrument panel in the school bus driver's compartment and visible to the school bus driver while seated in the driver's seat.
    c. The instrument panel shall be equipped with a rheostat switch that controls the illumination to the instrument panel and the gear shift selector indicator.
19. Oil filter: A replaceable element or cartridge-type oil filter shall be provided with a minimum capacity that meets or exceeds the capacity recommended by the manufacturer of the school bus engine.

20. Openings: All openings in the floorboard and in the fire wall between the chassis and passenger compartment shall be sealed.
21. Splash guards:
    a. A school bus shall be equipped with rear fender splash guards constructed of flexible rubberized material.
    b. The splash guards shall be wide enough to cover the tire tread width, installed close enough to the tire tread surface to control side-throw of road surface material, and extend to within 8 inches of ground level.
22. Steering system:
    a. Power steering is required on all school buses manufactured after January 1, 1984.
    b. Bracing extending from the center of the steering wheel to the steering wheel ring shall not be cracked or missing.
    c. The distance of movement of the steering wheel between two points of resistance shall not be greater than the following when measured with the engine running:

Steering wheel diameter	Power steering	Manual steering
16 in. or less	6 3/4 inches	4 1/2 in.
18 in.	7 1/8 inches	4 3/4 in.
20 in.	7 7/8 inches	5 1/4 in.
22 in.	8 5/8 inches	5 3/4 in.

    d. There shall be clearance of at least 2 inches between the steering wheel and any object in the driver's compartment.
    e. A non-adjustable steering column shall be fastened in a fixed position. An adjustable steering column shall be equipped with a locking mechanism.
    f. The steering gear housing shall not have loose or missing mounting bolts. There shall not be cracks in the gear housing or its mounting brackets.
    g. The connecting arm on the steering gear power source shall not be loose.
    h. The steering wheel shall turn freely in both directions.
    i. The steering system shall have a means for lubrication of all wear-points.
23. Suspension:
    a. Shock absorbers:
        i. A school bus shall be equipped with front and rear double-acting shock absorbers. Replacements to shock absorbers shall be made according to the specifications of the manufacturer's part number as stamped on the shock absorber.
        ii. If a school bus is manufactured with tandem rear axles, rear shock absorbers are not required.
    b. Suspension system:
        i. Capacity of suspension assemblies shall be commensurate with the chassis manufacturer's gross vehicle weight rating.
        ii. If leaf-type rear springs are used, they shall be a progressive rate or multi-stage design.
24. Tires and wheels:
    a. Tires and wheels shall have an accumulated load rating at least equal to the gross vehicle weight rating.
    b. Dual rear tires shall be provided on all school buses that have a gross vehicle weight rating of more than 10,000 pounds.
    c. Each tire on a particular axle shall be the same size.
    d. All tires on a school bus shall be bias or all tires on a school bus shall be radial and shall not differ more than one size between front and rear axles.
    e. On a Type C or D school bus, a spare tire, if present, shall be in a carrier mounted outside the passenger compartment.
25. Transmission: The school bus transmission shall have no fewer than three forward speeds and one reverse speed.
26. Turning radius:
    a. A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, as measured to the edge of the front tire at the outside of a circle as the school bus moves within the circle.
    b. A chassis with a wheelbase of more than 264 inches shall have a right and left turning radius of not more than 44 1/2 feet, as measured to the edge of the front tire at the outside of a circle as the school bus moves within the circle.
27. Weight:
    a. The gross vehicle weight of a school bus shall not exceed the chassis manufacturer's gross vehicle weight rating for the chassis as recorded on a notice located in the school bus driver's compartment.
    b. To calculate the gross vehicle weight of a school bus, add the chassis weight, the school bus body weight, the school bus driver's weight, and the total seated passenger weight.
        i. For the purpose of calculation, the school bus driver's weight is 150 pounds.
        ii. For the purpose of calculation, the passenger weight is 120 pounds per seated passenger.
    c. The weight distribution of a school bus on a level surface that is fully loaded according to the gross vehicle weight rating shall not exceed the front axle gross weight rating or rear axle gross weight rating as recorded on a notice located in the school bus driver's compartment.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-106 recodified from R17-9-106 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4). Amended by final expedited rulemaking at 24 A.A.R. 2267, effective July 24, 2018 (Supp. 18-3).

R13-13-107. Minimum Standards for School Bus Body

The body of a school bus introduced to Arizona on or after May 31, 2008 shall meet the requirements of this Section. The body of a school bus introduced to Arizona before May 31, 2008 shall meet the requirements of this Section or shall be maintained in accordance with the manufacturer's original specifications.

1. Air conditioning system: The school bus may be installed with an air conditioning system. If installed, the air conditioning system shall:
    a. Be of a mechanical vapor compression refrigeration type;
    b. Be manufactured to conform to the requirements of Standard J639, June 2005 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warren-

dale, PA 15096-0001, incorporated by reference and on file with the Department;

c. Have sufficient power for simultaneous cooling, circulating, and dehumidifying the air;

d. Be provided with refrigerant that is nontoxic, nonflammable, and non-explosive;

e. Have all power and grounding installed according to the manufacturer's specifications; and

f. Have exhaust system exit from the rear of the vehicle, and extend to, but not more than 2 inches beyond the outer edge of the rear bumper.

2. Aisle:

a. The center aisle of a school bus shall have a clearance of not less than 12 inches at the bottom of the seat cushion, increasing to 15 inches at the top of the seat backs.

b. Aisles to side emergency doors shall have a minimum clearance of 12 inches which may be achieved by using flip-up type seats.

3. Auxiliary fan:

a. An auxiliary fan, if installed, shall be placed in a location that does not obstruct the school bus driver's view of any mirror located on the school bus.

b. An auxiliary fan, if installed, shall have a 6-inch nominal diameter, with the fan blades covered by a protective cage.

c. Each installed auxiliary fan shall be controlled by a switch that is independent of any other electrical system.

4. Battery:

a. A battery shall be secured to a slide-out or swing-out tray in a vented compartment in the school bus body, so the battery is accessible to the outside for servicing. If the battery compartment has a door that is not removable, the door shall be secured by a fastening device when the door is in a closed position. If the battery compartment has a removable cover, the cover shall be secured by a fastening device when the cover is in place.

b. The word "Battery" shall be printed in unshaded black letters that are no more than 2 inches in height on the battery-compartment door or cover or immediately above the battery-compartment door or cover.

c. Buses with a battery located under the engine hood are exempt from these provisions.

5. Belt cutter: A school bus with passenger seat belts shall be equipped with a belt cutter having a full width handgrip and a protected, replaceable or non-corrodible blade. The belt cutter shall be mounted in a location accessible to the seated driver, and in an easily detachable manner. The belt cutter shall be accessible only to the school bus driver.

6. Color:

a. A school bus body shall be painted National School Bus Yellow according to the following specifications and tolerances:

Description	Reflectance	Chromaticity	
	Y	X	Y
Centroid	41.5%	.5139	.4434
V+ Light Limit	42.9%	.5139	.4427
V- Dark Limit	39.8%	.5133	.4422
H+ Green Limit	41.6%	.5123	.4368
H- Red Limit	41.7%	.5168	.4489
C+ Vivid Limit	41.5%	.5188	.4457
C- Weak Limit	41.5%	.5095	.4405

b. The bumpers, lamp hoods, lettering, and rub rails on a school bus body shall be black.

7. Crossing control arm:

a. A school bus may be equipped with a crossing control arm. If installed, all components and all connections of the crossing control arm shall:

i. Meet the requirements set forth in Standard J1133, November 2004 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department;

ii. Be mounted on the right side of the front bumper;

iii. When opened, extend in a line parallel to the body side and aligned with the right side wheel;

iv. Be weatherproofed;

v. Incorporate system connectors (electrical, vacuum, or air) at the gate and be easily removable to allow for towing of the school bus;

vi. Be constructed of non-corrodible or nonferrous material, or treated in accordance with the school bus body sheet metal specification;

vii. Have no sharp edges or projections that could cause injury or be a hazard to students;

viii. Be rounded at the end of the crossing control arm;

ix. Extend approximately 70 inches (measured from the bumper at the arm assembly attachment point) when in the extended position;

x. Not extend past the end of the bumper when in the stowed position;

xi. Extend simultaneously with the stop signal arm, activated by the stop signal arm control; and

xii. Include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. The device shall not interfere with the normal operations of the crossing control arm.

b. An automatic recycling interrupt switch may be installed for temporarily disabling the crossing control arm.

8. Defrosters:

a. Defrosting and defogging equipment shall direct a flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog, and snow.

b. The defrosting system shall conform to Standards J381 September 2000 (no later amendments or editions) and J382, September 2000 (no later amendments or editions), both published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001 incorporated by reference and on file with the Department.

c. An auxiliary fan shall not to be used in place of a defrosting and defogging system.

d. A portable heater shall not be used in place of a defrosting or defogging system.

9. Electrical wiring:
   a. All electrical wiring on a school bus shall conform to the standards contained in Standard J1292, October 1981 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001 and incorporated by reference and on file with the Department.
   b. Electrical wiring that is coded by color shall be coded as follows:

i.	Left Rear Directional Light:	Yellow
ii.	Right Rear Directional Light:	Dark Green
iii.	Stoplights:	Red
iv.	Back-up Lights:	Blue
v.	Taillights:	Brown
vi.	Ground:	White
vii.	Ignition Feed, Primary Feed:	Black

   c. Circuits: Electrical wiring circuits shall be protected by a fuse, circuit breaker, or Field Effect Transistor and shall be coded by number or color on an electrical wiring diagram located in the driver's compartment or the electrical access panel door. There shall be at least seven circuits as follows:
      i. Head, tail, stop, and instrument panel lamps;
      ii. Clearance and step-well lamps;
      iii. Dome lamps;
      iv. Ignition and emergency door signal;
      v. Turn signal lamps;
      vi. Alternately flashing signal lamps; and
      vii. Heaters and defrosters.
   d. All electrical wires passing through metal openings shall be protected by a non-metal grommet.
   e. Electrical wires not enclosed within the school bus body shall be fastened at intervals of not more than 18 inches.

10. Emergency exits: A door, push-out window, or roof hatch used as an emergency exit shall conform to the following:
   a. On the inside and outside of a school bus, the words "EMERGENCY EXIT" or "EMERGENCY DOOR" shall be printed in black, unshaded letters at least 2 inches high above an emergency door or push-out window and at least 1 inch high on a roof hatch.
   b. Each emergency exit shall open toward the exterior of the school bus and shall be labeled within 6 inches of the interior release mechanism with black lettering at least 3/8 of an inch high instructing how the exit is to be opened.
   c. On a Type A school bus with double rear doors used as emergency exits, the rear doors shall be secured with upper, center, and lower latches to the door frame.
   d. The upper portion of each door used as an emergency exit shall be equipped with a window made of safety glass with an area not less than 400 square inches. A door located in the rear end of the school bus used as an emergency exit shall also contain a lower window panel of safety glass of not less than 350 square inches. A Type A school bus that contains double rear doors used as emergency exits is exempt from this provision.
   e. There shall be no steps on the outside of the school bus leading to an emergency exit.
   f. A header pad filled with a material to protect against injury shall be attached to the top edge of the frame of a door used as an emergency exit. The header pad shall be a minimum of 3 inches wide and 1 inch thick and extend the full width of the door opening.
   g. Each emergency exit shall be equipped with a latch that opens from the inside of the school bus and is connected to an electrical buzzer audible in the driver's compartment that actuates when the latch is being released.
   h. Except for interlock/barrel bolt devices, if a lock is installed on an emergency exit, the lock shall be secured only by using a key and shall deactivate the ignition system of the school bus when locked.

11. Emergency equipment:
   a. All emergency equipment shall be mounted in the driver's compartment or adjacent to either side of the service entrance and shall be readily accessible. If the emergency equipment is mounted within a closed compartment, the compartment shall be clearly labeled as containing the emergency equipment.
   b. Fire extinguisher:
      i. A school bus shall be equipped with a minimum of one 5-pound pressurized, dry, chemical fire extinguisher of a type rated not less than 2A-10-BC by the Underwriter's Laboratories, Inc., as described by the National Fire Protection Association, Inc., One Batterymarch Park, Quincy, MA 02269, in NFPA 10: Standard for Portable Fire Extinguishers, published in 2006 (no later amendments or editions), incorporated by reference and on file with the Department.
      ii. A pressure gauge shall be mounted on the fire extinguisher to be readable in its mounted position.
      iii. The operating mechanism of the fire extinguisher shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.
   c. Warning devices: A school bus shall have a minimum of three reflective triangle road-warning devices that comply with the standards at 49 CFR 571.125, October 2006 (no later amendments or editions), published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.

12. Floor:
   a. The floor beneath the seats, including the tops of the wheel housings and the floor in the driver's compartment, shall be covered with fire-resistant floor-covering material having a minimum overall thickness of .10 inch.
   b. The aisle floor shall be covered with a fire-resistant ribbed or non-skid floor-covering material with a minimum thickness of .10 inch.
   c. The floor-covering material shall be bonded to the floor with a waterproof adhesive and shall not crack when subjected to changes in air temperature.

13. Handrail: A handrail at a school bus service entrance shall be secured to the school bus wall in a manner that causes the crevice formed by the distance between the handrail and the wall to pass the inspection procedure described by the National Highway Traffic Safety Administration, Washington, D.C. 20590, in School Bus

Safety Assurance Program Recall Listing: January 1991 Through June 1996 (no later amendments or editions), incorporated by reference and on file with the Department.

14. Heating system:
    a. Heaters shall be of the hot-water type.
    b. The heating system shall be capable of maintaining bus interior temperatures as specified in the procedure set forth in Standard J2233, June 2002 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
    c. A minimum of one heater shall be a fresh-air or combination fresh-air and recirculating-air type.
    d. If more than one heater is used, additional heaters may be of recirculating-air type.
    e. All heater hoses shall be secured in all areas of the school bus body and chassis to prevent wear due to vibration. Heater lines in the interior of the bus shall be covered by a protective shield to prevent scalding of the driver or passengers.
    f. Except on Type A school buses, the heater system shall include shutoff valves installed at the engine in the water pressure lines and return lines.
15. Identification:
    a. Only signs, lettering, and objects approved by state law or these rules shall appear on the interior or exterior of a school bus, including all glass areas.
    b. Each school bus owned by a school or a private company shall display either the name of the school and school number, if any, or the name of the private company on each exterior side of the school bus between the rub rails at the center line and seat cushion levels in black unshaded letters that are at least 5 inches in height. Additionally, a school bus owned by a private company that displays the name of the school and school number as described above, may display the company's name on each exterior side of the school bus below the floor line in black unshaded letters that are a maximum of 2 inches in height.
    c. An identification number assigned to a school bus by an owner shall be placed on the front and rear bumpers of the school bus and on each exterior side of the school bus below the floor line rub rail and forward of the centerline of the school bus. The identification number on each bumper shall be National School Bus Yellow. The identification number on each exterior side shall be black. Each identification number shall be a minimum of 5 inches in height.
    d. In addition to an identification number, a school bus may be identified by an emblem placed on the loading side of the front bumper or the exterior wall of the loading side below the floor line rub rail and forward of the center line of the school bus, or both. The emblem shall be painted or decaled on or attached to a magnetic backing.
    e. In addition to an identification number, a school bus may display a route identification sign. If displayed, the route identification sign shall:
        i. Be installed with a heavy duty Velcro, magnetic, screw-type or similar fixture;
        ii. Be a minimum of 5 inches in height; and
        iii. Be located on a flat surface of the bus body, excluding glass.
16. Interior: If the ceiling is constructed with overlapping panels, the first panel placed in the ceiling shall be overlapped by the following panel and each panel shall consecutively overlap to the rear end of the school bus. Exposed edges in the interior of the school bus shall be beaded, hemmed, flanged, or rounded to eliminate sharp edges.
17. Lamps and signals:
    a. All lamps on the exterior of a school bus shall conform to the provisions contained in 49 CFR 393.9 et seq. of the Federal Motor Carrier Safety Regulations, October, 2006 (no later amendments or editions) published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
    b. Interior lamps shall be provided that illuminate the center aisle and step well.
    c. Alternately flashing signal lamps:
        i. When a school bus is equipped with a four-lamp system, the system shall consist of two red alternately flashing signal lamps located one on the left and one on the right above the rear windows of the school bus and two red alternately flashing signal lamps located one on the left and one on the right above the windshield.
        ii. When a school bus is equipped with an eight-lamp system, the four red alternately flashing signal lamps shall be installed as described in subsection (14)(c)(i) and the four amber alternately flashing signal lamps shall be installed as follows: one amber alternately flashing signal lamp shall be located adjacent to each red alternately flashing signal lamp, at the same level, but closer to the vertical centerline of the school bus. The system of red and amber alternately flashing signal lamps shall be wired so the amber alternately flashing signal lamps are activated manually and the red alternately flashing signal lamps are activated automatically or manually.
        iii. Except for LED lamps, each alternately flashing signal lamp shall be covered by a lamp hood.
    d. Turn signal and stop lamps:
        i. Except as provided in subsections (17)(d)(iii) and (17)(d)(iv), all school buses shall be equipped with amber side-mounted turn signals. The turn signal lamp on the left side of the bus may be mounted rearward of the stop signal arm and the turn signal lamp on the right side may be mounted rearward of the entrance door.
        ii. Except on Type A school buses, a school bus body shall be equipped with rear turn signal lamps that are at least 7 inches in diameter, or if the lamp shape is other than round, a minimum of 38 square inches of illuminated area. The lens area of the rear turn signal lamps on Type A school buses shall be at least 21 square inches. The rear turn signal lamps shall be connected to the hazard warning switch located in the driver's compartment to allow the school bus driver to activate simultaneous flashing of

turn signal lamps when needed as a traffic hazard warning. The rear turn signal lamps shall be located to the far left and right sides of the flat surface of the rear of the school bus body and below the rear window.

iii. A Type C school bus may have a double-faced turn signal lamp that is visible from the front and rear of the school bus and mounted on the tops or sides of both front fenders or may have a turn signal lamp mounted on the left and right sides of the grill and may have a turn signal lamp mounted on each side of the school bus body between the window line and the second rub rail and forward of the vertical centerline.

iv. A Type D school bus may have a turn signal lamp mounted at the front of the school bus body above each head lamp and may have a turn signal lamp mounted on each side of the school bus body between the window line and second rub rails and forward of the vertical centerline of the school bus.

v. A 7 inch diameter stop lamp, or if the lamp shape is other than round, a stop lamp with a minimum of 38 square inches of illuminated area shall be located toward the centerline and adjacent to each of the rear turn signal lamps.

e. Backup lamps: A school bus shall be equipped with two backup lamps with clear lenses, located one on the right and one on the left rear panels below the rear windows.

f. White flashing strobe lamp: If used on a school bus, a strobe lamp shall have a single clear lens that emits light 360 degrees around its vertical axis and shall be located on the longitudinal centerline of the school bus roof 1/3 to 1/2 of the distance forward from the rear of the school bus body unless this placement restricts the view of the strobe lamp.

i. If the view of the strobe lamp is restricted when the strobe lamp is located 1/3 to 1/2 of the distance forward from the rear of the school bus body, the strobe lamp may be mounted immediately to the rear of the roof hatch.

ii. The strobe lamp shall be controlled by a manual switch located in the driver's compartment.

iii. A pilot lamp shall be located in the driver's compartment to show the school bus driver that the strobe lamp is activated.

18. Mirrors:
    a. Interior mirror: The interior mirror shall be made of either laminated glass or glass bonded to a backing that will retain the glass in the event of breakage. The interior mirror in Types B, C, and D school buses shall be a minimum of 6 inches in height and 30 inches in length surrounded by a frame with rounded corners. The interior mirror in Type A buses shall be a minimum of 6 inches in height and 16 inches in length.
    b. Exterior mirrors: A school bus shall comply with the requirements contained in 49 CFR 571.111, October 2006 (no later amendments or editions), published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
19. Noise suppression switch: A school bus shall be equipped with a manual noise suppression switch. Identification shall be provided on or adjacent to the switch, in order to clearly state its purpose and distinguish it from other controls. This switch shall be an on-off type that deactivates body equipment that produces noise, including, at least, the AM-FM radio, heaters, air conditioners, fans, and defrosters. This switch shall not deactivate safety systems, such as windshield wipers or lighting systems.
20. Overall length: The overall length of a school bus shall not exceed 45 feet including accessories.
21. Overall width: The overall width of a school bus shall not exceed 102 inches excluding mirrors.
22. Rear bumper:
    a. The rear bumper shall be made of a minimum of 3/16 inch thick pressed steel that is a minimum of 8 inches in total height.
    b. The rear bumper shall be wrapped around the back corners of the bus and shall extend toward the front of the school bus for at least 12 inches as measured from the rear-most point of the school bus body at the floor line.
    c. The rear bumper shall be attached to the chassis frame and braced to support the rear corners of the bumper.
    d. The rear bumper shall extend at least 1 inch beyond the rear-most part of the school bus body as measured at the floor line.
    e. The rear bumper shall not be equipped with footholds or handles.
    f. A Type A school bus equipped with the chassis manufacturer's rear bumper is exempt from subsections (22)(a) through (22)(c).
23. Restraining barrier:
    a. The restraining barrier shall be a minimum of 38 inches high as measured from the interior floor of the school bus to the top of the restraining barrier.
    b. The restraining barrier shall be the same width as the seat directly behind the restraining barrier.
24. Rub rails:
    a. There shall be no fewer than two rub rails located on a school bus as follows:
        i. One rub rail shall be located on each side of the school bus approximately at seat cushion level and shall extend from the rear post of the service door frame completely around the school bus body, excluding the emergency door, to the front post of the school bus driver's window.
        ii. One rub rail shall be located on each side of the school bus approximately at the floor line and shall extend from the rear post of the service door frame to the rear corner post of the school bus body and from the front post of the school bus driver's window to the rear corner post on the driver's side
    b. Rub rails are not required on emergency doors, special-service entrance door, access panels and compartment doors, and wheel well openings.
    c. Each rub rail shall be attached on the outside of the school bus body at each structural post in the school bus body.
    d. Each rub rail shall be a minimum of 4 inches in width and constructed of corrugated or ribbed 16-gauge steel.
25. Seat belt for school bus driver: A seat belt for the school bus driver shall be installed in the driver's compartment. The seat belt shall be equipped with a retractor on each

side of the school bus driver's seat to keep the seat belt retracted and off the floor when not in use.

26. Seats:
    a. Each seat shall have a minimum depth of 15 inches measured from the front of the seat cushion to the seat back.
    b. Each seat shall be a minimum of 38 inches in height measured from the interior floor of the school bus to the top of the back cushion.
    c. Seat spacing shall meet the requirements of 49 CFR 571.222, October 2006 (no later amendments or editions), published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328, incorporated by reference and on file with the Department. Seat spacing shall not be less than 24 inches between the front of a seat back cushion to the back surface of the cushion on the preceding seat. Seat spacing shall be measured at cushion height, at the center of the seat, on a plane parallel to the center line of the bus. The seat upholstery may be placed against the seat cushion padding, but without compressing the padding, before measurement is taken.
    d. The school bus driver's seat shall be adjustable, without the use of tools, both vertically and horizontally for a minimum of 4 inches. Seats with vertical adjustments are not required on Types A and B school buses.
27. Service door:
    a. The service door shall be located on the right side of the school bus opposite the school bus driver and within direct view of the school bus driver when seated in the school bus driver's seat. Types A and B school buses are exempt from this provision.
    b. The service door shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches. Type A school buses shall have a service door with a minimum opening of 1200 square inches.
    c. Windows in the upper and lower panels of the service door shall be made of safety glass. The bottom of each lower window panel shall be no more than 10 inches from the top surface of the lower step of the service entrance. The top of each upper window panel shall be no more than 6 inches below the top of the service door. Type A buses are exempt from this provision.
    d. To protect passengers' fingers, a flexible rubber material shall be attached by number 10 3/4 inch metal screws to the opening and closing edges of the service door. Type A school buses are exempt from this provision.
    e. The service door shall open towards the exterior of the school bus. A Type A school bus is exempt from this provision if the service door is provided by the school bus chassis manufacturer.
    f. A header pad, filled with a material to protect against injury, shall be attached to the top edge of the frame of the service door. The header pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the service entrance.
    g. A Type A school bus with the chassis manufacturer's standard service entrance is exempt from subsections (27)(a) through (27)(d).
28. Steps:
    a. The risers of the steps in the service entrance shall be equal. When plywood is laid over the steel floor of the school bus, the height of the top step may be increased by the thickness of the plywood.
    b. The first step at the service entrance shall be no less than 10 inches and no more than 16 inches from the ground.
    c. Steps shall be enclosed in the school bus body.
    d. Steps shall not extend beyond the side of the school bus body.
    e. A handrail not less than 10 inches in length shall be provided inside the doorway.
29. Step treads:
    a. All steps, including the floor-line platform area, shall be covered with ribbed or non-skid floor-covering material that is mounted on a metal plate.
    b. The metal back of the step tread shall be a minimum 24-gauge cold rolled steel and shall be permanently bonded to the ribbed or non-skid material.
    c. If ribbed material is used, the ribbed design shall run from the risers toward the service entrance. Each step tread shall have a 1 1/2 inch white nosing.
30. Stirrup steps: There shall be a handle and at least one folding stirrup step or recessed foothold located on each side of the front of a school bus for accessibility for cleaning the windshield and lamps. Type A school buses are exempt from this provision.
31. Stop signal arm:
    a. School buses shall be equipped with a stop signal arm on the left side of the school bus body that extends 90º from the school bus body when opened.
    b. The stop signal arm shall be either air or electrically driven, and meet the requirements of Standard J1133, November 2004 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
    c. The stop signal arm shall be an 18-inch octagon, constructed of a red material that reflects light, with the word "STOP" printed on both sides in white letters not less than 5 inches high. Additionally, the word "STOP" may be illuminated by a light-emitting diode system on both sides of the stop signal arm.
32. Sun shield: An interior adjustable transparent sun shield or visor not less than 6 inches x 30 inches with a finished edge shall be installed over the windshield in the driver's compartment. School buses with a gross vehicle weight rating of 10,000 pounds or less are exempt from this provision.
33. Tailpipe:
    a. The tailpipe shall extend to, but not more than 2 inches beyond, the outer edge of the rear bumper;
    b. The tailpipe shall exit in the rear of the vehicle behind the rear drive axle, and shall be placed according to the manufacturer's specifications; and
    c. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.
34. Undercoating:
    a. The entire underside of the school bus body, including floor sections, cross member and below-floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued to the bus body manufacturer notarized certification that materials meet or exceed all perfor-

mance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, Coating Compound, Bituminous, Solvent Type, Underbody (For Motor Vehicles), February 2, 1973 (no later amendments or editions), published by the General Services Administration acting as an agent for the Superintendent of Documents, Washington D.C. 20402, and incorporated by reference and on file with the Department. Modified test procedures shall be used for the following requirements:
i. Salt spray resistance – test modified to 5% salt and 1,000 hours,
ii. Abrasion resistance, and
iii. Fire resistance.
b. Test panels shall be prepared in accordance with paragraph 4.6.12 of Federal Specification TT-C-520B, with a modified procedure requiring that the test shall be made on a 48-hour air-cured film at a thickness recommended by the material manufacturer.
c. Undercoating is not required if the underside of the school bus is constructed of noncorrosive material.
d. The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in the cured film.

35. Ventilation: An immovable, non-closing exhaust ventilator shall be installed in the school bus roof.
36. Wheel housing:
a. The wheel-housing opening shall be large enough to allow for the removal of the tire and wheel.
b. The wheel housing shall be constructed of 16-gauge steel or fiberglass of equal strength and sealed to the school bus floor.
c. The wheel housing shall not extend more than 12 inches above the floor inside the school bus body and shall not extend into the emergency door opening.
d. The wheel housing shall provide clearance for tire chains installed on the tires of the driving wheels.
37. Windows: Each side window in the passenger compartment of a school bus body shall provide an unobstructed opening of at least 190 square inches when the window is open.
38. Windshield washer system: A windshield washer system that provides an application of cleaning solution to the windshield shall be installed.
39. Windshield wipers:
a. A windshield wiping system with a minimum of two speeds shall be provided.
b. The windshield wipers shall be operated by one or more air or electric motors.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-107 recodified from R17-9-107 at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4).

R13-13-108. Inspection, Maintenance, and Alterations

A. A school bus shall be inspected by the Department before the school bus is introduced into Arizona to transport passengers.
1. After inspecting a school bus, the Department shall place a decal that contains a number used by the Department to identify the school bus above the school bus driver's side window in the driver's compartment. This decal shall not be removed from the school bus while it is operated in Arizona except by the Department. Before the school bus is transferred or retired from service, the school bus owner shall contact the Department to have this decal removed.
2. If the Department finds that no major defect exists on a school bus, the Department shall place a safety inspection decal that contains the month and year of inspection on the right side of the centerline of the windshield of the school bus in a position that does not interfere with the school bus driver's line of vision.
3. If the Department finds a major defect on the school bus, the Department shall place the school bus out of service. Before the school bus may be placed back into service, the Department shall reinspect the school bus to determine that the major defect has been corrected. If the major defect has been corrected, the Department shall place a safety inspection decal on the school bus in accordance with subsection (A)(2).
4. If the Department finds a minor defect on a school bus, the Department shall issue an inspection order, but the school bus may be operated to transport passengers while the minor defect is being corrected. A copy of the inspection order shall be returned to the Department within 15 working days from the date of inspection and shall show that the minor defect has been corrected unless, in accordance with the provisions of subsection (A)(5), the school bus owner obtains an extension of time to correct the minor defect.
5. Upon receipt of a written request from the school bus owner, the Department shall grant one or more extensions of time to correct a minor defect if:
a. The school bus owner submits to the Department written documentation that the:
i. School bus owner's action or inaction did not cause or contribute to the delay in completing the repair;
ii. School bus owner has secured a written estimated expedited delivery or completion date from the provider of the materials or services required to complete the repair; and
iii. School bus owner made reasonable attempts to secure the materials or services, or materials or services of equivalent quality, at a substantially similar price from alternate sources; and
b. The Department determines that an extension of time to correct the minor defect will not increase the probability of an accident involving the school bus or passengers or the risk of injury to the school bus driver or passengers.
6. Each extension of time shall be for 60 days or less. The Department shall determine the length of each extension of time after giving consideration to the information provided under subsection (A)(5)(a). When the minor defect is corrected, the school bus owner shall return to the Department a copy of the inspection order issued by the Department.
7. If a minor defect on a school bus is not corrected within 15 working days or at the end of an extension period, if applicable, the Department shall remove the safety inspection decal and the school bus shall be placed out of

service until further inspection by the Department shows that the minor defect is corrected.

B. The Department shall use the following criteria to determine whether a major or minor defect is present on a school bus introduced into Arizona on or after May 31, 2008. For a school bus introduced into Arizona before May 31, 2008, the Department shall determine whether the school bus is in an unsafe condition by using the following criteria or if the item does not comply with the criteria due to its original design, the Department shall determine if the school bus is in an unsafe condition by determining if the school bus is maintained in accordance with the manufacturer's original design specifications for the specific make and model of school bus.

INSPECTION ITEM	MAJOR DEFECT	MINOR DEFECT
Air conditioning system, if installed	Missing hose covers or trim panels	Broken or loose evaporator covers
	Missing air conditioning louvres	Unsecured refrigerant hoses
	Loose or missing air conditioning mounting fasteners	Loose, missing or severely cracked belts
	Refrigerant leaks from evaporators or hoses in the interior of the bus	
	Broken compressor brackets	
	Broken mounting bolts	
	Electrical wiring hanging out of evaporator covers	
	Missing evaporator covers	
	Missing air diffusers	
	Evaporators not secured to ceiling or bulkhead	
Alarm, back-up, if installed		Low volume
		Not working
Auxiliary fan, if installed	Obstructs school bus driver's view of any mirror	Incorrect size
	Used in place of defrosting or defogging system	Not controlled by independent switch
	Not covered by protective cage	
Battery (Types C and D buses only)	Not mounted according to the manufacturer's instructions	Incorrect or no identification
Belt cutter	Missing	
Body fluid cleanup kit	Absence of body fluid cleanup kit	
	Any item missing from body fluid cleanup kit	
Brakes, compressed air	Inoperative or missing visual or audible low air signal	
	Compressed-air gauge missing	
	Grease or oil leakage into brake system	
	Exposed or damaged ply on any air hose	
	Air capacity less than 90 pounds per square inch at idle speed	
	Wet-reservoir valve missing or inoperative	
	Leaking, cracked, or broken hose or connection	
	Audible air leak	
	Pushrod exceeds limitation	
	Low-air warning system does not activate at 60 psi and remains activated at less than 60 psi	
Brakes, hydraulic-assisted	Inoperative or missing visual or audible signal	
Brakes, emergency-brake system	Inoperative	
	Does not activate when service brake system reaches 20 to 40 pounds psi	
Bumpers	Break or rip	Not painted black
	Loose bumper	
	Foothold or handle present on rear bumper	

Cooling system		Leak in system Fluid level in radiator not full
Crossing control arm, if installed	Has sharp edges or projections that could injure a student Will not retract	Not working Fails to open completely
Defroster	Inoperative Ventilation opening blocked	
Drive shaft	Absence of protective metal guard installed by the manufacturer around the drive shaft to any driving axle	
Dust boots	Missing, torn, split, or loose around floor-mounted gear shift, parking brake handle, or steering column.	
Emergency warning devices	Having fewer than two operable	Missing one
Emergency door	Inoperative latch Broken or missing portion of seal around door Window not of safety glass Inoperative warning device Lock is not the ignition shut-off type	No header pad
Emergency exit	Inoperative warning device or latch on all emergency exits except roof exit Not properly identified Header pad missing or damaged Broken seal around window	Inoperative roof exit
Engine compartment	Inoperative hood latch	Deterioration of hose, belt, or wiring Deterioration of battery hold-down clamp, corrosive acid buildup on terminal
Exhaust system	Exhaust leak Exhaust tailpipe extends more than 2 inches beyond the outer edge of the rear bumper or fails to terminate flush with the outside edge of the school bus body in the rear of the school bus	Exhaust pipe bracket not attached to the chassis and the tailpipe End of tailpipe pinched or bent
Exterior paint		Exposed metal or base primer Incorrect color
Fire extinguisher	Absence of fire extinguisher Not at full charge	Not mounted in required position
First-aid kit	Absence of first-aid kit Three or more items missing from first-aid kit	One or two items missing from first-aid kit
Frame	Crack in frame Cracked, loose, or missing body mount or body-mount bolt Welded repair not performed by body or chassis manufacturer or manufacturer's certified agent	
Fuel system	Fuel tank not mounted to the chassis frame or not vented to outside of engine compartment Fuel system extends above chassis frame (does not apply to filler tube or Type A bus) Fuel tank bracket cracked or broken Leaking tank or fuel line Fuel line attached to bottom of fuel tank Missing or improper fuel cap	

Handrail	Handrail does not pass the inspection procedure described in R13-13-107(13)	
Heating system	Heater missing or inoperative Heater line in interior of school bus not covered by protective shield No shutoff valve	Unsecured heater hose Inadequate heat-producing capacity
Horn (Air or electrical)	Missing or inoperative	
Instrument panel	Missing or inoperative ignition power-deactivation switch if the ignition does not use a key. Any inoperative gauge or switch, except auxiliary fan switch Improper illumination	Inoperative auxiliary fan switch
Interior, aisles	Incorrect clearance	
Interior, seats	Broken, cracked, exposed, or loose seat frame Screw or mounting bolt missing	
Interior, floor covering	Hole Improper material Improperly bonded Loose metal trim	
Lamps, clearance	Inoperative Cracked, broken, or missing lens	Incorrect color Dust behind lens
Lamps, head	Low beam inoperative Not mounted as required by 49 CFR 393.24 Both high beams inoperative	One high beam inoperative Inoperative dimmer switch on a bus not operated when head lamps are required Cracked, broken, or missing lens
Lamps, back-up	Inoperative	Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, interior Over aisle		Inoperative Cracked, broken, or missing lens
Lamps, interior Over step-well	Inoperative	Cracked, broken, or missing lens
Lamps, turn signal	Inoperative	Cracked, broken, or missing lens Dust behind lens Incorrect size Incorrect location
Lamps, strobe, if installed	Pilot or strobe lamp missing or inoperative Cracked, broken, or missing lens Incorrect color Incorrect location	
Lamps, identification		Inoperative Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, hazard	Inoperative	
Lamps, stop	Both inoperative	One inoperative Cracked, broken, or missing lens Dust behind lens

Lamps, tail	Both inoperative	One inoperative Cracked, broken, or missing lens Dust behind lens
Lamps, side marker		Inoperative Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, alternately flashing signal	One or more inoperative lamps	Incorrect color Lamp hood missing Cracked, broken, or missing lens Dust behind lens
Lettering and numbering		Missing any lettering or numbering Incorrect size, color, or location Unauthorized sign, letter, or object
Mirrors, cross-view	Missing Broken or loose mounting Broken or clouded glass	
Mirrors	Interior or exterior mirror missing Loose or broken mounting bracket Crack, break, or flaking of reflective material affixed to back of mirror glass Crack or break of mirror glass Loose or missing mounting bracket bolt or screw Incorrect size Do not meet safety standards contained in 49 CFR 571.111	
Miscellaneous	Object not secured inside the school bus Any item noted by the Department that could cause injury or present a danger to a passenger or school bus driver	Any item noted by the Department that needs to be repaired because it could interfere with the safe operation of the school bus but that is not a major defect
Noise suppression switch	Out of service Malfunctioning	
Parking brake	Inoperative, missing part, or not in proper adjustment	
Restraining barrier	Missing Incorrect size Loose	
Rub rails	Missing more than one Loose or dangling	Missing one Incorrect location Incorrect color Incorrect width
School bus body	Damage resulting in cut or rip to the exterior of school bus body Hole that would allow exhaust gases or dust to enter the passenger compartment Bolt attaching body to chassis loose, broken, or missing Exceeds length or width limitations	Absence of undercoating Loose or missing rivet, screw, or bolt
Seat belt	Absence of driver seat belt or inoperative driver seat belt buckle or retraction system Frayed seat belt material	

Seats	One or more missing Incorrect size or location Driver seat does not meet requirements for adjustment Loose seat cushions Exposed frame	Torn seat cushions
Service door	Incomplete closing of door assembly Does not contain safeguards to prevent accidental opening Window not made of safety glass Broken or cracked window panel Inoperative door control Does not open towards exterior of the school bus Scissors or butterfly door prohibited Absence of flexible material on outer edge of service door Absence of header pad	
Special needs school bus	Incorrect location or size of special-service entrance Incorrect size of special-service entrance door Window not made of safety glass Inoperative pressure switch No safety device in wheelchair lift No restraining barrier on wheelchair-lift platform Fails to provide wheelchair-securement device or anchorage Special-service entrance door does not open towards exterior of school bus (except Type A school bus) Wheelchair lift inoperable	Drip molding not installed above the special-service entrance Special-service entrance door not weather-sealed Incorrect color of door material or panel Lacks wheelchair emblem Missing fastening device for special-service entrance door Dome light missing or inoperative
Splash guards		Bottom edge of guard is more than 8 inches above the ground Does not cover entire width of single or dual tire Missing splash guard
Steering	Distance of movement not within parameters of R13-13-106(22)(c) Steering wheel does not move freely when turning the wheel Missing or cracked steering-wheel ring or bracing from center of steering wheel to steering-wheel ring Steering column not in a fixed position or locking mechanism missing or inoperative on adjustable steering column Steering column mounting bracket cracked or missing Loose or missing mounting bolt in steering gear housing Loose connecting arm on steering gear power source	Leakage of lubricant Power-steering belt cracked, frayed, or slipping Fluid does not fill power steering reservoir to the full level on the dipstick
Steps	Loose or missing grab handle in step-well Missing stirrup step or handle	Incorrect distance between steps Incorrect floor covering

Stop signal arm	Any stop arm inoperative Air leak If equipped with a light-emitting diode system, one or more lights missing Missing any stop arm	Incorrect lettering or color on stop signal arm Incorrect size of stop signal arm
Sun shield or visor (if required)	Broken, cracked, or missing	Not transparent
Suspension	Broken, damaged, or missing suspension part U-bolt loose, broken, cracked, or missing	Leaking shock absorber
Tires	Tires on same axle not of the same size Combination of bias and radial tires Tires vary more than one size between axles Tires not correct size for gross vehicle weight rating of school bus Single rear tire on school bus with gross vehicle weight rating of more than 10,000 pounds Regrooved, recapped, or retreaded tire mounted on a front wheel Tread groove depth less than 4/32 of an inch, measured in a tread groove on a tire on a front wheel Tire is mounted or inflated so it comes in contact with any part of the school bus or other tire Tread groove depth less than 2/32 of an inch, measured in a tread groove on a tire on a rear wheel Bump, knot, or bulge present on any tire Sidewall is cut, worn, or damaged to the extent that ply cord is exposed Separation of tread from tire casing Exposed ply or belting on any tire Flat tire or audible leak from a tire on any wheel If present, spare tire on Type C or D school bus not mounted outside passenger compartment	
Ventilation	Non-closing exhaust ventilator missing	
Wheel housing	Incorrect size or construction of wheel housing or opening	
Wheels	Not correct size for gross vehicle weight rating of school bus Loose or missing lug nut Broken stud bolt Crack or welded repair in wheel assembly	Not painted black
Windows	Not of safety glass Opening too small Cracked or broken Placement of non-transparent material Inoperative latch	
Windshield	Placement of non-transparent material Crack, chip, or pitting that interferes with the school bus driver's vision	Crack, chip or pitting that does not interfere with the school bus driver's vision
Windshield washer system	Missing	Low or no cleaning solution

Windshield wipers	Inoperative or missing wiper on school bus driver's side Inoperative or missing wiper on side opposite the school bus driver	Inoperative speed control Split or hardened wiper blade
Wiring	Incorrect color or number coding Wiring circuit not protected by fuse or circuit breaker One or more non-metal grommets missing Electrical wires outside the school bus body improperly secured	

C. A school bus shall be inspected annually, according to a schedule established by the Department and the standards contained in subsections (A) and (B) and this section.
1. If the Department finds a major defect, the Department shall remove the current safety inspection decal and replace with a new safety inspection decal only after the major defect is repaired.
2. If the Department finds a minor defect, the Department shall remove the current safety inspection decal and replace with a new safety inspection decal and allow the school bus owner to make repairs in accordance with the provisions at R13-13-108(A)(4) through (A)(7).

D. A school bus driver shall perform the following operations checks and tasks on the school bus:
1. Before a school bus is operated for the first time each day, conduct a pre-trip operations check of the school bus to determine that the following are operational and are not damaged:
   a. All lamps, including alternately flashing, back-up, clearance, hazard, head, identification, interior, side marker, stop, tail, turn signal, and strobe lamps, if any, and emergency warning devices;
   b. Tires, wheels, and wheel fasteners;
   c. Service door;
   d. Steps and step wells;
   e. Emergency exits and signals;
   f. Emergency doors and signals;
   g. Wheelchair lift and wheelchair lift dome lamp;
   h. Wheelchair-securement devices;
   i. Wheelchair-securement anchorages;
   j. Special-service entrance door;
   k. Special-service entrance door signal;
   l. Windows;
   m. Windshield;
   n. Windshield wipers;
   o. Instrument panel and gauges;
   p. Service brakes;
   q. Service brake warning devices;
   r. Parking brake;
   s. Bumpers;
   t. Seats and seat frames;
   u. Floor coverings;
   v. School bus body;
   w. Engine fluid levels;
   x. Engine compartment steering components;
   y. Stop arm;
   z. Horn;
   aa. Mirrors;
   bb. Engine fluid gauges;
   cc. Noise suppression switch;
   dd. Child alert notification system, if installed;
   ee. Crossing control arm, if installed; and
   ff. Air conditioning system, if installed.
2. Each time a pre-trip operations check of a school bus is conducted, check all emergency equipment to determine that the emergency equipment complies with the standards at R13-13-107(11) and R13-13-110.
3. Each time a school bus is operated subsequent to the first time the school bus is operated each day, conduct a walk-around operations check to determine whether there is an obvious engine fluid leak and the following are operational and are not damaged:
   a. All lamps listed in subsection (D)(1)(a);
   b. Tires, wheels, and wheel fasteners;
   c. Bumpers;
   d. School bus body;
   e. Windows;
   f. Stop arm; and
   g. Windshield.
4. Once daily, sweep and clean the interior of the school bus.
5. After completing each operations check, the school bus driver shall complete the portions of a written monthly operations check report that provide the following information:
   a. Date and time of the operations check;
   b. Name of the school bus driver conducting the operations check;
   c. Name of the employer;
   d. Number assigned to the school bus by the school bus owner and painted on the outside of the school bus body; and
   e. Indication of whether an item is operational, inoperative, or damaged.
6. A school bus driver who performs an operations check and finds any item listed in subsections (D)(1) through (D)(3) inoperative or damaged shall immediately complete and submit a written repair order to the school bus owner through the employer.
   a. The school bus owner shall use the standards contained in subsection (B) to determine whether an item reported on a repair order as inoperative or damaged is a major or minor defect.
   b. If the school bus owner finds that a major defect exists, the school bus owner shall place the school bus out of service until the major defect is repaired.
   c. If the school bus owner finds that a minor defect exists, the school bus may be used to transport passengers, but the school bus owner shall repair the defect in accordance with the provisions at R13-13-108(A)(4) through(A)(7). Time in which to make the minor repair shall be calculated from the date of the written repair order.
7. After a school bus makes its final trip on the last day the school bus is driven in a particular month the school bus driver operating the school bus shall submit the written

monthly operations check report to the school bus owner through the employer.

E. In addition to the operations checks described in subsection (D), a school bus owner shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all parts of a school bus chassis and body described in Sections R13-13-106 and R13-13-107 and any other parts and accessories that may affect safe operation of the school bus. The school bus owner shall ensure that the maintenance of a school bus and repair of major defects is done by:

1. An ASE-certified technician,
2. An individual working under the supervision of an ASE-certified master school bus technician,
3. An individual with at least one year of participation in a school bus manufacturer-sponsored or commercial vehicle maintenance training program, or
4. An individual with at least one year of experience as a school bus mechanic.

F. Records

1. A school bus owner shall maintain the following records in a separate file for each school bus for as long as the school bus is in operation in Arizona:
   a. Number assigned to the school bus by the school bus owner,
   b. Name of the school bus body manufacturer,
   c. Name of the school bus chassis manufacturer,
   d. Identification number of the school bus located in the driver's compartment,
   e. Year the school bus body was assembled upon the school bus chassis, and
   f. Size of the tires placed on the school bus.
2. A school bus owner shall maintain all records of initial inspection, subsequent inspections, and repairs and maintenance procedures performed on the school bus for three years from the date of inspection, repair, or maintenance. The school bus owner shall ensure that all records of repairs and maintenance procedures include verification from the owner of the business responsible for the repairs and maintenance procedures that the individual who actually performs the repairs and maintenance procedures is qualified under subsection (E).
3. If a school bus is sold, the school bus owner shall transfer the records required by subsections (F)(1) and (F)(2) to the purchaser.
4. A school bus owner shall maintain monthly operations check reports for three months from the date of the report.

G. Alterations

1. Before a school bus owner alters a school bus, the school bus owner shall submit a request in writing to the Department describing the proposed alteration and the reason for the proposal.
2. Within 60 days of receiving a request for alteration, the Department shall inform the school bus owner in writing whether the request has been approved or denied. The Department shall base its decision to approve or deny on an assessment of whether the proposed alteration affects the operations of a school bus, complies with the statutes and rules applicable to school buses, or affects the health, safety, or welfare of any individual.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-108 recodified from R17-9-108 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4).

R13-13-109. Time-frames for Making Certification Determinations

A. For certification as a school bus driver, the time-frames required by A.R.S. § 41-1072 et seq. are:

1. Overall time-frame: 60 days
2. Administrative completeness review time-frame: 45 days
3. Substantive review time-frame: 15 days

B. An administratively complete application for certification as a school bus driver consists of all the information and documents listed in R13-13-102(A).

C. An administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Department receives an application.

1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
2. Within 120 days from the postmark date of the deficiency notice, the applicant shall submit to the Department the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the postmark date of the deficiency notice until the date the Department receives the missing documents and information.
3. If the applicant fails to provide the missing documents and information within the time provided, the Department shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-13-102.
4. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.

D. A substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the postmark date of the notice of administrative completeness.

1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information.
2. The applicant shall submit to the Department the additional information identified in the request for additional information within 20 days from the postmark date of the request for additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the postmark date of the request for additional information until the Department receives the additional information.
3. Unless an applicant requests that the Department deny certification within the 20-day period in subsection (D)(2), the Department shall close the file of an applicant who fails to submit the additional information within the 20 days provided. An applicant whose file is closed and who wants to be certified shall apply again under R13-13-102.
4. When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to certify the applicant.
   a. The Department shall deny certification if it determines that the applicant does not meet all substantive criteria for certification required by statute and rule. An applicant who is denied certification may

appeal the Department's decision under A.R.S. § 41-1092 et seq. and any rules made under A.R.S. § 41-1092.01(C)(4).

b. The Department shall grant certification if it determines that the applicant meets all substantive criteria for certification required by statute and rule.

Historical Note

New Section R17-9-109 adopted by final rulemaking at 5 A.A.R. 384, effective January 5, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). New Section R13-13-109 recodified from R17-9-109 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-110. First-aid Equipment

No later than 180 days after the effective date of these rules, a school bus in Arizona shall meet the requirements of this Section.

1. First-aid and body-fluid cleanup kits shall be mounted in a school bus in accordance with R13-13-107(11)(a).
2. First-aid kit: A school bus shall be equipped with a removable first-aid kit that has a weatherproofing seal around the lid to prevent moisture or dust from entering the first-aid kit, is clearly labeled as a first-aid kit, and contains the following:
   a. Two - 1 inch x 2 1/2 inch yards adhesive tape rolls,
   b. 24 - Sterile gauze pads 3 inches x 3 inches,
   c. Eight - 2 inch adhesive bandages,
   d. 10 - 3 inch adhesive bandages,
   e. Two - 2 inch x 6 inch sterile gauze roller bandages,
   f. Four - Triangular bandages approximately 40 inches x 36 inches x 54 inches with two safety pins,
   g. Three - Sterile gauze pads at least 24 inches x 24 inches,
   h. Three - Sterile eye pads,
   i. One - Rounded-end scissors,
   j. One - Pair of non-latex gloves, and
   k. One - Mouth-to-mouth airway.
3. Body fluid or bloodborne-pathogen cleanup kit: A school bus shall be equipped with a removable body-fluid or bloodborne-pathogen cleanup kit that is sealed, clearly labeled as a body-fluid or bloodborne-pathogen cleanup kit, and contains the following:
   a. One - Pouch of solidifier with chlorine,
   b. One - Pick-up scoop with scraper,
   c. One - Pair of non-latex gloves,
   d. Two - Disinfectant hand wipes (antimicrobial),
   e. Two - Plastic disposal bags with ties (biohazard),
   f. Two - Germicidal towelettes effective against human immunodeficiency virus and tuberculosis,
   g. Two - Paper crepe towels, and
   h. One - Easy to follow instructions.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-110 recodified from R17-9-110 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-111. Rehearing or Review of Decision

A. The Department shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. A party may amend a motion for rehearing or review at any time before the Department rules on the motion.

C. The Department may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Department or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Department, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. The Department's decision is a result of passion or prejudice; or
8. The finding of fact or decision is not justified by the evidence or is contrary to law.

D. The Department may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

E. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Department may extend this period for a maximum of 20 additional days, for good cause as described in subsection (H).

F. Not later than 15 days after the date of a decision, after giving the parties notice and an opportunity to be heard, the Department may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Department may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

G. If a rehearing is granted, the Department shall hold the rehearing within 60 days after the date on the order granting the rehearing.

H. The Department may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and:

1. A ruling on the motion will further administrative convenience, expedition, or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). New Section R13-13-111 recodified from R17-9-111, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-112. Enforcement Audits

A. To enforce the provisions of this Chapter, the Department may conduct an audit of any of the records required to be maintained under this Chapter. The audit may be conducted for cause or without cause.

B. The Department may enter an employer's or owner's place of business to conduct an audit.

C. An employer or owner shall make records available to the Department during regular business hours at the employer's or owner's place of business or at another mutually agreeable location.

D. Within 10 business days after completing an audit, the Department shall inform the employer or owner in writing of any concerns identified.

E. The Department and the employer or owner shall make a written agreement specifying the actions that must be taken to address the concerns identified by the audit and the time within which the actions will be taken.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). New Section R13-13-112 recodified from R17-9-112, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

ARTICLE 2. MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON ALTERNATIVE FUEL

R13-13-201. Minimum Standards for Compressed Natural Gas Fuel Systems

A. In addition to the definitions in R13-13-101, in this Article, unless otherwise specified:

"AGA" means the American Gas Association.

"ANSI" means the American National Standards Institute.

"Angle of departure" means the area above an imaginary line that extends from the bottom outside edge of the rear bumper on a vehicle to the point at which a tire on the vehicle's rear drive axle touches the ground.

"Appurtenance" means an item connected to an opening of a natural-gas pressure vessel to make the natural-gas pressure vessel gas-tight. This includes pressure relief devices, shutoff, backflow, excess-flow, and internal valves, liquid-level and pressure gauges, and plugs.

"Approved" means acceptable to the Department.

"ASE" means National Institute of Automotive Service Excellence.

"Bracket" means rubber-lined, hoop and cradle mounting hardware supplied or approved by a pressure-vessel manufacturer to hold a natural-gas pressure vessel in a rack.

"CNG" means compressed natural gas, a combustible mixture of hydro-carbon gases and vapors, principally methane, that is reduced in volume by pressure for use as a vehicular fuel.

"Fuel-distribution assembly" means a device that regulates the flow of fuel from a natural-gas pressure vessel to a vehicle engine.

"Fuel line" means a pipe, tubing, or hose, and all related fittings through which natural gas passes on a vehicle.

"Installer" means a person who converts a school bus from the use of gasoline to the use of CNG by attaching a natural-gas fuel system to the school bus after the school bus is manufactured.

"Listed" means included in a publication of an approved organization that is concerned with product evaluation, conducts periodic inspection of equipment or material, and includes equipment or material in the approved organization's publication only if the equipment or material complies with appropriate standards or performs in a specified manner.

"NFPA" means the National Fire Protection Association, which is located at 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, and which is accessible at (617) 770-3000 and www.nfpa.org.

"NGV-1" means specific standards set by the American National Standards Institute and American Gas Association for the refueling connection device of a natural-gas vehicle.

"NGV-2" means specific standards set by the American National Standards Institute and American Gas Association for a vehicle-on-board natural-gas pressure vessel.

"Natural gas" means a combustible mixture of hydrocarbon gases and vapors, principally methane.

"Natural-gas fuel system" means a group of items including a pressure vessel and all attached valves, piping, and appurtenances that form a network for distributing natural gas to a vehicle engine.

"Operating pressure" means the internal force that a manufacturer intends for a natural-gas pressure vessel to achieve during normal operation of the vehicle to which the natural-gas pressure vessel is attached.

"Out-of-service" means not compliant with these rules, NFPA 52, or manufacturer's instructions for installation, maintenance, or repair.

"Owner" means a private business, school, or school district that owns a school bus.

"PSI" means pound per square inch.

"Pressure-relief device" means a mechanism that is installed in a natural-gas pressure vessel or integrated with a valve, that is operated by temperature, pressure, or both, and that releases the CNG in the natural-gas pressure vessel in specific emergency conditions. A pressure-relief device for a U.S. Department of Transportation or Canada Transport natural-gas pressure vessel also includes a mechanism capable of protecting a partially charged natural-gas pressure vessel.

"Pressure vessel" means a cylinder that is part of a natural-gas fuel system and that is constructed, inspected, and maintained in accordance with U.S. Department of Transportation or Canada Transport regulations or ANSI/AGA NGV2, Basic Requirements for Compressed Natural Gas Vehicle (CNGV) Fuel Containers, or CSA B51, Boiler, Pressure Vessel and Pressure Piping Code.

"Pressure-vessel valve" means a mechanical device connected directly to a natural-gas pressure vessel opening that regulates the flow of CNG from the natural-gas pressure vessel to the vehicle engine.

"Rack" means a metal structure that surrounds a natural-gas pressure vessel mounted on a vehicle and is secured to the vehicle frame by a method capable of withstanding a static up, down, left, right, forward, or backward force of eight times the weight of the fully pressurized natural-gas pressure vessel.

"UL" means the Underwriters' Laboratory, Inc.

B. Applicability and enforcement date of this Section

1. This Section applies to school buses that are manufactured to use only gasoline or diesel fuel and are converted to use CNG, in whole or in part.
2. The Department shall enforce this Section beginning 180 days after it is filed with the Office of the Secretary of State. After the beginning enforcement date, a school bus that is manufactured to use only gasoline or diesel fuel and is converted to use CNG, in whole or in part, shall meet the requirements of this Section when the school bus is introduced into Arizona or when the school bus is converted to natural-gas power. A school bus introduced into Arizona and powered in whole or in part by CNG

before the beginning enforcement date of this Section shall meet the requirements of this Section or those at A.A.C. R17-4-611.

3. After the beginning enforcement date of this Section, the Department shall not approve a school bus manufactured to use only gasoline or diesel fuel and converted to use CNG, in whole or in part, unless the natural-gas fuel system meets the requirements of this Section.

C. Insurance

1. An owner shall not contract with an installer unless the installer has insurance coverage provided by a comprehensive general liability broad form insurance policy that is approved by the Department. The insurance policy shall include coverage for liability resulting from:
   a. Completed installation operations,
   b. Harm that arises on the installer's premises, and
   c. Breach of contract by the installer.
2. In addition to the liability coverage described in subsection (C)(1), an owner shall ensure that either:
   a. The installer has insurance coverage for liability resulting from harm that arises from subcontracted work performed by an independent contractor, or
   b. An independent contractor who performs work for the installer under an agreement has an insurance policy that provides coverage for liability resulting from harm caused by the independent contractor's work.
3. An owner shall not contract with an installer unless the installer has an insurance policy that provides at least $1 million liability coverage per occurrence both for bodily injury and for property damage.
4. An owner shall not contract with an installer unless the issuer of the installer's insurance policies described in subsections (C)(1) through (C)(3) names the Department as an additional insured on each policy and keeps the Department informed of any change in the status of each policy.
5. An owner shall obtain the Department's approval of the installer's insurance policy by submitting proof of the insurance described in subsections (C)(1) through (C)(3) to the Department before entering a contractual agreement with the installer for the installation of a natural-gas fuel system on a school bus.
6. If an owner acts as an installer, the owner shall maintain the insurance required by this Section.
7. The Department shall approve an installer's insurance policy, proof of which is submitted by an owner in accordance with subsection (C)(5), if the policy conforms to the requirements in subsections (C)(1) through (C)(3). The Department shall send written notice of its decision to approve or disapprove the installer's insurance policy to the owner within 15 days from receipt of the proof of insurance.

D. General requirements for installing a natural-gas fuel system

1. Converting a school bus to use of CNG, whether in whole or in part, is not an alteration as defined in R13-13-101.
2. Unless specifically provided otherwise in this Section, when installing a natural-gas fuel system, an installer shall use parts and equipment and perform work in a manner that meets or exceeds the standards of NFPA 52, Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1995 (and no later editions or amendments), Quincy, MA, which is incorporated by this reference and on file with the Department and the Office of the Secretary of State.
3. An installer shall use only UL-listed or AGA-approved carburetor equipment when installing a natural-gas fuel system on a school bus.
4. An installer shall meet or exceed the recommended guidelines provided by the manufacturers of all parts of a natural-gas fuel system when installing the natural-gas fuel system on a school bus.
5. An installer shall ensure that installation of a natural-gas fuel system on a school bus is performed by an individual who has proof of training provided by the manufacturer of the natural-gas fuel system or ASE alternative fuels certification.
6. If a school bus is converted from the use of gasoline or diesel fuel to the dedicated use of CNG, the installer shall remove the gasoline or diesel-fuel tank and accompanying gasoline or diesel-fuel system parts from the school bus.

E. Natural-gas pressure vessel: An installer shall use only a natural-gas pressure vessel that is certified by its manufacturer as meeting or exceeding the NGV2 standards and as being U.S. Department of Transportation or ANSI listed. An installer shall use the natural-gas pressure vessel manufacturer's recommended bracket.

F. Installing a natural-gas pressure vessel

1. An installer shall securely attach a rack to the frame of a school bus in the following manner:
   a. By drilling no holes in the school bus frame that exceed the manufacturer's requirements; and
   b. By using no welding on and applying no heat to the school bus frame.
2. When installing a natural-gas fuel system on a school bus, an installer shall locate the natural-gas pressure vessel and its appurtenances on the vehicle frame as follows:
   a. Below the driver's or passengers' compartment;
   b. So no part protrudes:
      i. In front of the front axle,
      ii. Beyond the outside face of the rear bumper, or
      iii. Beyond the sides of the school bus;
   c. Inside a rack; and
   d. So the minimum clearance between the road and the lowest part of the natural-gas pressure vessel and its rack on a school bus loaded to its gross vehicle weight rating, is:
      i. No fewer than 7 inches (17.5 mm) for a school bus with a wheel base fewer than or equal to 127 inches (323 mm); or
      ii. No fewer than 9 inches (22.5 mm) for a school bus with a wheel base greater than 127 inches (323 mm).
3. If the natural-gas pressure vessel and its appurtenances are located behind the rear axle of the school bus, in addition to the requirements in subsection (F)(3), an installer shall locate the natural-gas pressure vessel as follows:
   a. Below the floor line, and
   b. Above the school bus' angle of departure.

G. Protecting a natural-gas pressure vessel. To protect a natural-gas pressure vessel and its appurtenances from damage, an installer shall:

1. Surround the natural-gas pressure vessel with a stone guard on all sides that are not protected by the natural barriers of the vehicle. The stone guard shall not be attached to the natural-gas pressure vessel. If the stone guard protects a valve, it shall be made of at least 16-gauge steel. If the stone guard does not protect a valve, it shall be made of at least 3/16-in. mesh with openings no greater than 1 in.;

2. Place a resilient, non-absorbent gasket between the natural-gas pressure vessel and its brackets in a manner that prevents the brackets from directly contacting the natural-gas pressure vessel;
3. Ensure that the weight of the natural-gas pressure vessel is not supported, in whole or in part, by an appurtenance; and
4. Place a shield between, but not attached to, the natural-gas pressure vessel and the vehicle exhaust system if the natural-gas pressure vessel or the fuel lines are located fewer than 8 inches from the exhaust system. The shield shall be constructed of at least 18-gauge metal.

H. Safety and check valves: An installer shall equip a natural-gas fuel system with:
1. Either an automatic fuel supply shut-off valve that is placed between the pressure vessel fuel-pressure regulator and the fuel distribution assembly and activated by engine vacuum or oil pressure, or an electronic fuel injector; and
2. Either a manual or automatically controlled shut-off valve that enables the natural-gas pressure vessel to be isolated from the remainder of the natural-gas fuel system. If a manual shut-off valve is used, it shall:
   a. Have no more than 90° rotation from the opened to the closed position;
   b. Have a red valve handle;
   c. Be placed in an accessible location; and
   d. Have "ESV" printed on the school bus at the access location to the manual shut-off valve, in 2-in. to 4-in., unshaded, red letters.

I. Installation of fuel lines. An installer shall:
1. Use fuel lines constructed of seamless stainless steel that has been tested and certified by the manufacturer to an operating pressure of 3600 PSI with a 4:1 safety factor;
2. Mount and brace fuel lines to the vehicle frame in a manner that minimizes vibration;
3. Secure fuel lines to the vehicle frame at least every 24 inches with rubber-lined fasteners;
4. Protect fuel lines that pass through any structural member with rubber grommets, bulkhead fittings, or both;
5. Cause fuel lines that run to the engine to follow the main frame channel; and
6. Install an access door that is at least 70 square inches if access to the fill receptacle and fuel pressure gauge is through the school bus body. The words "CNG Fill" shall be printed on the school bus body, immediately above the access door, in 2-in. to 4-in., unshaded letters.

J. Installation of Venting System. An installer shall ensure that in addition to meeting the requirements in NFPA 52, all vent exits are aimed toward the ground.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 4115, effective October 3, 2000 (Supp. 00-4). New Section R13-13-201 recodified from R17-9-201 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-202. Inspection and Maintenance of Compressed Natural Gas Fuel Systems

A. This Section applies to all school buses that are powered, in whole or in part, by CNG and are introduced into Arizona after the beginning enforcement date of these rules.

B. An owner shall not use a school bus equipped with a natural-gas fuel system to transport passengers until the natural-gas fuel system is inspected and approved by the Department. An owner shall notify the Department when the owner obtains a school bus that needs to be inspected for compliance with these rules.

C. After the initial inspection conducted by the Department, an owner shall ensure that a school bus equipped with a natural-gas fuel system is inspected annually and under the following special circumstances:
1. When the school bus is involved in an accident;
2. When the natural-gas pressure vessel may have been damaged;
3. When natural gas is smelled;
4. When there is an unexpected loss of gas pressure, rattling, or other indication of looseness; or
5. When the natural-gas pressure vessel is changed.

D. An owner shall ensure that an annual or special-circumstances inspection is conducted by the Department or an individual who has proof of training provided by the manufacturer of the natural-gas fuel system or ASE alternative-fuel certification.

E. An owner shall ensure that every inspection of a school bus equipped with a natural-gas fuel system assesses whether the natural-gas fuel system meets the safety standards in 13 A.A.C. 13, and NFPA 52. This assessment shall include:
1. Leak-testing the natural-gas fuel system in compliance with NFPA 52 guidelines;
2. Verifying that the pressure vessel is designed for storage of CNG;
3. Verifying that the service life of the natural-gas pressure vessel has not expired;
4. Verifying that the natural-gas pressure vessel is certified by its manufacturer as meeting or exceeding the NGV2 standards and as being U.S. Department of Transportation or ANSI listed;
5. Verifying that all parts of the natural-gas fuel system are properly listed or approved; and
6. Verifying that all parts of the natural-gas fuel system are installed in accordance with the manufacturer's instructions.

F. An owner shall ensure that an individual who conducts an inspection of a school bus equipped with a natural-gas fuel system completes a Compressed Natural Gas Safety Inspection Form, which is available from the Department, and certifies that the school bus meets all safety standards in 13 A.A.C. 13, and NFPA 52.

G. If it is necessary to condemn a natural-gas pressure vessel, the owner shall:
1. Return the condemned natural-gas pressure vessel to its manufacturer; and
2. Obtain a certificate from the manufacturer that states ownership of the natural-gas pressure vessel is transferred from the owner to the manufacturer.

H. An owner shall maintain each completed Compressed Natural Gas Safety Inspection Form in a separate file for each school bus for the service life of the school bus. If a school bus is transferred from one owner to another, the first owner shall transfer the completed inspection forms to the second owner.

I. An owner shall make the inspection forms maintained under subsection (H) available for review by the Department.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 4115, effective October 3, 2000 (Supp. 00-4). New Section R13-13-202 recodified from R17-9-202 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.

2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.

3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.

4. Make rules necessary for the operation of the department.

5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.

6. Appoint a deputy director with the approval of the governor.

7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.

8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.

9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.

11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.

2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.

4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.

5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.

6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.

8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.

9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.

10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.

12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

28-900. School transportation rules

A. The department of public safety in consultation with the student transportation advisory council established by section 28-3053 shall adopt rules as necessary to improve the safety and welfare of student passengers by minimizing the probability of accidents involving school buses and student passengers and by minimizing the risk of serious bodily injury to student passengers in the event of an accident.

B. The rules may include:

1. Minimum standards for the design and equipment of school buses that are designed for sixteen or more passengers.

2. Minimum standards for the periodic inspection and maintenance of school buses that are designed for sixteen or more passengers.

3. Procedures for the operation of school buses that are designed for sixteen or more passengers.

4. Minimum standards for the design and equipment of motor vehicles described in section 15-925 that are substantially different than the minimum standards prescribed in paragraph 1 of this subsection.

5. Minimum standards for the periodic inspection and maintenance of motor vehicles described in section 15-925.

6. Procedures for the operation of motor vehicles described in section 15-925.

7. Other criteria as deemed by the department of public safety and the student transportation advisory council to be necessary and appropriate to ensure the safe operation of school buses and motor vehicles that are described in section 15-925. Any rules adopted pursuant to this section shall allow for a variety of vehicles to be used to meet the needs of students and systems of varying sizes and locations.

C. The rules shall provide, if applicable, minimum standards equal to or more restrictive than those adopted by the United States department of transportation in accordance with 23 United States Code and rules adopted pursuant to 23 United States Code.

D. Notwithstanding a rule adopted by the department of public safety with respect to exterior color of a school bus that is designed for sixteen or more passengers, in order to reduce the interior temperature of a school bus, the exterior top of a school bus may be painted white, but the white area shall not extend beyond the center clearance lights, front and rear, and shall not extend below a line five inches above the top of the side windows.

E. An officer or employee of any school district or charter school who violates any of the rules or who fails to include the obligation to comply with the rules in any contract executed by the officer or employee on behalf of the school district or charter school is guilty of misconduct and is subject to removal from office or employment. Any person who operates a school bus or motor vehicle under contract with a school district or charter school and who fails to comply with any of the rules is in breach of contract, and the school district or charter school shall cancel the contract after notice and a hearing by the responsible officers of the school district or charter school.

F. The department of public safety shall enforce the rules adopted pursuant to this section.

28-3228. School bus drivers; student transportation requirements; rules; cancellation of certificate

A. A person shall not operate a school bus that is designed for sixteen or more passengers and that transports school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety. A person shall not operate a vehicle described in section 15-925 to transport schoolchildren unless the person possesses the appropriate license class for the size of the vehicle being operated, a school bus driver certificate that is issued by the department of public safety and a valid fingerprint clearance card as required by subsection D of this section.

B. To be certified as a school bus driver for a vehicle that is designed for sixteen or more passengers, a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of public safety in consultation with the student transportation advisory council established by section 28-3053.

2. Complete an initial instructional course on school bus driver safety and training, including behind the wheel training.

C. The department of public safety in consultation with the student transportation advisory council established by section 28-3053 shall adopt rules that establish minimum standards for the certification of school bus drivers and drivers of other vehicles described in section 15-925. In cooperation with local school districts and charter schools, the department of public safety shall provide for school transportation safety and training courses. The standards established shall:

1. Include requirements concerning knowledge of operating a school bus or a vehicle described in section 15-925, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus or vehicle described in section 15-925 or that might endanger the health or safety of passengers, knowledge of first aid, establishment of school bus and other vehicle safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of public safety and the student transportation advisory council established by section 28-3053 prescribe for the protection of the public.

2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the ability of the applicant to safely operate a school bus or vehicle described in section 15-925.

3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

4. Require the applicant to possess a commercial driver license issued by the department, except that:

(a) Notwithstanding subsection A of this section the applicant may possess a commercial driver license issued by another state if the applicant will be driving a school bus for a school district that is adjacent to that state.

(b) An applicant to drive a vehicle described in section 15-925 does not need to possess or obtain a commercial driver license. This subdivision applies only if a commercial driver license is not required by state or federal law to operate the vehicle based on the vehicle's gross vehicle weight rating or occupancy.

D. Each person who applies for a school bus driver certificate shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 and shall submit an identity verified fingerprint card as described in section 15-106 that the department of public safety shall use to process the fingerprint clearance card as outlined in section 15-106.

E. A person who is issued a school bus driver certificate shall maintain a valid identity verified fingerprint clearance card for the duration of any school bus driver certification period.

F. The department of public safety shall suspend a school bus driver certificate if the fingerprint clearance card is invalid, suspended, canceled or revoked.

G. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

H. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

I. The department of public safety shall enforce the rules adopted pursuant to this section.

15-106. Identity verified fingerprints

An applicant who applies for a new teaching certificate in order to teach in a school district, a participant in field experience or student teaching in this state, an applicant who applies for a renewal of an existing teaching certificate in order to continue teaching in a school district, an applicant who is required for the first time to be fingerprinted in order to teach in a charter school and an applicant who is required to renew fingerprints in order to continue teaching in a charter school pursuant to section 15-183, an applicant who is required to be fingerprinted pursuant to section 15-512 and any person who is contracted by this state, by a school district or by a charter school to provide tutoring services shall submit for an identity verified fingerprint card that will be used by the department of public safety to process the fingerprint clearance card pursuant to title 41, chapter 12, article 3.1 as follows:

1. The applicant shall submit a request for an application packet from the department of public safety.

2. The application packet shall be contained in an envelope specified by the department of public safety and shall include the following:

(a) A blank applicant fingerprint card.

(b) An application for a fingerprint clearance card.

(c) Instructions for the return of the application packet.

3. A school district or charter school may contract for fingerprinting services through an entity or entities and shall provide a copy of the instructions to the entity or entities as provided by the department of public safety regarding the submission of identity verified fingerprints. If a school district or charter school elects to provide fingerprinting services, the school district or charter school shall authorize an individual employed by the school district or charter school to administer the services.

4. The department of public safety shall provide instructions to law enforcement agencies and public schools regarding the submission of identity verified fingerprints. The department of public safety shall reject the application for a fingerprint clearance card if the application is not correct or is not submitted according to the instructions provided by the department of public safety.

5. The applicant, at the time that identity verified fingerprints are taken, shall provide the law enforcement agency, school district, charter school or other entity with a completed application form for a fingerprint clearance card, the fingerprint card with the requisite demographic information and the required fee in the form of a money order or cashier's check made out to the department of public safety. The law enforcement agency, school district, charter school or other entity shall verify the identity of the applicant through recognized means of photographic identification and a comparison of the demographic information on the photographic identification against the demographic information on the application form and the fingerprint card. The authorized person taking the fingerprints shall enter on the application form a description of the photographic identification presented by the applicant. The law enforcement agency, school district, charter school or other entity shall place the completed fingerprint card, the completed application form or any other form required by the department of public safety and the fee provided by the applicant in the postage prepaid envelope provided by the department of public safety and mail it to the fingerprinting division in the department of public safety. A law enforcement agency, school district, charter school or other entity may charge the applicant a reasonable fee for services provided pursuant to this section.

6. Fingerprints submitted electronically or through an internet-based system pursuant to section 41-1758.01 shall include a completed application for a fingerprint clearance card, the requisite applicant demographic information and the required fee, and shall be identity verified in accordance with instructions provided by the department of public safety. The department shall reject the application for a fingerprint clearance card if the application is not correct or is not submitted according to the department's instructions. The entity or entities contracted by the department shall comply with:

(a) All information privacy and security measures and submission standards established by the department.

(b) The information technology security policy approved by the department.

7. The department of public safety shall process the application packet in the same manner prescribed for fingerprint clearance cards issued pursuant to title 41, chapter 12, article 3.1.

8. The department of public safety shall provide for digital storage and retrieval of identity verified fingerprints taken pursuant to this section. The fingerprints taken pursuant to this section shall be digitally designated in the fingerprint archive as identity verified fingerprint records.

9. A person who has a set of identity verified fingerprints on file with the department of public safety pursuant to this section shall not be required to submit a new set of fingerprints to the department of public safety to renew the person's fingerprint clearance card. On receipt of the required application form and fee for a renewal fingerprint clearance card from a person required to submit identity verified fingerprints, the department of public safety shall attempt to use the electronic copy of the applicant's identity verified fingerprints that are retained pursuant to this section to conduct the state and national criminal records checks. The department of public safety may require the applicant to submit a new set of identity verified fingerprints if the department of public safety determines that the original fingerprints submitted have been lost or damaged or are found to be otherwise of insufficient quality to conduct a valid technical fingerprint search either by the department of public safety or the federal bureau of investigation.

10. A person who participates in a teacher preparation program that is approved by the state board of education and who does not participate in field experience or student teaching in this state shall not be required to obtain a fingerprint clearance card pursuant to this section.

15-925. School transportation; allowable vehicles

Notwithstanding any other law, a school district or charter school in this state or a privately owned and operated entity that is contracted for compensation with a school district or charter school in this state may use a motor vehicle that is designed to carry at least eleven and not more than fifteen passengers or a motor vehicle that is designed as a type A school bus or type B school bus as defined by the department of public safety to carry at least eleven and up to fifteen passengers to transport students to or from home or school on a regularly scheduled basis in accordance with the safety rules adopted by the department of public safety pursuant to sections 28-900 and 28-3228.

SUBSTANTIVE POLICY STATEMENT

Senate Bill 1630, 11 to 15 Student Transportation Passenger Vehicles

Policy No. CVETFD-1

Effective October 1, 2022

Pursuant to A.R.S. § 41-1091: "This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedures act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement."

This is a new statement. This statement will automatically expire upon the filing of final rules.

Policy Statement:

The policy establishes the following:

A. Until such time as the Department can consult with the Student Transportation Advisory Council and implement final rules in relation to the provisions in Senate Bill (SB) 1630 and A.R.S. § 15-925 (Item 4 below), the Department's interim intent to authorize, inspect and enforce 11-to-15-person passenger vehicles (925 vehicles) and drivers will be in a manner consistent with other types of school buses and in accordance with this policy statement. A rulemaking to amend school bus rules for SB1630 and all other necessary rule changes to modernize the decades-old rules is expected to be a lengthy process potentially exceeding a year. The Department recognizes the desire of schools to implement SB1630 as quickly as possible and this guidance is intended to assist schools in decision making moving forward.

B. Any Type A or Type B multifunction school activity bus in service prior to July 1, 2022 that is painted white may be used up to July 1, 2027 if equipped with an eight lamp, alternating flashing signal lamp as in R13-13-107(17) and a stop arm as in R13-13-107(31).

C. The removal of seats to meet the requirements will be prohibited and does not reclassify the vehicle.

D. Any vehicle that is not a Type A or Type B school bus shall meet the following: seating and crash protection requirements of 49 CFR 571.222; tires and wheels requirements of 49 CFR 393.75; color of school bus yellow requirements of the *National School Transportation Specifications and Procedures* by the National Congress on School Transportation; have a reflective strip at least 4 inches tall of alternating white and yellow 2-inch stripes set at a 45º angle the stretches across the lower rear of the vehicle and terminating no more than 4 inches from the outside edges of the vehicle; have on both sides of the vehicle the name of the school or the name of the private company in 3-inch block, black letters; Have on the rear of the vehicle the lettering *STUDENT TRANSPORTATION* in 4-inch block, black letters; have a vehicle number displayed in 3-inch block, black number either on the lower left or right area on the back of the vehicle

or on the left or right side of the vehicle at a point forward of the centerline of the driver and front passenger doors; seatbelts installed and functioning in accordance with the manufacturer's specifications; be equipped with a high-mounted, amber (as opposed to white in R13-13-104(D)(32) flashing light centered on the rear roof line that is activated by the driver at railroad grade crossing which flashes at a rate equal to or greater than the turn signal rate with a visibility equivalent to a stop lamp as defined in A.R.S. § 28-939.

E. Drivers shall comply with R13-13-104(B)(9),(C),(D),(E), and R13-13-108 as applicable to a 925 vehicle. For example, if a 925 vehicle does not have a service door or clutch, that portion of the rules will not be applicable. However, if the 925 has a similar feature, performance of that feature may be required; for example, if the 925 vehicle is not equipped with a service door the driver may be asked to perform a similar function of opening and closing the passenger doors on the 925 vehicle or similarly rolling windows up/down.
F. Should not stop on a highway, interstate or primary roadway to load or unload passengers. Should stop in low-traffic volume areas with speed limits below 35 miles per hour. When loading or unloading the driver should place the vehicle in park, activate the four-way hazard flashers and the top/rear mounted flashing light described in Item 3(D) above.
G. For railroad grade crossings, the driver shall comply with R13-13-104(B)(15) with the requirement to operate the flashing light in Item 3(D) above. For vehicles without a service door in R13-13-104(B)(15)(d), the right front window shall be fully opened or fully rolled down.
H. The driver shall secure wheelchairs as specified in R13-13-105.
I. Any manufacturer-installed child safety locks on doors shall not be engaged.
J. The driver shall not remove the vehicle from park until all passengers are properly wearing their seatbelts or properly restrained. All passengers shall properly wear or use all safety belts.
K. The driver shall comply with the requirements in R13-13-102 with the exceptions of:
   (1) Subsection 102(A)(3)(a)(v) and (A)(4) an Arizona commercial vehicle driver license is not required. The Department will require at a minimum an Arizona Class D driver license pursuant to the authorizing statute.
   (2) Subsection 102(A)(5) a school bus (letter S) endorsement is not required pursuant to the authorizing statute.
L. Classroom and behind-the-wheel instructors shall comply with the requirements in R13-13-103. The Department will continue to require at a minimum a CDL for instructors.
M. Until such time as a passenger (letter P) endorsement can be placed on a driver license by MVD and until such time the Department's Student Transportation Unit can program their database to accept 925 driver certifications, the Department will provide a certified driver with a hardcopy and/or electronic credential the driver can retain/provide for verification of certification.

State statute that underlies the substantive policy statement:

Fifty-fifth Legislature, Second Regular Session, 2022, Chapter 290, Senate Bill 1630, amending sections 15-383, 15-746, 15-922, 15-945, 28-900, 28-3053 and 28-3228, adding 15-925. Approved by the Governor June 13, 2022. Filed in the Office of the Secretary of State June 13, 2022.

Contact information:

Name: William Lunt, sergeant, for bus inspections/enforcement -or-
Kimberly Thomas, supervisor, for driver certification.

Address: Arizona Department of Public Safety, P.O. Box 6638, MD3002, Phoenix, AZ 85005-6638.

Specify:
Mail Drop 3002 for bus inspections/enforcement -or-
Mail Drop 3150 for driver certification.

Telephone: (602) 206-5093 for bus inspections/enforcement -or-
(602) 223-2646 for driver certification.

E-mail: wlunt@azdps.gov for bus inspections/enforcement -or-
kthomas@azdps.gov for driver certification.

How to obtain a paper copy of this statement:

A copy of this statement for a fee of $9 is available from the Department through the public records request process at https://www.azdps.gov/services/public/records/public.

SUBSTANTIVE POLICY STATEMENT

School Bus Driver Hours Limitations

Policy No. HPDCVE-2

Effective April 26, 2024

Pursuant to A.R.S. § 41-1091: "This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedures act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement."

This is a new statement. This statement will automatically expire upon the filing of final rules.

Policy Statement:

The policy establishes and clarifies the following:

A. Subsection (C) is not clear, specific and understandable regarding the type of hours being referenced; in terms of compensated, uncompensated or a combination of time.

B. The Department will enforce the 60-hour and 70-hour limits in subsection (C)(3-4) as compensated hours.

C. The Department recognizes school bus drivers may typically work a split shift; meaning, the driver may drive a morning pick-up route, leave work during the middle of the day and then return to work in the afternoon to drive a drop-off route. The Department reasons that hours during a workday in-between routes, where a driver logs off duty and is not compensated by the employer should not count against the driver's hour limitations in subsection (C)(3-4).

D. The Department further clarifies and will enforce that uncompensated hours in the middle of the day which are less than eight (8) consecutive hours do count against the driver's 15-hour limitation in subsection (C)(2).

E. The Department will address these clarifications in a future rulemaking in consultation with the Student Transportation Advisory Council pursuant to Arizona Revised Statutes §§ 28-900 and 28-3228. This statement will automatically expire upon the filing of final rules.

State statute that underlies the substantive policy statement:

A. Arizona Administrative Code, Title 13 Public Safety, Chapter 13 School Buses, Section 104(C) regarding limitations on driving/working hours for school bus drivers.

B. Arizona Revised Statutes §§ 15-925, 28-900 and 28-3228 authorize the Department to adopt rules setting the minimum standards necessary to improve the safety and welfare of student passengers, certify school bus drivers and improve school bus operations.

Contact information:

Name:	William Lunt, sergeant, for bus inspections/enforcement -or- Kimberly Thomas, supervisor, for driver certification.
Address:	Arizona Department of Public Safety, P.O. Box 6638, MD3002, Phoenix, AZ 85005-6638. Specify: Mail Drop 3002 for bus inspections/enforcement -or- Mail Drop 3150 for driver certification.
Telephone:	(602) 206-5093 for bus inspections/enforcement -or- (602) 223-2646 for driver certification.
E-mail:	wlunt@azdps.gov for bus inspections/enforcement -or- kthomas@azdps.gov for driver certification.

www.azsos.gov

Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

Volume 30, Issue 36 **~ Administrative Register Contents ~** **September 6, 2024**

From the Publisher

ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE *REGISTER*?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* Chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this Chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking.very document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

Arizona Administrative REGISTER

September 6, 2024
Volume 30, Issue 36

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ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
The *Arizona Administrative Code* is available online at www.azsos.gov.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register.* These dates include file submittal dates with a three-week turnaround from filing to published document.

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The Office of the Secretary of State is an equal opportunity employer.

Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register.* Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

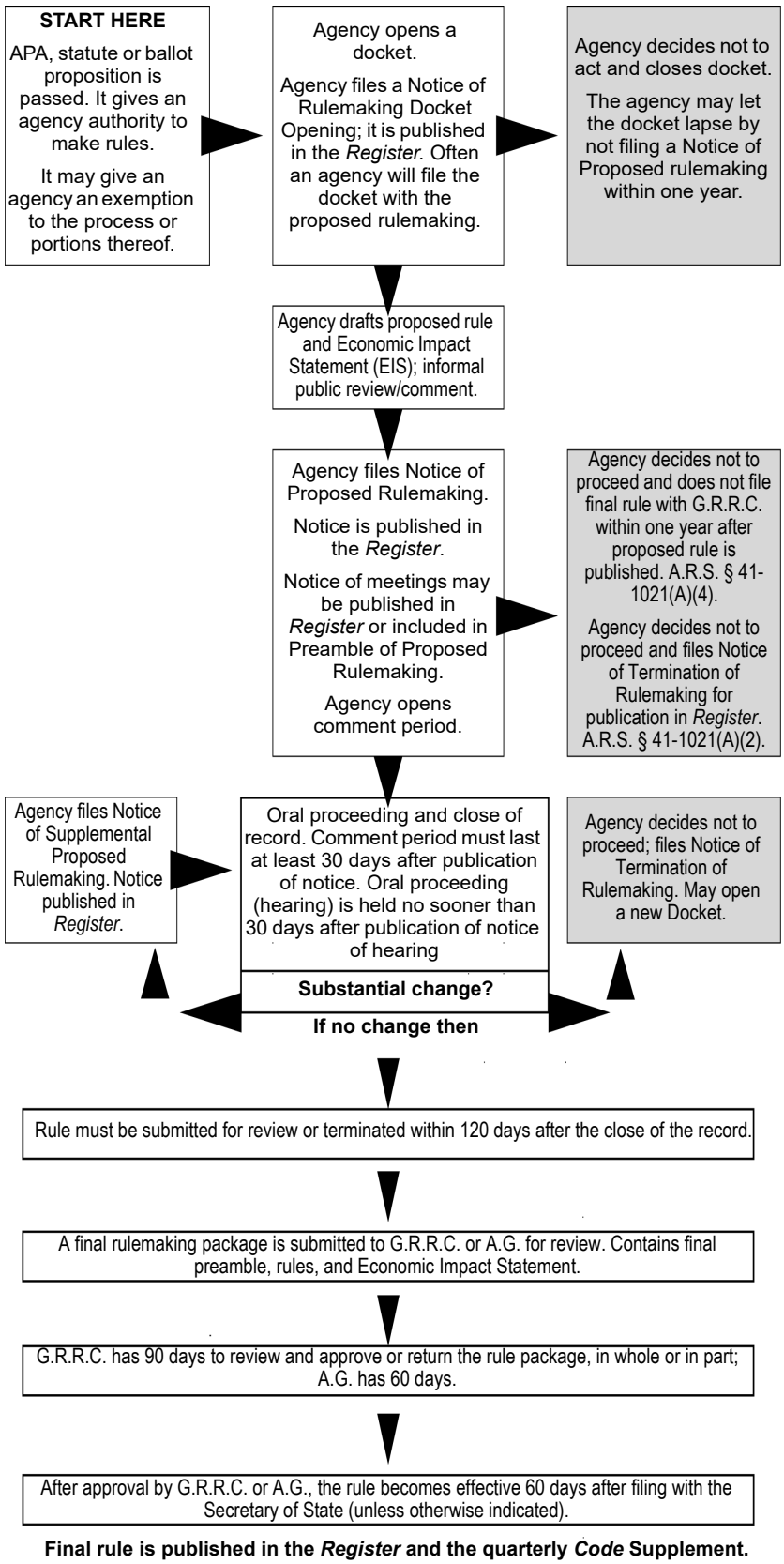
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

***Arizona Administrative Code* (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

***Arizona Administrative Register* (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are complied by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.", and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – Administrative Procedure Act

A.R.S. – Arizona Revised Statutes

CFR – *Code of Federal Regulations*

EIS – Economic, Small Business, and Consumer Impact Statement

FR – *Federal Register*

G.R.R.C. – Governor's Regulatory Review Council

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Supplemental Proposed Rulemakings. After an agency has filed a Notice of Proposed Rulemaking and it is published in the *Register*, an agency may decide to make substantial changes to the rule after it is proposed.

The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed changes. When filed, the notice is published under the deadline schedule in the back of the *Register*.

The Notice of Supplemental Proposed Rulemaking shall be published in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #11 for the close of record and information related to public hearings and oral comments.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

[R24-159]

PREAMBLE

1. Permission to proceed with this supplemental proposed rulemaking was granted under A.R.S. § 41-1039 by the governor on:

April 26, 2021

2. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the supplemental proposed rule:

Notice of Docket Opening: 30 A.A.R. 246, February 2, 2024, Issue 5

Notice of Proposed Rulemaking: 30 A.A.R. 261, February 9, 2024, Issue 6

3.

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R4-11-101	Amend
R4-11-305	Amend
R4-11-406	Amend
R4-11-1203	Amend
R4-11-1301	Amend
R4-11-1302	Amend
R4-11-1303	Amend
R4-11-1304	Amend
R4-11-1305	Amend
R4-11-1306	Amend
R4-11-1307	Amend

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

Authorizing statute: A.R.S. § 32-1207

Implementing statute: A.R.S. §§ 32-1201 et seq.

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

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Suite 2470
Phoenix, AZ 85007

Telephone: (602) 542-4493

Email: ryan.edmonson@dentalboard.az.gov

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

The Board needs to amend its rules to address permitting requirements for several types of anesthesia and sedation permits.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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.

None

8. An explanation of the substantial change which resulted in the supplemental notice:

The Board received several comments during the public comment period and oral proceeding that related to General formatting

and terminology. The Board also received comments, and made changes to the proposed rules, as follows:

Dr. Caputo asked why the fees for R4-11-1302 and 1303 were decreased, while the fees for 1301 were not. The Board responded that the fees were based on renewal periods.

HIS suggested using more general language to refer to "another agency that follows the same procedures, standards, and techniques for training as the American Heart Association" and the Board determined that adding the American Heart Association was an appropriate standard.

Dr. Caputo commented that the Board should consider incorporating language to state the permit holder maintains an Action Plan for the conduct of any sedation or anesthesia procedure that includes appropriate drugs, equipment and supplies accepted according to state and national standards. The Board determined that the rules, as written, do not prohibit a licensee from creating such a plan.

Dr. Fukami commented: A neuromuscular blocker such as succinylcholine was omitted from list of emergency medications for general anesthesia. Should absolutely be included, for treatment of laryngospasm. Also would recommend anti-hypoglycemic, like IV dextrose.

Dr. Snell commented: The list of emergency drugs should include a muscle paralytic such as Succinylcholine.

The Board ensured that a neuromuscular blocker is included, but does not want to include IV dextrose specifically.

Dr. Caputo commented that the amount of CE for pediatric endorsement should count towards a Licensee's overall CE credits.

The Board agreed and made changes to the rule language to ensure that such credit was thusly accounted.

Dr. Caputo and Dr. Fukami commented that the primary responsibility for monitoring a patient during anesthesia should be the treating dentist.

The Board agreed and made corresponding changes to ensure such.

Dr. Caputo suggested that references to specific drugs should be removed.

The Board agreed and removed references to specific drug names throughout the rules.

9. 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

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

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. There may be some impact to dental professionals who must now obtain a pediatric endorsement in order to provide anesthesia and sedation services to patients that are less than eight years of age. However, the increased regulation is necessary to ensure that dental professionals are qualified to provide such services to patients who are less than eight years of age in order to better protect the health, safety, and welfare of those patients. The Board is also removing the requirement to obtain a permit in order to work with a qualified anesthesia provider if the treating dentist meets certain requirements that protect the health, safety, and welfare of their patients. Thus, the economic impact is minimized.

11. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Suite 2470
Phoenix, AZ 85007

Telephone: (602) 542-4493

Email: ryan.edmonson@dentalboard.az.gov

12. The time, place, and nature of the proceedings to make, amend, renumber, or repeal the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:

The Department will accept comments during business hours at the address listed in Item #5. Comments will also be accepted via email at the email address provided under Item #5. Mailed written comments shall be postmarked within 30 days of this published notice.

An oral proceeding regarding the proposed rules will be held as follows:

Date: October 17, 2024

Time: 11:30 a.m.

Location: Virtual format
Video call link: https://meet.google.com/mxy-zamg-yau
Or dial: (US) +1 316-778-8312 PIN: 803 985 409#

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

None

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:
Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:
No analysis was submitted.

14. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
None

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section
R4-11-101. Definitions

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

Section
R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of ~~General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA.~~ Section 1301 Permits, Section 1302 Permits, and Section 1303 Permits.

ARTICLE 4. FEES

Section
R4-11-406. Anesthesia and Sedation Permit Fees

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

Section
R4-11-1203. Dentists and Dental Consultants

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

Section
R4-11-1301. General Anesthesia and Deep Sedation
R4-11-1302. Parenteral Moderate Sedation
R4-11-1303. Enteral Moderate ~~Oral~~ Sedation
R4-11-1304. ~~Permit to Employ or Work~~ Working with a QAP ~~Defined as a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)~~
R4-11-1305. ~~Reports of Adverse Occurrences~~ Mandatory Reporting
R4-11-1306. ~~Education; Continued Competency~~ Enteral Sedation
R4-11-1307. Renewal of Permit

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions
The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"ACLS" means Advanced Cardiac Life Support.

"AED" means an Automatic External Defibrillator.

~~"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia~~.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental, dental therapy, or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a Recognized Continuing Dental Education program.

"Deep sedation" is a Drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental therapist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Documentation of attendance" means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of Credit Hours;

Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the ~~official compendium~~ Official Compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental, dental therapy, or dental hygiene school and use of the technology poses material risks.

"Enteral" means any technique of administration in which the Drug is absorbed through the gastrointestinal tract.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a Drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or Drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Licensee" means a dentist, dental therapist, dental hygienist, dental consultant, ~~retired~~ Retired licensee, or ~~person who holds~~ a ~~restricted permit~~ Restricted Permit Holder ~~under A.R.S. §§ 32-1237 or 32-1292~~.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic Drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond ~~appropriately~~ normally to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be ~~modestly~~ mildly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

~~"Mobile dental permit holder" means a Licensee or denturist who holds a mobile permit under R4-11-1301, R4-11-1302, or R4-11-1303.~~

"Mobile permit" means a permit issued by the Board under R4-11-1301(G), R4-11-1302(F), or R4-11-1303(F).

"Moderate sedation" is a Drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation~~, not limited to reflex withdrawal from a painful stimulus~~. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. In accordance with this definition, the ~~The~~ Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a Drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means the use of nitrous oxide in combination with oxygen ~~used~~ as an inhalation analgesic.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

~~"Oral sedation" is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.~~

"PALS" means Pediatric Advanced Life Support.

"Parenteral ~~sedation~~" is ~~a minimally depressed level of consciousness that allows~~ the ~~patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of~~ administration ~~in which the drug bypasses the gastrointestinal tract~~ of a Drug that bypasses the gastrointestinal tract to achieve a desired level of sedation or General Anesthesia.

"Pediatric endorsement" is a provision added to a Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit allowing administration of sedation or General Anesthesia to a pediatric patient who is younger than 8 years of age according to R4-11-1301, R4-11-1302, or R4-11-1303.

~~"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.~~

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polishing" means a procedure limited to the removal of Plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A Licensee or dental assistant shall not represent that this procedure alone constitutes an oral Prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only Drug" does not include a Controlled Substance but does include:

Any Drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any Drug that is limited by an approved new Drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful Drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any Drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a Scaling and Polishing procedure performed on patients with healthy tissues to remove coronal Plaque, Calculus, and stains.

"QAP" means a qualified anesthesia provider according to A.R.S. § 32-1201.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, or sponsored by a national or state dental, dental therapy, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program or Academy of General Dentistry, Program Approval

for Continuing Education approved provider, dental, dental therapy, dental hygiene, or denturist Study Club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental therapist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove Plaque, Calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer General Anesthesia and Deep Sedation, or employ or work with a QAP a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer Parenteral Moderate Sedation, or employ or work with a QAP a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer Oral Enteral Moderate Sedation, or employ or work with a QAP a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental therapists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of ~~General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA.~~ Section 1301 Permits, Section 1302 Permits, and Section 1303 Permits.

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within ~~30~~ 14 calendar days of receiving an initial or renewal application for a ~~General Anesthesia and Deep Sedation permit, parenteral sedation permit, Oral Sedation permit or permit to employ a physician anesthesiologist or Certified Registered Nurse Anesthetist~~ Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.

4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

ARTICLE 4. FEES

R4-11-406. Anesthesia and Sedation Permit Fees

~~**A.**~~ As ~~expressly~~ authorized under A.R.S. § 32-1207, the Board ~~establishes and~~ shall collect the following permit and renewal fees:
1. $300 for a Section 1301 ~~permit~~ Permit, ~~fee: $300~~ plus $25 for each additional location for the same permit, not including a Mobile Permit; or
2. $180 for a Section 1302 Permit or a Section 1303 Permit, plus $25 for each additional location for the same permit, not including a Mobile Permit; or
~~2.~~3. ~~Section 1302 permit fee:~~ $300 for a Mobile Permit for a Section 1301 Permit; or ~~plus $25 for each additional location;~~
~~3. Section 1303 permit fee: $300 plus $25 for each additional location; and~~
~~4. Section 1304 permit fee: $300 plus $25 for each additional location.~~
4. $180 for a Mobile Permit for a Section 1302 Permit or a Section 1303 Permit.

~~**B.** Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301,1302,1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.~~

~~**C.** Permit renewal fees:~~
~~1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;~~
~~2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;~~
~~3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and~~
~~4. Section 1304 permit renewal fee: $300 $300 $100 plus $25 for each additional location.~~

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:
1. At least 36 Credit Hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, ~~chemical dependency, tobacco cessation~~ and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit ~~permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation~~ who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in ~~opioid education~~ chemical dependency, which may include tobacco cessation;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in Basic Life Support Health Care Provider Level endorsed by the American Heart Association ~~cardiopulmonary resuscitation healthcare provider level~~, ~~advanced cardiac life support or pediatric advanced life support~~. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, ~~in a dental office or dental clinic,~~ a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years ~~by complying with R4-11-1307~~.

B. To obtain or renew a Section 1301 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that~~, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307,~~ includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
   a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
      i. The following emergency ~~Emergency~~ Drugs;
         (1) Vasopressor;
         (2) Corticosteroid;
         (3) Bronchodilator;
         (4) Opioid antagonist;
         (5) Benzodiazepine antagonist;
         (6) Antihistaminic;
         (7) Anticholinergic;
         (8) Anticonvulsant;
         (9) Epinephrine;
         (10) Antiarrhythmic;
         (11) Coronary artery vasodilator; and
         (12) Antihypertensive;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or ~~automated external defibrillator~~ AED;
      v. Positive pressure oxygen and supplemental oxygen;
      vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; ~~and~~
      xiii. Blood pressure monitoring device; ~~and~~
      xiv. End tidal capnography; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in Basic Life Support Health Care Provider Level endorsed by the American Heart Association ~~cardiopulmonary resuscitation healthcare provider level~~;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing ACLS certification from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association ~~coursework~~ within the two years prior to submitting the permit application ~~in one or more of the following:~~
   ~~a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;~~
   ~~b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
   ~~c. A recognized continuing education course in advanced airway management~~.

C. Before a Section 1301 Permit holder administers General Anesthesia or Deep Sedation, by any means, in a dental office or dental clinic, to a patient who is less than eight years of age, the dentist shall possess a Pediatric Endorsement issued by the Board. A dentist who has obtained a Section 1301 Permit with a Pediatric Endorsement pursuant to this section may administer General Anesthesia and lower levels of sedation to a patient who is less than eight years of age. The dentist may renew the Pediatric Endorsement every three years by complying with subsection (D).

D. To obtain or renew a Pediatric Endorsement for a Section 1301 Permit, a Dentist shall:
1. Maintain PALS certification; and
2. Either:
   a. Have completed a CODA-accredited residency program that has a standard for pediatric anesthesia training within the two years immediately preceding the dentist's application for a Pediatric Endorsement, or
   b. If the dentist completed a residency more than two years prior to the dentist's application, submit an affidavit to the Board indicating the dentist has provided intravenous Deep Sedation or General Anesthesia for 30 pediatric patients within three years immediately preceding the dentist's application. Cases completed with a dental practitioner who maintains a Section 1301 Permit with a Pediatric Endorsement can count towards the 30 cases; and complete 20 Credit Hours of Recognized Continuing Dental Education training over the past three years in areas of pediatric airway anatomy, physical evaluation, medical conditions, pharmacology, sedation, General Anesthesia, and medical emergencies. The 20 Credit Hours of Recognized Continuing Dental Education completed according to this section may be used to meet the Credit Hours required in these rules.

~~C.~~ **E.** In addition to meeting the requirements of subsection (B), initial ~~Initial~~ applicants shall meet ~~one or more of~~ the following conditions ~~by submitting to the Board verification of meeting the condition directly from the issuing institution~~:
1. ~~Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school~~

~~level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;~~ Submit proof to the Board directly from the issuing institution of successful completion of an accredited U.S. or Canadian residency in oral and maxillofacial surgery; or

2. ~~Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or~~ Submit proof to the Board directly from the issuing institution of successful completion of an accredited U.S. or Canadian residency in dental anesthesiology. For graduates of a dental anesthesiology residency program prior to CODA or Canadian provincial accreditation, the program must have met the educational and duration requirements of the American Dental Association Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry at the Advanced Education Level (Part II), in effect at the time of residency completion.

~~3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:~~

~~a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;~~

~~b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and~~

~~c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).~~

~~D.~~**F.** After submitting the application and written evidence of compliance with requirements in ~~subsection~~ subsections (B) and~~, if applicable, subsection (C)~~ (E) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications; or
   b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances; and
   e. Proper recordkeeping as specified in subsection ~~(E)~~ (H) by reviewing the records generated for the patient specified in subsection ~~(D)(2)(b)~~ (F)(2)(b)~~; and~~
   f. For renewal applicants, records supporting continued competency as specified in ~~R4-11-1306~~ subsection (U).
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete ~~Board-approved continuing education~~ Recognized Continuing Dental Education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete ~~Board-approved remedial continuing education~~ Recognized Continuing Dental Education with the subject matter outlined in ~~R4-11-1306~~ this Article as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. ~~The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a)~~ An applicant who meets the requirement of subsection (E)(2), does not need to complete an onsite evaluation according to this section.

~~5.~~**G.** ~~A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to~~ dental offices or dental clinics to provide anesthesia or deep sedation. ~~The~~ To obtain a Mobile Permit for a Section 1301 Permit, the applicant ~~must~~ shall submit a completed affidavit verifying:

   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

~~E.~~**H.** A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. ~~Pre-operative,~~Intra-operative and post-operative electrocardiograph documentation;
2. ~~Pre-operative, intra-operative,~~Intra-operative and post-operative pulse oximeter documentation;
3. ~~Pre-operative, intra-operative,~~Intra-operative and post-operative blood pressure and vital sign documentation;
4. Documentation of intra-operative and post-operative monitoring of ventilatory status utilizing capnography or precordial stethoscope;
~~4.~~5. A list of all medications given, with dosage and time intervals, and route and site of administration;
~~5.~~6. Type of catheter or portal with gauge;
~~6.~~7. Indicate nothing by mouth or time of last intake of food or water;
~~7.~~8. Consent form; and
~~8.~~9. Time of discharge and status, including name of escort.

~~F.~~**I.** The Section 1301 Permit holder shall only use intraosseous access exclusively for emergency situations. ~~The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.~~

~~G.~~**J.** The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure as necessary.

~~H.~~**K.** The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable.

L. The Section 1301 Permit holder, shall establish written guidelines for discharging a patient.

M. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

~~I.~~**N.** A Section 1301 Permit holder may employ or work with a QAP ~~the following health care professionals~~ to provide anesthesia or sedation services, accepting primary responsibility for the conduct of the procedure, including review of medical records, health status classification, plan for sedation or anesthesia technique, and preparation for any emergency response, and shall ensure that the ~~health care professional~~ QAP continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable~~:~~

~~1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or~~

~~2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15~~.

~~J.~~**O.** A Section 1301 Permit holder may also administer ~~parenteral~~ Parenteral Moderate Sedation or lower levels of sedation without obtaining a Section 1302 Permit or a Section 1303 Permit.

P. The Section 1301 Permit holder who administers General Anesthesia or Deep Sedation shall ensure that the following additional persons are present, in addition to the Section 1301 Permit holder, to assist the Section 1301 Permit holder with monitoring the patient during the procedure:

1. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and
2. One person with current certification in Basic Life Support Healthcare Provider Level endorsed by the American Heart Association.

Q. If the Section 1301 Permit holder who administers General Anesthesia or Deep Sedation to a patient is the operating dentist, the Section 1301 Permit holder shall ensure the additional person present for the procedure according to subsection (P) has the primary responsibility of monitoring the patient during the procedure.

R. A Section 1301 Permit holder who has obtained a Pediatric Endorsement according to subsection (D), and who administers General Anesthesia or Deep Sedation to a patient who is less than eight years of age shall ensure:

1. The following additional persons are present, in addition to the Section 1301 Permit holder, to assist the Section 1301 Permit holder with monitoring the patient during the procedure:
   a. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and
   b. One person with a current certification in Basic Life Support Health Care Provider Level endorsed by the American Heart Association; and
2. When the patient is less than eight years of age and in monitored recovery, a person with current certification in PALS or ACLS shall monitor the patient's vital signs until the patient meets the criteria for discharge.

S. Except as permitted according to subsection (C), a Section 1301 Permit holder cannot provide any anesthesia or sedation services under this section to a patient that is less than eight years of age.

T. A Section 1301 Permit holder shall not perform a procedure in a dental office or dental clinic, with the administration of General Anesthesia or Deep Sedation that the Section 1301 Permit holder anticipates to be longer than five hours.

U. In addition to meeting the requirements in subsection (B), in order to renew a Section 1301 Permit, the permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. General Anesthesia,
   b. Parenteral sedation,
   c. Physical evaluation,

d. Medical emergencies,
e. Monitoring and use of monitoring equipment, or
f. Pharmacology of Drugs and non-Drug substances used in General Anesthesia or Parenteral sedation; and

2. Complete at least 10 General Anesthesia or Deep Sedation cases per calendar year; and
3. Apply a maximum of six hours of ACLS coursework toward the continuing education requirements for subsection (U)(1).

V. A Section 1301 Permit holder who meets the requirements of subsection (U), may apply those requirements to the Credit Hours required under these rules.

R4-11-1302. Parenteral Moderate Sedation

A. Before administering ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 Permit every ~~five~~ three years ~~by complying with R4-11-1307~~.

1. A Section 1301 Permit holder may also administer ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents, Drugs, or techniques, or any combination thereof, which have a narrow margin for maintaining consciousness ~~including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof~~ that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that~~, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307,~~ includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation ~~by intravenous or intramuscular route~~:
   a. Contains the following properly operating equipment and supplies during the provision of ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation by the permit holder or QAP ~~General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist~~:
      i. The following emergency ~~Emergency~~ Drugs~~;~~:
         (1) Vasopressor;
         (2) Corticosteroid;
         (3) Bronchodilator;
         (4) Opioid antagonist;
         (5) Benzodiazepine antagonist;
         (6) Antihistaminic;
         (7) Anticholinergic;
         (8) Anticonvulsant;
         (9) Epinephrine;
         (10) Antiarrhythmic;
         (11) Coronary artery vasodilator; and
         (12) Antihypertensive;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or ~~automated external defibrillator~~ AED; ~~and~~
      x. A pretrachial stethoscope, precordial stethoscope, or end tidal capnography; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in Basic Life Support Health Care Provider Level endorsed by the American Heart Association ~~cardiopulmonary resuscitation healthcare provider level~~;
      ii. Is present during the ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation procedure to monitor appropriate physiologic parameters and to assist in any supportive or resuscitation measures; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;

5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. ~~Advanced cardiac life support~~ ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association; or
   ~~b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
   ~~c.~~b. A ~~recognized continuing education~~ Recognized Continuing Dental Education course in advanced airway management or Moderate Sedation.

C. A dentist shall not administer Parenteral Moderate Sedation to a patient who is less than eight years of age. A dentist who has obtained a Section 1302 Permit with a Pediatric Endorsement pursuant to this section may administer Enteral Moderate Sedation and lower levels of sedation to a patient who is less than eight years of age. The dentist may renew the Pediatric Endorsement every three years by complying with subsection (D).

D. To obtain or renew a Pediatric Endorsement for a Section 1302 Permit, a Dentist shall:
1. Maintain PALS certification; and
2. Have completed a CODA-accredited residency program that has a standard for pediatric anesthesia training within the two years immediately preceding the dentist's application for a Pediatric Endorsement, or
3. The dentist shall submit an affidavit to the Board indicating the dentist has provided Enteral Moderate Sedation for 15 pediatric patients within three years immediately preceding the dentist's application. Cases for Enteral Moderate Sedation, completed with a dental practitioner who maintains a Section 1301 Permit, or a Section 1302 Permit, or a Section 1303 Permit, with a Pediatric Endorsement, can count towards the 15 cases; and complete 20 Credit Hours of Recognized Continuing Dental Education training over the past three years in areas of pediatric airway anatomy, physical evaluation, medical conditions, pharmacology, sedation, General Anesthesia, and medical emergencies. The 20 Credit Hours of Recognized Continuing Dental Education completed according to this section may be used to meet the Credit Hours required in these rules.

~~C.~~**E.** Initial applicants shall meet one of the following conditions ~~by submitting to the Board verification of meeting the condition directly from the issuing institution~~:
1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty didactic hours of basic ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on personal administration of ~~parenteral~~ ~~sedative~~ medications for Parenteral Moderate Sedation to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
   b. A copy of the ~~parenteral~~ Parenteral Moderate sedation permit in effect in another state or certification of military training in ~~parenteral~~ Parenteral Moderate sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of ~~continuing education~~ Recognized Continuing Dental Education taken within the last five years as outlined in ~~R4-11-1306(B)(1)(b) through (f)~~ this Article.

~~D.~~**F.** After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection ~~(C)~~(E) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications, or
   b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
   e. Proper recordkeeping as specified in subsection ~~(E)~~ (I) by reviewing the records generated for the patient receiving ~~parenteral~~ Parenteral sedation as specified in subsection ~~(D)(2)(b)~~(F)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in subsection (K)~~R4-11-1306~~.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;

c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
d. Category 2 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
e. Category 3 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education with the subject matter ~~outlined in R4-11-1306 as~~ identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

~~4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).~~

~~5.~~4. To obtain a Mobile Permit for a Section 1302 Permit, ~~A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The~~ the applicant ~~must~~ shall submit a completed affidavit verifying:
a. That the equipment and supplies for the provision of ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation is provided, ~~and~~
b. Compliance with R4-11-1302(B)(2)(b).

G. A Section 1302 Permit holder shall complete an onsite evaluation that complies with subsection (F) in order to renew a Section 1302 Permit every six years.

H. A Section 1302 Permit holder does not need to comply with subsection (F)(2)(b) to renew a Section 1302 Permit.

~~F.~~I. A Section 1302 Permit holder shall keep a ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation record for each ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation procedure that~~:~~ includes

~~1.~~ ~~Includes~~ the following entries:
~~a.~~1. ~~Pre-operative, intra-operative,~~ Intra-operative and post-operative pulse oximeter documentation;
~~b.~~2. ~~Pre-operative, intra-operative,~~ Intra-operative and post-operative blood pressure and vital sign documentation;
3. Documentation of intra-operative and post-operative monitoring of ventilatory status utilizing capnography or precordial stethoscope.
~~c.~~4. A list of all medications given, with dosage and time intervals and route and site of administration;
~~d.~~5. Type of catheter or portal with gauge;
~~e.~~6. Indicate nothing by mouth or time of last intake of food or water;
~~f.~~7. Consent form; ~~and~~
~~g.~~8. Time of discharge and status, including name of escort~~; and~~

~~2. May include pre-operative and post-operative electrocardiograph report~~.

J. The Section 1302 Permit holder shall only use intraosseous access exclusively for emergency situations.

K. In addition to meeting the requirements in subsection (B), in order to renew a Section 1302 Permit, the permit holder shall:
1. Participate in 18 clock hours of continuing education every three years in one or more of the following areas:
a. General Anesthesia,
b. Parenteral sedation,
c. Physical evaluation,
d. Medical emergencies,
e. Monitoring and use of monitoring equipment, or
f. Pharmacology of Drugs and non-Drug substances used in General Anesthesia or Parenteral sedation; and
2. Complete at least 10 Parenteral Moderate Sedation cases per calendar year; and
3. Apply a maximum of six hours of ACLS coursework toward the continuing education requirements for subsection (K)(1).

~~F.~~L. ~~The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.~~ The Section 1302 Permit holder shall establish a functional intravenous catheter for each patient receiving intravenous sedation services.

~~G.~~M. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation for the duration of the procedure as necessary.

~~H.~~N. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation until termination of the ~~parenteral~~ Parenteral Moderate ~~sedation~~ Sedation procedure and oxygenation, ventilation and circulation are stable.

O. The Section 1302 Permit holder shall establish written guidelines for discharging a patient.

P. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

~~I.~~ ~~A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).~~

Q. A Section 1302 Permit holder who has obtained a Pediatric Endorsement according to subsection (D), and who administers Enteral Moderate Sedation to a pediatric patient who is less than eight years of age shall ensure:
1. The following additional persons are present with the patient during the procedure:
a. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and

b. One person with current certification in Basic Life Support Health Care Provider Level endorsed by the American Heart Association; and

2. A person who has a current certification in PALS or ACLS and monitors the patient after the patient's oxygenation, ventilation, and circulation are stable until the patient meets criteria for discharge using a recognized pediatric discharge scoring system.

R. Except as according to subsection (C), a Section 1302 Permit holder may also administer Enteral Moderate Sedation or lower levels of sedation without obtaining a Section 1303 Permit.

S. A Section 1302 Permit holder shall not perform a procedure, with the administration of any sedation, the Section 1302 Permit holder anticipates to be longer than five hours, in a dental office or dental clinic.

T. A Section 1302 Permit holder may employ or work with a QAP to provide anesthesia or sedation services, accepting primary responsibility for the conduct of the procedure, including review of medical records, health status classification, plan for sedation or anesthesia technique, and preparation for any emergency response, and shall ensure that the QAP continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable.

R4-11-1303. Enteral Moderate ~~Oral~~ Sedation

A. Before administering Enteral Moderate Sedation ~~Oral Sedation~~ in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every ~~five~~ three years by complying with R4-11-1307.

~~1.~~ A Section 1301 Permit holder or Section 1302 Permit holder may also administer ~~oral sedation~~ Enteral Moderate Sedation without obtaining a Section 1303 Permit.

~~2. The administration of a single Drug for minimal sedation does not require a Section 1303 Permit if:~~

~~a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;~~

~~i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and~~

~~ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and~~

~~b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.~~

B. To obtain or renew a Section 1303 Permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that~~, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307,~~ includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Enteral Moderate Sedation ~~Oral Sedation~~:
   a. Contains the following properly operating equipment and supplies during the provision of sedation:
      i. The following emergency ~~Emergency~~ Drugs;
         (1) Vasopressor;
         (2) Bronchodilator;
         (3) Opioid antagonist;
         (4) Benzodiazepine antagonist;
         (5) Antihistaminic;
         (6) Anticholinergic;
         (7) Anticonvulsant;
         (8) Coronary artery vasodilator;
      ii. Cardiac defibrillator or ~~automated external defibrillator~~ AED;
      iii. Positive pressure oxygen and supplemental oxygen;
      iv. Stethoscope;
      v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      vi. Pulse oximeter;
      vii. Blood pressure monitoring device; ~~and~~
      viii. Auxiliary lighting; and
      ix. A pretracheal or precordial stethoscope, or end tidal capnography; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current certificate in Basic Life Support Health Care Provider Level endorsed by the American Heart Association ~~cardiopulmonary resuscitation healthcare provider level~~;

ii. Is present during the Enteral Moderate Sedation ~~Oral Sedation~~ procedure to monitor appropriate physiologic parameters and to assist in any supportive or resuscitation measures; and
iii. After the procedure is completed, adequately monitors the patient on a one-on-one basis until discharge criteria is met;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. ~~Cardiopulmonary resuscitation healthcare Provider Level~~ ACLS from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross; or
   ~~b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
   ~~c.~~b. A ~~recognized continuing education~~ Recognized Continuing Dental Education course in advanced airway management.

C. Before administering Enteral Moderate Sedation in a dental office or dental clinic, to a patient who is less than eight years of age, a dentist shall possess a Section 1303 Permit with a Pediatric Endorsement issued by the Board. A dentist who has obtained a Section 1303 Permit with a Pediatric Endorsement pursuant to this section may utilize a QAP according to R4-11-1304. The dentist may renew the Pediatric Endorsement every three years by complying with subsection (D).

D. To obtain or renew a Pediatric Endorsement for a Section 1303 Permit, a Dentist shall:
1. Maintain a PALS certification; and
2. Have completed a CODA-accredited residency program that has a standard for pediatric anesthesia training within the two years immediately preceding the dentist's application for a Pediatric Endorsement, or
3. The dentist shall submit an affidavit to the Board indicating the dentist has provided Enteral Moderate Sedation for 15 patients, who are less than eight years of age, within three years immediately preceding the dentist's application. Cases for Enteral Moderate Sedation completed with a Permit Holder who maintains a Pediatric Endorsement, can count towards the 15 cases; and complete 20 Credit Hours, in addition to the 30 Credit Hours required according to subsection (E)(1), of Recognized Continuing Dental Education training over the past two years in areas of pediatric airway anatomy, physical evaluation, medical conditions, pharmacology, sedation, General Anesthesia, and medical emergencies. The 20 Credit Hours of Recognized Continuing Dental Education completed according to this section may be used to meet the Credit Hours required in these rules.

~~C.~~**E.** Initial applicants shall meet one of the following conditions ~~by submitting to the Board verification of meeting the condition directly from the issuing institution~~:
1. ~~Complete a Board recognized post doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or~~ Provide a written affidavit of successfully completing 30 hours of Recognized Continuing Dental Education within the three years before submitting the permit application, that includes the following Enteral Moderate Sedation training:
   a. Physical evaluation;
   b. Pharmacology;
   c. Management of medical emergencies;
   d. The importance of, and techniques for, maintaining proper documentation; and
   e. Monitoring and the use of monitoring equipment; or
2. An applicant who completed ~~Complete a Board recognized post doctoral residency program that includes documented~~ training in Enteral Moderate Sedation ~~Oral Sedation~~ more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered ~~enteral~~ Enteral Moderate Sedation ~~oral sedation~~ to a minimum of ~~25~~20 patients within the year or 75 patients within the last five years before submitting the permit application;
   b. A copy of the ~~Oral~~ sedation permit in effect in another state or certification of military training in Enteral Moderate Sedation ~~Oral Sedation~~ from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of ~~continuing education~~ Recognized Continuing Dental Education taken within the last five years as outlined in ~~R4-11-1306(C)(1)(a) through (f); or~~ this Article.
3. ~~Provide proof of participation in 30 clock hours of Board recognized undergraduate, graduate, or post graduate education in oral sedation within the three years before submitting the permit application that includes:~~
   ~~a. Training in basic oral sedation,~~
   ~~b. Pharmacology,~~
   ~~c. Physical evaluation,~~
   ~~d. Management of medical emergencies,~~
   ~~e. The importance of and techniques for maintaining proper documentation, and~~
   ~~f. Monitoring and the use of monitoring equipment.~~

F. To renew a Section 1303 Permit, an applicant shall provide proof of participation in 18 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in Enteral Moderate Sedation within the three years before submitting the permit application that includes:
1. Training in basic Enteral Moderate Sedation,
2. Pharmacology,
3. Physical evaluation,
4. Management of medical emergencies,
5. The importance of and techniques for maintaining proper documentation, and

6. Monitoring and the use of monitoring equipment.

~~D.~~**G.** After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection ~~(C)~~ (E) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.

1. The onsite evaluation team shall consist of:
   a. For initial applications, two dentists who are Board members, or Board designees.
   b. For renewal applications, one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
   d. Proper recordkeeping as specified in subsection ~~(E)~~(I) by reviewing the forms that document the oral sedation record; and
   e. For renewal applicants, records supporting continued competency as specified in ~~R4-11-1306~~this Article.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
   d. Category 2 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
4. The onsite evaluation of an additional dental office or dental clinic in which Enteral Moderate Sedation ~~Oral Sedation~~ is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection ~~(D)(2)(a)~~(G)(2)(a).
5. To obtain a Mobile Permit for a Section 1303 Permit ~~A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The~~ the applicant ~~must~~ shall submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of Enteral Moderate Sedation ~~Oral Sedation~~ as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where Enteral Moderate Sedation ~~Oral Sedation~~ is provided, and
   b. Compliance with R4-11-1303(B)(2)(b).

H. Notwithstanding any other section, an onsite evaluation shall be required to renew a Section 1303 Permit every six years.

~~E.~~**I.** A Section 1303 Permit holder shall keep a ~~an Oral~~ sedation record for each ~~Oral~~ sedation procedure that~~:~~

~~1.~~ ~~Includes~~ includes the following entries:
~~a.~~1. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
~~b.~~2. Pre-operative, intra-operative, and post-operative blood pressure;
~~c.~~3. Documentation of intra-operative and post-operative monitoring of ventilatory status utilizing capnography or precordial stethoscope.
4. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
~~d.~~5. List of all medications given, including dosage and time intervals;
~~e.~~6. Patient's weight;
~~f.~~7. Consent form;
~~g.~~8. ~~Special notes, such as, nothing by mouth or~~ List of the patient's last intake of food or water; ~~and~~
~~h.~~9. Evaluation of the patient's airway;

~~i.~~10. Time of discharge and status, including name of escort; and
~~2. May include the following entries:~~
~~a. Pre-operative and post-operative electrocardiograph report; and~~
~~b. Intra-operative blood pressures.~~

~~F.~~**J.** The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Enteral moderate ~~Oral~~ sedation for the duration of the procedure as necessary.

~~G.~~**K.** The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Enteral ~~moderate~~ Moderate ~~Oral sedation~~ Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

L. A Section 1303 Permit holder who has obtained a Pediatric Endorsement according to subsection (D), and who administers Enteral Moderate Sedation to a pediatric patient who is less than eight years of age shall ensure:

1. The following additional persons are present, in addition to the Section 1303 Permit holder, to assist the Section 1303 Permit holder with monitoring the patient during the procedure:

a. One person with current certification in PALS or ACLS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and
b. One person with current certification in Basic Life Support Health Care Provider Level endorsed by the American Heart Association; and

2. A person with current certification in PALS or ACLS and monitors the patient after the patient's oxygenation, ventilation, and circulation are stable until the patient meets criteria for discharge using a recognized pediatric discharge scoring system.

~~H. A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:~~
~~1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);~~
~~2. The Section 1303 Permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:~~
~~a. Advanced Cardiac Life Support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;~~
~~b. Pediatric Advanced Life Support in a practice treating pediatric patients;~~
~~c. A recognized continuing education course in advanced airway management;~~
~~3. The Section 1303 Permit holder ensures that:~~
~~a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;~~
~~b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);~~
~~c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and~~
~~d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable.~~

M. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

N. The Section 1303 Permit holder shall not use pharmacy compounded medications for sedation for a patient that is less than eight years of age.

O. If a patient expectorates the sedation medication, the Section 1303 Permit holder shall not administer any additional dose of any sedation medication.

P. All sedation medications used to achieve Enteral Moderate Sedation for a patient that is less than eight years of age, shall be administered in the immediate presence of the Section 1303 Permit holder.

Q. A Section 1303 Permit holder shall not perform a procedure, with the administration of sedation, the Section 1303 Permit holder anticipates to be longer than five hours, in a dental office or dental clinic.

R. The Section 1303 Permit holder shall establish written guidelines for discharging a patient.

S. A Section 1303 Permit holder may employ or work with a QAP to provide anesthesia or sedation services, accepting primary responsibility for the conduct of the procedure, including review of medical records, health status classification, plan for sedation or anesthesia technique, and preparation for any emergency response, and shall ensure that the QAP continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable.

R4-11-1304. ~~Permit to Employ or Work~~ Working with a QAP ~~Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)~~

~~A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.~~
~~1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).~~
~~2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.~~
~~3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.~~

~~B. To obtain or renew a Section 1304 permit, a dentist shall:~~
~~1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307 includes:~~
~~a. General information about the applicant such as:~~
~~i. Name;~~
~~ii. Home and office addresses and telephone numbers;~~
~~iii. Limitations of practice;~~
~~iv. Hospital affiliations;~~
~~v. Denial, curtailment, revocation, or suspension of hospital privileges;~~
~~vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and~~
~~vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and~~
~~b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;~~
~~2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:~~
~~a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:~~

~~i. Emergency drugs;~~
~~ii. Electrocardiograph monitor;~~
~~iii. Pulse oximeter;~~
~~iv. Cardiac defibrillator or automated external defibrillator (AED);~~
~~v. Positive pressure oxygen and supplemental continuous flow oxygen;~~
~~vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;~~
~~vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;~~
~~viii. Endotracheal tubes and appropriate connectors;~~
~~ix. Magill forceps;~~
~~x. Oropharyngeal and nasopharyngeal airways;~~
~~xi. Auxiliary lighting;~~
~~xii. Stethoscope; and~~
~~xiii. Blood pressure monitoring device; and~~

~~b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;~~

~~3. Hold a valid license to practice dentistry in this state; and~~
~~4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:~~
~~a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;~~
~~b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
~~c. A recognized continuing education course in advanced airway management.~~

~~C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.~~
~~1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.~~
~~2. The onsite team shall evaluate the following:~~
~~a. The availability of equipment and personnel as specified in subsection (B)(2);~~
~~b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and~~
~~c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.~~
~~3. The evaluation team shall recommend one of the following:~~
~~a. Pass. Successful completion of the onsite evaluation; or~~
~~b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.~~
~~4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit~~ holder provides treatment during the ~~administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).~~

~~D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries as required by a 1301 permit:~~
~~1. Pre-operative and post-operative electrocardiograph documentation;~~
~~2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;~~
~~3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and~~
~~4. A list of all medications given, with dosage and time intervals and route and site of administration;~~
~~5. Type of catheter or portal with gauge;~~
~~6. Indicate nothing by mouth or time of last intake of food or water;~~
~~7. Consent form; and~~
~~8. Time of discharge and status, including name of escort.~~

~~E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.~~

~~F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.~~

~~G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1304 permit holder shall does not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.~~

A. A dentist who is a Section 1301 Permit holder, Section 1302 Permit holder, or Section 1303 Permit holder may work with any QAP without Board notification.

B. A dentist who is not a Section 1301 Permit holder, Section 1302 Permit holder, or 1303 Permit holder may work with any QAP if a treating dentist involved in the case signs an affidavit attesting that a treating dentist shall ensure the QAP complies with the following rules:
1. Section R4-11-1301 for a QAP who is a Section 1301 Permit holder.
2. Section R4-11-1302 for a QAP who is a Section 1302 Permit holder.
3. Section R4-11-1303 for a QAP who is a Section 1303 Permit holder.
4. Section R4-11-1304(D) for a QAP who is not a licensed dentist.

C. When a dentist who is not a Section 1301 Permit holder, Section 1302 Permit holder, or Section 1303 Permit holder works with any QAP, a treating dentist involved in the case shall submit the following to the Board on forms provided by the Board within 10 days of utilizing the QAP.
1. The QAP's name;
2. The QAP's license number and the name of the licensing entity, if not the Board;
3. The address where the dentist is utilizing the QAP.
4. The signed affidavit from R4-11-1304(B).

D. When a dentist who is not a Section 1301 Permit holder, Section 1302 Permit holder, or Section 1303 Permit holder utilizes a QAP who is not a licensed dentist, a treating dentist involved in the case shall sign the affidavit according to subsection (B) and submit the notification according to subsection (C) to attest that a treating dentist shall ensure the following while the QAP is providing General Anesthesia or Deep Sedation to the patient.
1. The dental office or dental clinic contains the properly operating equipment and supplies as described in R4-11-1301(B)(2)(a).
2. A staff of supervised personnel will be present as described in R4-11-1301(B)(2)(b).
3. The QAP is registered by their licensing board to provide anesthesia in a dental office or dental clinic, in Arizona.
4. The QAP maintains current certification in ACLS or if the QAP is treating a patient who is less than eight years of age, the QAP maintains current certification in PALS.
5. If the QAP is treating a patient less than eight years of age, the QAP has completed 30 pediatric General Anesthesia or Deep Sedation cases within the last three years.
7. The QAP maintains an anesthesia record that includes the information as described in R4-11-1301(H) and a licensed dentist involved in the case maintains a copy.
8. The QAP only uses intraosseous access exclusively for emergency situations.
9. The QAP utilizes supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure as necessary.
10. The QAP continuously supervises the patient from the initiation of General Anesthesia or Deep Sedation until termination of the General Anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable.
11. The QAP establishes written guidelines for discharging a patient.
12. The QAP does not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
13. The following additional persons will be present, in addition to the QAP, to assist the treating dentist with monitoring the patient during the procedure:
    a. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergency management or general anesthesia or deep sedation within two years prior to the procedure; and
    b. One person with current certification in Basic Life Support Healthcare Provider Level endorsed by the American Heart Association.
14. When the patient is less than eight years of age and in monitored recovery, a person with current certification in PALS or ACLS shall monitor the patient's vital signs until the patient meets the criteria for discharge.
15. The QAP does not administer General Anesthesia or Deep Sedation for a procedure that is anticipated to last longer than five hours in a dental office or dental clinic.

E. A dentist shall submit a new affidavit and notification to the Board according to this section within 10 days of a change in any of the information required by this section for a dentist to work with a QAP.

R4-11-1305. ~~Reports of Adverse Occurrences~~ Mandatory Reporting

If a death~~,~~ or incident ~~requiring~~ involving the activation of emergency medical response, occurs in a dental office or dental clinic, occurs during the administration of or recovery from ~~general~~ anesthesia, ~~deep sedation, moderate sedation,~~ or ~~minimal~~ sedation, the permit holder and the treating dentist ~~involved~~ shall submit a complete Article 13 Incident Report ~~report of the incident~~ consistent with A.R.S. § 32-1272(D) to the Board within ~~10~~ seven business days after the occurrence.

R4-11-1306. ~~Education; Continued Competency~~ Enteral Minimal Sedation

~~**A.** To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.~~
~~1. The program shall include instruction in the following subject areas:~~
~~a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;~~
~~b. Physiological and psychological risks for the use of various modalities of pain control;~~
~~c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;~~
~~d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and~~
~~e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.~~
~~2. The program shall consist of didactic and clinical training. The didactic component of the program shall:~~
~~a. Be the same for all dentists, whether general practitioners or specialists; and~~
~~b. Include each subject area listed in subsection (A)(1).~~
~~3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).~~

~~**B.** To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302, a permit holder shall:~~
~~1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:~~
~~a. General anesthesia,~~

~~b. Parenteral sedation,~~
~~c. Physical evaluation,~~
~~d. Medical emergencies,~~
~~e. Monitoring and use of monitoring equipment, or~~
~~f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and~~
~~2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:~~
~~a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;~~
~~b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
~~c. A recognized continuing education course in advanced airway management;~~
~~3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and~~
~~4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).~~

~~C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:~~
~~1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:~~
~~a. Oral sedation,~~
~~b. Physical evaluation,~~
~~c. Medical emergencies,~~
~~d. Monitoring and use of monitoring equipment, or~~
~~e. Pharmacology of oral sedation drugs and non-drug substances; and~~
~~2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:~~
~~a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;~~
~~b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;~~
~~c. Pediatric advanced life support (PALS);~~
~~d. A recognized continuing education course in advanced airway management; and~~
~~3. Complete at least 10 oral sedation cases a calendar year.~~

A. A treating dentist does not need to obtain a Section 1303 Permit to administer a single Enteral Drug for the purpose of achieving Minimal Sedation.

B. The treating dentist shall not administer a single Enteral Drug in excess of the total maximum recommended dose per the package insert for that Drug for unmonitored home administration.

C. The treating dentist may administer Nitrous oxide in combination with a single Enteral Drug for the purpose of achieving Minimal Sedation.

R4-11-1307. Renewal of Permit

A. To renew a Section 1301 Permit, Section 1302 Permit, or Section 1303 ~~permit~~ Permit, and Pediatric Endorsement, the permit holder shall:
~~1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;~~
~~2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;~~
~~3.~~1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
~~4.~~2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as applicable and described in R4-11-1301, R4-11-1302, or R4-11-1303.

~~B. To renew a Section 1304 permit, the permit holder shall:~~
~~1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and~~
~~2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.~~

~~C.~~**B.** After the permit holder successfully completes the evaluation, where applicable, and submits the required affidavits, the Board shall renew a Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit, ~~1304 permit,~~ as applicable.

~~D.~~**C.** The Board may stagger due dates for renewal applications.

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency.

Economic Impact Statements are not published but are filed by the agency with their final notice.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to item #5 to contact the person charged with the rulemaking.

The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION STATE PERSONNEL SYSTEM

[R24-169]

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on:

May 24, 2024

2.

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R2-5A-101	Amend
R2-5A-104	Amend
R2-5A-105	Amend
R2-5A-305	Amend
R2-5A-402	Amend
R2-5A-403	Amend
R2-5A-405	Amend
R2-5A-502	Amend
R2-5A-504	Amend
R2-5A-B603	Amend
R2-5A-B606	Amend
R2-5A-B611	Amend
R2-5A-D601	Amend
R2-5A-D602	Amend
R2-5A-D603	Amend
R2-5A-701	Amend
R2-5A-702	Amend
R2-5A-803	Amend
R2-5B-403	Amend

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

Authorizing statute: A.R.S. §§ 41-703(3), 41-743(B)(3) and 41-771
Implementing statute: A.R.S. §§ 38-611, 41-742, 41-745, 41-746, 41-747, 41-748, 41-754, 41-772 and 41-773

4. The effective date of the rule:

October 12, 2024

5. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the final rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 327, February 16, 2024
Notice of Proposed Rulemaking: 30 A.A.R. 295, February 16, 2024

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

Name: Christine Bronson, HR Consultant
Address: Arizona Department of Administration
Human Resources Division
100 N. 15th Ave., Suite 301
Phoenix, AZ 85007
Telephone: (602) 619-6360

Email: Christine.Bronson@azdoa.gov
or
Name: Kerry Schleappe, HR Deputy Director
Address: Arizona Department of Administration
Human Resources Division
100 N. 15th Ave., Suite 301
Phoenix, AZ 85007
Telephone: (602) 540-8309
Email: Kerry.Schleappe@azdoa.gov

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

The Department is amending the rules in 2 A.A.C. Chapter 5, Department of Administration - State Personnel System (SPS), to address issues identified during the preceding Five-year Review Report, as approved by the Governor's Regulatory Review Council on July 12, 2018. The Department is also amending several other rules to align with statutory requirements, implement the directives outlined in Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter. The amended rules will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

Section by Section Explanation of the Rulemaking:

R2-5A-101. Definitions. The rule is being amended to address issues identified during the preceding Five-year Review Report by amending the definitions of "child" and, by adding definitions of "disciplinary action" and "protected category." The Department further proposes to add a definition of "disabled veteran" which is used in R2-5A-302, in order to provide additional clarity.

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation. The rule is being amended to address issues identified during the preceding Five-year Review Report and to improve the rule by removing repetitive language and adding the term "protected category" to the definitions listed in R2-5A-101, as described above. The Department further proposes to add clarifying language regarding "sex" to clarify that sex includes sexual orientation and gender identity.

R2-5A-105. Records. The rule is being amended to clarify references to "disciplinary action"; this is also consistent with the Department's proposal to add the definition of "disciplinary action" in R2-5A-101, Definitions, as described above.

R2-5A-305. Employment of Relatives. The rule is being amended to address issues identified during the preceding Five-year Review Report by allowing for an exception for relationship to an interviewer or panel member.

R2-5A-402. Salary Administration. The rule is being amended to address issues identified during the preceding Five-year Review Report by removing the current or former salary from the factors that must be considered when setting an employee's salary. The Department also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-403. Supplemental Pay. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding covered positions that require full authority peace officer certification to the exception and will also resolve the conflict between the rule and the current version of the compensation guidelines. The Department also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-405. Tuition Reimbursement for Education. The rule is being amended to expand the rule to "Education Assistance" and add a new subsection for student loan repayment assistance. Student loan repayment assistance may be utilized as a recruitment and retention tool when the employee's current position requires a degree or a degree is a selective preference for the position, because tuition reimbursement would not be applicable. The proposed amendment requires an agency to develop a written policy prior to granting this assistance and also requires that the policy be submitted to ADOA for review and approval.

R2-5A-502. Hours of Work. The rule is being amended to expand this rule to "Hours and Location of Work." The increase in remote work since the COVID pandemic has made it necessary to address the location of work in rule. The proposed amendments stipulate that every employee shall have a designated State of Arizona worksite, which shall be the geographic location of the position for the purposes of determining agency employees impacted by a furlough or a reduction in force. The proposed amendments provide that an agency head may allow an employee to work from an alternate location (remote work), subject to the stated conditions.

R2-5A-504. Alcohol and Drug-free Workplace. The rule is being amended by adding a requirement for each agency to adopt a written policy for testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The proposed amendment also requires the agency to submit its policy to ADOA for approval, similar to the wording in existing rules requiring other agency policies to be submitted to ADOA.

R2-5A-B603. Sick Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding the ability of an employee to use sick leave for the purposes of victim leave pursuant to R2-5A-D604.

R2-5A-B606. Civic Duty Leave. This rule is being amended pursuant to Executive Order 2023-24, Ensuring Adequate Staffing of Voting Locations, which directs the Department to conduct rulemaking to provide for civic duty leave for the purpose of serving at a voting location during a statewide election in this State.

R2-5A-B611. Meritorious Service Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding covered positions that require full authority peace officer certification to the exceptions. The Department

also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave. The rule is being amended to eliminate the combined total of FMLA leave if both spouses work for the State, thus allowing each spouse to take the full amount of FMLA leave (up to 12 or 26 workweeks, as applicable). This amendment also serves to further advance Governor Hobbs' initiative to expand family sick leave benefits to state employees (email from Governor Hobbs dated January 3, 2023).

R2-5A-D602. Industrial Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by revising the language in subsection B to "gross salary" in order to be consistent with the terminology in subsection A, paragraph 3.

R2-5A-D603. Military Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding language to allow an employee who has not received their military orders at the time the leave is requested to submit a copy of their orders at a later date. The Department also proposes to amend the rule to comply with a new or existing state statutory requirement. Laws 2021, Ch. 193 (HB2297) amended A.R.S. § 38-610(C)(3) by modifying the calculation of military leave of absence for public employees from days to hours.

R2-5A-701. General. This rule is being amended to address issues identified during the preceding Five-year Review Report by codifying into rule the temporary procedures initially implemented in 2015, to extend the performance appraisal exemption to all uncovered employees in political appointment positions (i.e., positions listed in A.R.S. § 41-742(F)).

R2-5A-702. Performance Management Process. This rule is being amended to conform with the temporary procedures identified in the preceding Five-year Review Report, and ensure the rule is effective for the performance management procedures being used currently.

R2-5A-803. Employee Request for Review of Disciplinary Action. The rule is being amended to address issues identified during the preceding Five-year Review Report by replacing "a state merit board or council" with "the State Personnel Board or the Law Enforcement Merit System Council" to improve clarity and eliminate any potential confusion.

R2-5B-403. Grievance Procedures. This rule is applicable only to covered employees. The rule is being amended to address issues raised by the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR), which has employees statutorily required to be covered, and the most covered employees of any agency. The current rule requires that the grievant have an oral discussion with the immediate supervisor; however, the immediate supervisor is frequently not in a position of authority to make disciplinary decisions. The Department is proposing to revise the rule to require that the oral discussion be held instead with the individual designated as the first step in the agency's grievance procedure.

8. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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

9. 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

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

The Department promulgates rules that provide for the direction and control of the State Personnel System (SPS). The SPS is the largest personnel system in state government, encompassing over 100 state agencies, boards, commissions and offices, and approximately 34,000 employees. SPS rules affect SPS agencies, employees, and applicants for positions within the SPS. As such, the SPS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on small businesses or other consumers. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the Department to prepare the rule package. Any financial impact or administrative expenses associated with the rules will be covered by ordinary operating funds.

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

Between the proposed rulemaking and the final rulemaking, the Department made one change to the rules. In R2-5A-101, the Department supplemented the definition of "Disabled veteran" by adding the phrase, "for the purposes of R2-5A-302, pertaining to preferences" to provide additional clarity. The Department does not consider the change to be substantially different from the proposed rule within the meaning of A.R.S. § 41-1025(B).

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

During the public comment period for the Notice of Proposed Rulemaking, the Department did not receive any written public comments. An oral proceeding was held on March 21, 2024, via Google Meet, and although several individuals attended the proceeding, there were no oral comments made during the proceeding. The record closed at 5:00 p.m. on March 21, 2024.

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

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

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

Not applicable

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

14. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
29 CFR 825.100 through 29 CFR 825.800, Family and Medical Leave Act (FMLA), are incorporated by reference in Section R2-5A-D601.

20 CFR 1002.1 through 20 CFR 1002.314, Uniformed Services Employment and Reemployment Rights Act (USERRA), are incorporated by reference in Section R2-5A-D603.

15. 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

16. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION STATE PERSONNEL SYSTEM

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

ARTICLE 1. GENERAL

Section
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R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation
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ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

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ARTICLE 6. LEAVE

PART B. PAID LEAVE

Section
R2-5A-B603. Sick Leave
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PART D. LEAVE THAT COULD BE EITHER PAID OR UNPAID

Section
R2-5A-D601. Family and Medical Leave Act (FMLA) Leave
R2-5A-D602. Industrial Leave
R2-5A-D603. Military Leave

ARTICLE 7. PERFORMANCE MANAGEMENT

Section
R2-5A-701. General
R2-5A-702. Performance Management Process

ARTICLE 8. DISCIPLINARY ACTIONS

Section
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SUBCHAPTER B. COVERED EMPLOYEES

ARTICLE 4. GRIEVANCES

Section
R2-5B-403. Grievance Procedures

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

ARTICLE 1. GENERAL

R2-5A-101. Definitions

In this subchapter, the following words and phrases have the defined meanings unless otherwise clearly indicated by the context:

"Agency head" means the chief executive officer of a state agency, or designee.

"Appeal" means a covered employee's request for a review of a disciplinary action by the State Personnel Board under A.R.S. § 41-782 or the Law Enforcement Merit System Council under A.R.S. § 41-1830.16, as applicable.

"Applicant" means a person who seeks appointment to a position in state employment.

"Appointing authority" means the person or group of persons authorized by law or delegated authority to make appointments to fill positions. A.R.S. § 41-741(1)

"Appointment" means the offer to and the acceptance by a candidate of a position in a state agency.

"At will" means an employment relationship where either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason. A.R.S. § 41-741(2)

"Base salary" means an employee's salary excluding supplemental pay provided by R2-5A-403, overtime pay or other pay allowance provided by law.

"Break in service" means a separation from state employment, regardless of the reason for separation. A.R.S. § 41-741(3)

"Business day" means the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding observed state holidays.

"Candidate" means a person whose education, experience, competencies and other qualifications meet the requirements of a position and who may be considered for employment.

"Cause" means any of the reasons for disciplinary action provided by A.R.S. § 41-773 or these rules.

"Change in assignment" means movement of an employee to a different position in the same state agency or another state agency. A.R.S. § 41-741(4)

"Child" means~~, for purposes of R2-5A-B603, pertaining to sick leave, and R2-5A-B605 pertaining to bereavement leave,~~ a natural child, adopted child, foster child, or stepchild.

"Class" means a group of positions with the same title and grade because each position in the group has similar duties, scope of discretion and responsibility, required qualifications, or other job-related characteristics.

"Class series" means a group of related classes as listed by the Arizona Department of Administration, Human Resources Division.

"Class specification" means a description of the type and level of duties and responsibilities of the positions assigned to a class.

"Competencies" means knowledge, skills, abilities, behaviors and other characteristics that contribute to successful job performance and the achievement of organizational results.

"Covered employee" means an employee who:

(a) Before September 29, 2012, is in the state service, is not uncovered pursuant to section 41-742, subsection A, and has remained in covered status without a break in service since that date.

(b) Before September 29, 2012, is in the state service, is employed as a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and has remained in covered status without a break in service since that date.

(c) Before September 29, 2012, is in the state service, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and has remained in that status without a break in service since that date.

(d) On or after September 29, 2012, is a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and is appointed to a position in the covered service, but does not include a position in any other class in the correctional officer class series or the community correctional officer class series or in any other correctional class series.

(e) On or after September 29, 2012, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service. A.R.S. § 41-741(5)

"Covered position" means a position in the covered service.

"Covered service" is defined in A.R.S. § 41-741 and means that employment status conferring rights of appeal as prescribed in A.R.S. §§ 41-782 and 41-783 or A.R.S. § 41-1830.16, as applicable.

"Days" means calendar days, unless otherwise stated.

"Demotion" means a change in the assignment of an employee from a position in one class to a position in another class that has a lower grade.

"Department" means the Arizona Department of Administration.

"Director" means the Director of the Arizona Department of Administration, or the Director's designee, who is responsible for administering the state personnel system pursuant to applicable state and federal laws. A.R.S. § 41-741(7)

"Disabled veteran" means, for the purposes of R2-5A-302, pertaining to preferences, an honorably separated veteran who served on active duty in the armed forces of the United States at any time and who has a service-connected disability.

"Disciplinary action" means a letter of reprimand, suspension, involuntary demotion, or dismissal.

"Employee" means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed. A.R.S § 41-741(8)

"Employing agency" means the agency where the employee is employed or, if an applicant, the agency to which the person has applied.

"Essential job function" means a fundamental job duty of a position that an applicant or employee must be able to perform, with or without a reasonable accommodation.

"FLSA" means the federal Fair Labor Standards Act.

"FLSA exempt" means a position that is not entitled to overtime compensation under the FLSA.

"FLSA non-exempt" means a position that is entitled to overtime compensation under the FLSA.

"FMLA" means the federal Family and Medical Leave Act.

"Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board. A.R.S. § 41-741(9)

"Grade" means the numeric identifier associated with one or more pay ranges, used to determine the internal worth of a class relative to other classes.

"Manifest error" means an act or failure to act that is, or clearly has caused, a mistake.

"Parent" means, for purposes of R2-5A-B602, pertaining to annual leave, R2-5A-B603, pertaining to sick leave, and R2-5A-B605, pertaining to bereavement leave, a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered "in loco parentis."

"Part-time" means employment scheduled for less than 40 hours per week.

"3/4 time" means employment regularly scheduled for at least 30 hours but fewer than 40 hours per week.

"1/2 time" means employment regularly scheduled for at least 20 hours but fewer than 30 hours per week.

"1/4 time" means employment regularly scheduled for at least 10 hours but fewer than 20 hours per week.

"Pay status" means an employee is receiving pay for work or for a compensated absence.

"Premium/contribution" means the amount paid in exchange for insurance coverage. Depending on the type of coverage, the premium/contribution is paid by the employee, the state, or a combination of both.

"Promotion" means a change in assignment of an employee from a position in one class to a position in another class that has a higher grade.

"Protected category" means race, color, national origin, religion, age, disability, genetic information, sex (including sexual orientation and gender identity), pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation.

"Reallocation" means changing the allocation of a position to a different class if a material and permanent change in duties or responsibilities occurs.

"Reversion" means the return of a covered employee on promotional probation to a position in the class in which the employee held permanent status immediately before the promotion or to a similar position in another class at the same grade as the class the employee held permanent status if the employee possesses the qualifications for that position.

"Rules" means the rules adopted by the Department of Administration, Human Resources Division. A.R.S. § 41-741(13)

"Special assignment" means the temporary assignment, for up to six months, of the duties and responsibilities of another position to an employee in the same agency.

"State agency" means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona Board of Regents, state universities, the Arizona State Schools for the Deaf and the Blind, the Department of Public

Safety, the Arizona Peace Officer Standards and Training Board, the Cotton Research and Protection Council or public corporations. A.R.S. § 41-741(14)

"State Personnel Board" is defined in A.R.S. § 41-741 and means the board established by A.R.S. Title 41, Chapter 4, Article 6.

"State Personnel System" is defined in A.R.S. § 41-741 and means all state agencies and employees of those agencies that are not exempted by the provisions of A.R.S. Title 41, Chapter 4, Article 4.

"State service" is defined in A.R.S. § 41-741 and means all offices and positions of employment in state government that, before September 29, 2012, were subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012.

"Supervisor" means a state employee who has one or more other state employees reporting directly to the person and, for those state employees, typically has the authority to:

(a) Approve sick or annual leave.

(b) Recommend hiring, discipline or dismissal.

(c) Assign or schedule daily work.

(d) Complete a performance evaluation. A.R.S. § 41-741(18)

"Temporary appointment" means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year.

"Transfer" means the movement of an employee from one position to another position in the same or an equivalent grade.

"Uncovered employee" means an employee in uncovered service. A.R.S. § 41-741(19)

"Uncovered service" means employment at will and includes all state employees except those in covered service. A.R.S. § 41-741(20)

"Working day" or "working hours" means a day or the hours an employee is regularly scheduled to work.

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation

A. General. Agencies shall comply with all federal and state anti-discrimination laws. Agencies shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. The information provided in this rule is intended to serve as a summary of agencies' and employees' obligations with regard to compliance with applicable federal and state laws, rules and regulations. Nothing in these rules shall be construed as providing rights in excess of, or in addition to those authorized under federal laws and Arizona Revised Statutes.

B. Equal Employment Opportunity. Each agency shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex (including sexual orientation and gender identity), pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of this state that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.

C. Harassment Prohibited. Harassment of a sexual nature or harassment based on ~~race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation~~ any protected category is prohibited. An agency shall prohibit the unlawful harassment of any employee in the course of the employee's work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in unlawful harassment may be subject to disciplinary action, up to and including termination of employment.

D. Protection from Retaliation. The state prohibits retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint concerning unlawful discrimination or unlawful harassment.

E. Complaints.

1. An applicant for state employment who has a complaint alleging discrimination or harassment may file a complaint under the procedures in R2-5A-308.
2. It is every employee's responsibility to promptly bring any allegation of discrimination, harassment or retaliation to the attention of the employing agency. Such complaints shall be filed under the procedures established under Article 9.

R2-5A-105. Records

A. Definitions. For the purposes of this Section, "record" generally refers to a paper document; however, a document may be maintained electronically.

B. Application Materials.

1. An agency head shall maintain and keep confidential all resumés, applications, tests, test results, records, correspondence, and other documents used to seek state employment. The agency head shall not release any materials that the agency head determines would compromise the application process for future applicants and shall restrict the review of the applicant's application materials to:
   a. The applicant,
   b. An individual who has written authorization from the applicant,
   c. State officials in the normal line of duty, or,
   d. Officials acting in response to court orders or subpoenas.
2. The Director, or designee, shall ensure that when a person makes a public records request under A.R.S. Title 39, Chapter 1, Article 2 for applicant information:
   a. Information shall only be provided if the position under recruitment is a high-level position and the public has a legitimate interest in the names of persons being seriously considered for the position, as determined by the Director; and
   b. Only the names and resumés of the final candidates for the position as determined by the Director shall be released.

C. Official Personnel File.
1. An employee's official personnel file is the official record and documentation of the employee's employment.
2. An agency head shall, for each agency employee, maintain an official personnel file that contains:
   a. A copy of the job application for the employee's current position;
   b. A copy of all performance appraisals completed as required by Article 7;
   c. Personnel action forms that authorize changes in employment status, position, classification, pay, or leave status;
   d. Letters of commendation as established by agency policy; and
   e. Correspondence consisting of:
      i. ~~Letters of reprimand, suspension, demotion or dismissal~~ Disciplinary actions;
      ii. Acknowledgments of receipt of ~~letters of reprimand or other~~ disciplinary ~~communications~~ actions; and
      iii. Employee objections or responses to correspondence described in subsection (C)(2)(e)(i) that are not filed as complaints under Article 9 or grievances under Subchapter B, Article 4, if the objection or response is received within 30 calendar days of the date of the disciplinary action ~~or letter of reprimand~~.
3. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. An agency head shall limit access to an employee's official personnel file to:
   a. The employee;
   b. The employee's attorney or an individual who has written authorization from the employee to review the personnel file;
   c. Agency personnel designated by the agency head as having a need for the information;
   d. A Department official in the normal line of duty;
   e. An official acting in response to a court order or subpoena;
   f. An official of an agency to which the employee has applied; and
   g. An official of an agency of the federal government, state government, or political subdivision, if the agency head of the employing agency deems access to the file to be appropriate.
4. When an employee moves from one state agency to another, the gaining agency shall request that the losing agency forward the employee's official personnel file to the gaining agency. The losing agency shall forward the file within 20 business days of the receipt of the request.
5. When a former employee returns to state employment within five years of the former employee's separation to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The last agency shall forward the file within 20 business days of the receipt of the request.

D. Disclosure of information.
1. Definitions. For the purposes of this subsection:
   ~~a. "Disciplinary actions" means letters of reprimand, suspension, demotion or dismissal.~~
   ~~b.~~a. "Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions" ~~means the correspondence listed in subsection (D)(1)(a) and~~ includes disciplinary actions, an official notice of charges of misconduct as applicable to covered employees, the final disciplinary letter, and any responses related to complaints, grievances or appeals upholding, amending, or overturning the discipline.
   ~~c.~~b. "Employee responses" means any written documents, submitted and signed by the employee, either:
      i. In response to an official notice of charges of misconduct;
      ii. As a formal complaint filed under the provisions of Article 9 or a formal grievance under Subchapter B, Article 4, of these rules pertaining to a specific disciplinary action; or
      iii. As an objection to a specific disciplinary action and contained in the employee's official personnel file under subsection (C)(2)(e)(iii).
2. Personnel records are confidential and an agency head shall ensure that except as provided in subsection (C)(3), only the following information about a current or former employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.
   a. Name of employee;
   b. Date of employment;
   c. Current and previous class titles and dates of appointment to the class;
   d. Current and previous agencies to which the employee has been assigned and the location of the main office for each agency;
   e. Current and previous salaries and dates of each change;
   f. Name of employee's current or last known supervisor; and
   g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.

E. Insurance and medical records. An agency head:
1. May maintain group insurance enrollment forms in an employee's official personnel file for an employee hired prior to September 29, 2012.
2. Shall maintain in a separate file that is not part of the employee's official personnel file:
   a. Medical records, and
   b. Group insurance enrollment forms for an employee hired on or after September 29, 2012.

F. Employment eligibility records. An agency head shall retain I-9 forms and other documents required by law to prove employment eligibility in a separate file that is not part of the employee's official personnel file.

G. Employee access to files. An employee has the right to review only the employee's official personnel file.

H. Recordkeeping Requirements. An agency head shall ensure that agency recruitment and employee records are maintained in accordance with the General Records Retention Schedule for Human Resources/Personnel Records published by and on file with the Secretary of State, Arizona State Library, Archives and Public Records.

ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

R2-5A-305. Employment of Relatives

A. Relationship to supervisors. An individual shall not be employed in a position if the immediate supervisor of the individual is related within the third degree of affinity (marriage) or consanguinity (blood), or by adoption.

B. Relationship to other employees. An individual shall not be employed in a position if the individual is related within the third degree to an employee who currently occupies a position under the same immediate supervisor.

C. Exceptions. The Director may grant an exception to the prohibitions in subsections (A) and (B) if there is no other qualified person for the position at the location.

D. Relationship to subordinate employees. A supervisor or manager at any level shall not make an employment decision specifically benefitting any individual who is related within the third degree, unless an exception under subsection (C) has been granted.

E. Relationship to interviewer or interview panel members. An employee shall not interview or serve on an interview panel of any job candidate if the candidate is related within the third degree. An agency head may authorize an exception in an individual case. Any exception shall be documented by the agency head and subject to audit by the Director.

F. Definition. For the purpose of this Section, persons related within the third degree include a spouse, child, parent, grandchild, grandparent, sister, brother, great grandchild, great grandparent, aunt, uncle, niece, nephew or first cousin.

ARTICLE 4. COMPENSATION SYSTEM

R2-5A-402. Salary Administration

A. General. The Director shall develop procedures for salary administration for use by all agencies when setting the salary of an employee. In setting an employee's salary, an agency head shall consider such factors as the employee's education, experience, skills, performance, and ~~current or former salary, as well as~~ the current salaries of employees in the same class in the agency and the relative experience and performance of those employees.

B. Classes. The Director shall assign each class to a salary range and to a grade.

C. Salary. The base salary of an employee shall be not less than the minimum nor more than the maximum of the salary range of the class to which the employee's position is allocated, except as provided by these rules.

D. Salary adjustment. The salary used to compute a salary adjustment is the employee's base salary. Following an adjustment to the base salary, an agency shall add to the new rate of pay any special pay supplement still valid.

E. New hire starting rate. An agency head may offer a salary to a new hire within the salary range of the class to which the employee is being appointed in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.

F. Promotion. An employee who has a change in assignment from a position in one class to a position in another class having a higher grade shall receive a salary increase as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.

G. Demotion.

1. An employee who has a change in assignment from a position in one class to a position in another class having a lower grade, whether voluntary or involuntary, shall receive a salary decrease as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
2. A demoted employee shall not be eligible for an increase to base salary for six months after the effective date of the demotion to the new position, other than a salary increase that is legislatively mandated. After six months, the employee may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.

H. Lateral transfer. An employee who has a change in assignment from a position in one class to a position in the same class or in another class having the same grade shall receive no increase in salary, unless an exception is approved by the Director. The Director may approve a salary increase based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's qualifications. Transferred employees are not eligible for increases to base salary during their first six months in the new job unless approved by the Director. An employee who transfers to another agency may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.

I. Reversion of covered employee. A covered employee who is reverted under the rules in Subchapter B shall be paid the same salary as that paid prior to the promotion, plus the percentage or dollar amount of increase of an intervening general salary adjustment for which the employee was eligible.

J. Job reallocation.

1. The base salary of an employee in a position that is reallocated to a class in a higher pay range may receive a salary increase in accordance with the procedures and guidelines published by the Director. If increasing the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a position that is reallocated to a class with the same or lower pay range shall remain the same provided that the employee's salary is within the pay range of the position. If the employee's salary is less than the minimum of the salary range or greater than the maximum salary of the new pay range, the employee's salary shall be the minimum salary or the maximum salary of the new pay range, respectively.

K. Job regrade.

1. The base salary of an employee in a class that is reassigned to a higher grade shall be adjusted by the amount determined by the Director. If adjusting the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a class that is reassigned to a lower grade shall remain the same provided that the employee's salary is at or above the minimum salary of the new pay range of the class, and may be greater than the maximum salary of the pay range. If the employee's salary is greater than the maximum, the employee is not eligible for an increase to base pay until the employee's salary is less than the maximum salary of the new pay range.

L. Merit increases.
1. The Director shall establish guidelines for merit increases to base pay.
2. Merit increases shall be available:
   a. To uncovered employees.
   b. To covered employees only if such increases are legislatively appropriated.
3. Subject to the guidelines established by the Director:
   a. Merit increases may be implemented at the discretion of the agency head.
   b. Merit increases are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.

~~4. An agency head shall report to the Director on the utilization of merit increases pursuant to the reporting requirements in the guidelines established by the Director.~~

M. Legislatively-appropriated salary adjustments. Subject to legislative appropriation, the Director shall determine employee eligibility and criteria for salary adjustments.

R2-5A-403. Supplemental Pay

A. General. Supplemental pay is in addition to an employee's base pay. The salary of an employee may exceed the maximum salary of the pay range for the employee's class if the excess amount is due to the receipt of supplemental pay.

B. Shift differential. The Director may authorize a shift differential to be paid to an employee on other than a day shift. The Director shall establish a competitive shift differential rate periodically based on an annual survey of the market place. Employees in the same class in the same agency who work on the same shift shall receive the same shift differential pay.

C. Special assignment. An employee on a special assignment shall remain in the employee's current position with no change to base salary. If the classification to which the employee is on a special assignment is a higher grade, the employee shall be provided a conditional pay supplement in an amount that, when added to the employee's base salary, would be within the range of the higher classification. If the classification to which the employee is on a special assignment is the same or a lower grade, the employee shall not be eligible for a conditional pay supplement while on special assignment. Any conditional pay supplement received by the employee for the special assignment shall be discontinued at the conclusion of the special assignment.

D. Conditional pay supplements. The Director may establish conditional pay supplements. A conditional pay supplement provides additional compensation to an eligible employee and shall be discontinued when the qualifying conditions no longer apply. An employee may be awarded multiple conditional pay supplements. A conditional pay supplement does not:
1. Change base salary;
2. Provide a basis for the computation of a salary increase; or
3. Provide a basis for the computation of pay upon an employee's promotion, demotion or transfer.

E. Variable pay.
1. The Director may establish variable pay strategies determined to be the prevailing practices in the market and in the best interest of the state.
2. If the Director establishes variable pay strategies, the Director shall establish guidelines for the administration of variable pay.
3. Variable pay shall be available only to uncovered employees, except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, or covered positions that require full authority peace officer certification, as specified in the guidelines established by the Director.
4. Subject to the guidelines established by the Director:
   a. Variable pay strategies may be implemented at the discretion of the agency head.
   b. Variable pay strategies are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.

~~5. An agency head shall report to the Director on the utilization of variable pay strategies pursuant to the reporting requirements in the guidelines established by the Director.~~

R2-5A-405. ~~Tuition Reimbursement for~~ Education Assistance

A. General. A state agency may assist an employee in the pursuit of educational goals by providing tuition reimbursement and student loan repayment assistance.

B. ~~Procedures~~Tuition reimbursement. Prior to granting tuition reimbursement, an agency shall establish a policy which shall include the following conditions:
1. The educational program will provide a benefit to the state.
2. The employee shall successfully complete the required course work or the educational requirements of the program in order to receive reimbursement.
3. Education assistance may not exceed $5,250 per employee in any one calendar year unless approved in advance by the Director.
4. An employee who receives education assistance may be required to return all or a portion of the amount received if the employee does not remain employed with the agency for a defined period of time, as specified in the agency's policy.

C. Student loan repayment assistance. An agency that provides tuition reimbursement may also provide student loan assistance to an eligible employee in the repayment of student loans obtained by the employee and used for the actual costs paid for educational

expenses and living expenses that occurred during the employee's undergraduate, graduate or professional education if the education is required or a selective preference for the employee's current position. Before granting student loan repayment assistance, an agency head shall develop a written policy that provides for equal consideration of all employees similarly situated. The policy will describe the need being addressed, and the benefit expected to be gained. The agency head shall submit the proposed policy and any subsequent changes to the Director for approval, and include at a minimum:

1. Eligibility requirements;
2. Request and approval procedures;
3. Documentation required to support the request for repayment assistance;
4. The monthly limit on student loan repayment assistance and a specified lifetime cap;
5. A requirement that the employee receiving student loan repayment assistance must provide to the agency monthly proof of payment of the monthly repayment amount for each active student loan approved for assistance;
6. Information regarding how an employee's leave of absence or separation affects student loan repayment assistance.

ARTICLE 5. CONDITIONS OF EMPLOYMENT

R2-5A-502. Hours and Location of Work

A. State work week. The state work week is the period of seven consecutive days starting Saturday at 12:00 a.m. and ending Friday at 11:59 p.m. An agency head may apply to the Director for an exception from the work week period for all or part of an agency workforce. The Director may grant an exception from the work week period to promote efficiency in the State Personnel System.

B. Hours of ~~employment~~ work.

1. An agency head shall determine the hours of employment in the work week for each agency employee.
~~2.~~a. An agency head may provide for breaks during the work period consistent with carrying out the duties of the agency.
~~3.~~b. An agency head may require an employee to work overtime.

~~**C.** Flexible work options.~~ 2. An agency head may offer a flexible 40-hour work week option to an employee if the agency head determines the agency's services can be maintained.

~~**D.** Attendance standards~~. 3. An agency head may establish a standard of attendance.

C. Location of work. Every employee shall have a designated work location in the State of Arizona.

1. An agency head shall determine the work location for each agency employee.
2. An agency head may allow an employee to work from an alternate location, subject to the employee's position requirements, the business needs of the agency, and in accordance with the procedures established by the Director. An employee who is authorized to work from an alternate location may be required to report to the employee's designated State of Arizona work location when directed.
3. The employee's designated State of Arizona work location shall be the geographic location of the position for the purposes of R2-5A-C601, pertaining to furlough, and R2-5B-602, pertaining to reduction in force.

R2-5A-504. Alcohol and Drug-free Workplace

A. General. State agencies shall prohibit the manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other unauthorized controlled substances during an employee's working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by alcohol or drugs while on duty.

B. Written policy. Each agency head shall adopt a written policy to address testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The policy shall include all of the requirements listed in A.R.S. § 23-493.04. The agency head will submit its proposed alcohol and drug-free workplace policy and any subsequent changes to the Director for approval.

ARTICLE 6. LEAVE
PART B. PAID LEAVE

R2-5A-B603. Sick Leave

A. Definition. "Sick leave" is any approved period of paid absence granted an employee due to:

1. Illness or injury that renders the employee unable to perform the duties of the employee's position.
2. Disability of the employee that is caused by pregnancy, childbirth, miscarriage, or abortion.
3. Examination or treatment of the employee by a licensed health care practitioner.
4. Illness, injury, disability caused by pregnancy or childbirth, or examination or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave granted for this purpose shall be charged to the employee's sick leave account and shall not exceed 40 hours per calendar year. For the purposes of this Section:
    a. The term "dependent child" means a natural child, an adopted child, a foster child, or a stepchild, more than one-half of whose support is received from the employee.
    b. The term "parent" means a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or an individual who stood "in loco parentis."
5. Attendance at court-related proceedings by the employee under A.R.S. § 8-420 or A.R.S. § 13-4439.

B. Accrual.

1. All state employees, except temporary and part-time employees, shall accrue sick leave at the rate of 3.70 hours bi-weekly.
2. Temporary employees shall not accrue sick leave.
3. Part-time employees who:
    a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of sick leave;
    b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time will accrue sick leave at the next lower rate;
    c. Work less than 1/4 time shall not accrue sick leave.

4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues sick leave each bi-weekly pay period if the employee has been in a pay status for at least one-half of the employee's scheduled work hours in that pay period or month.
5. A sick leave accrual is credited on the last day of the bi-weekly pay period or month in which the accrual is earned and is available for use on the first day of the following pay period or month. An employee who is separating from state employment accrues leave through the employee's last date of employment for the purpose of determining the employee's accumulated sick leave at the time of the employee's separation pursuant to subsection (F).

C. Accumulation. Sick leave accumulates without limit.

D. Use of sick leave.
1. Sick leave may be taken when approved by the agency head.
2. The agency head may require submission of evidence substantiating the need for sick leave. If the agency head determines the evidence is inadequate, the absence shall be charged to another category of leave or considered absence without leave.
3. An agency head may require an employee to be examined by a licensed health care practitioner designated by the agency head.
   a. If the licensed health care practitioner determines that the employee should not work due to illness or injury, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, charge the absence to another category of leave or leave without pay.
   b. The agency head may require the employee to obtain approval from the licensed health care practitioner before returning to work.
   c. The agency shall pay for all examinations required pursuant to this subsection. The employee shall not be charged any leave while participating in or traveling to or from any examination required pursuant to this subsection.

E. Movement to another state agency. An employee who moves to another state agency shall transfer all accumulated and unused sick leave to the employee's sick leave account in the new state agency.

F. Separation. All sick leave credits are forfeited upon separation from state employment except as provided in A.R.S. § 38-615 or otherwise provided by law. However, an employee who returns to state employment within two years after separation shall be credited with all unused sick leave accumulated at the time of separation if the employee was not paid for accumulated sick leave pursuant to A.R.S. § 38-615.

R2-5A-B606. Civic Duty Leave

A. General. Upon substantiated application, an employee shall receive absence with pay as civic duty leave while serving as a juror, complying with a subpoena, voting, serving as a voting location worker, or serving as a member of a governmental board, commission, or similarly constituted governmental body, subject to the conditions set forth in this rule and the limitations in R2-5A-A601(B).

B. Use of civic duty leave. Except for voting pursuant to A.R.S. § 16-401 (primary elections) or A.R.S. § 16-402 (general elections), an employee granted civic duty leave shall report for duty with the employing agency whenever the employee's presence is not required for the civic duty, unless:
1. The distance to the work location would preclude timely reporting for the civic duty, or
2. The employee cannot return to work at least one hour before the end of the work shift.

C. Appearance as a witness. An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's commercial, business, or personal matters.

D. Jury and witness fees. Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any fees to the employing agency, except for mileage allowance.

E. Membership on a public service body. An employee serving as a member of a governmental board, commission, or similarly constituted governmental body may be absent with pay while performing official duties with the body.

F. Serving as a voting location worker. Subject to the guidelines established by the Director and following written approval from the employee's supervisor, an employee may be absent with pay during a statewide election in this State for the purpose of serving at a voting location and completing the required associated training. An employee who is granted civic duty leave for serving as a voting location worker shall remit to the employing agency any fees paid by the county administering the election for work performed while the employee is on civic duty leave.

R2-5A-B611. Meritorious Service Leave

A. The Director shall establish guidelines for meritorious service leave.

B. Except for employees in covered positions classified as Correctional Officers I, II, or III, ~~or~~ Community Corrections Officers, or positions that require full authority peace officer certification, meritorious service leave is only available to uncovered employees.

C. The guidelines established by the Director shall include at a minimum:
1. The maximum number of hours of meritorious service leave that may be awarded to an employee per calendar year;
2. The maximum percentage of agency employees eligible for meritorious service leave;
3. A requirement that an employee shall use meritorious service leave within 12 months of receipt of the leave;
4. A requirement that if the employee does not use the meritorious service leave within 12 months of receipt, that the leave is forfeited; and
5. A statement that unused meritorious service leave is forfeited upon separation from state employment.

D. Subject to the guidelines established by the Director, a meritorious service leave program may be implemented at the discretion of the agency head.

~~**E.** An agency head shall report to the Director on the utilization of meritorious service leave pursuant to the reporting requirements in the guidelines established by the Director.~~

PART D. LEAVE THAT COULD BE PAID OR UNPAID

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave

A. General. All state agencies are responsible for complying with the federal Family and Medical Leave Act (FMLA) of 1993 and all applicable revisions. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. Any interference with, restraint of, or denial of an employee's rights provided by the FMLA is strictly prohibited.

B. Eligible employee.
1. An eligible employee for the purposes of the FMLA is an employee who:
   a. Is an employee of the state of Arizona;
   b. Has been employed by the state of Arizona for at least 12 months; and
   c. Worked for at least 1,250 hours of service during the 12 months immediately preceding commencement of the leave.
2. An agency head shall not extend FMLA benefits to an ineligible employee.

C. Situations covered by the FMLA. A state agency shall grant an eligible employee FMLA leave when the employee takes leave for one or more of the following reasons:
1. The birth of a child or placement of a child with the employee for adoption or foster care, provided the leave concludes within 12 months of the birth or placement.
2. To care for the employee's spouse, child or parent with a serious health condition.
3. The employee is unable to work because of the employee's own serious health condition.
4. Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on active duty or call to active duty status in support of a contingency operation.
5. To care for a covered service member with a serious injury or illness when the covered service member is the employee's spouse, child, parent or next of kin.

D. Amount of FMLA leave.
1. An employee who takes FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) may take a maximum of 12 workweeks of leave during any rolling 12-month period, measured backward from the first day of each approved period of FMLA leave.
2. An employee who takes FMLA leave for the situation described in subsection (C)(5) may take up to 26 workweeks of leave in a single 12-month period.
3. During a 12-month period, an eligible employee is able to take no more than 12 workweeks of FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) and a combined total of 26 workweeks of FMLA leave if the leave includes the situation described in subsection (C)(5).
4. ~~If a husband and wife are both state employees, the husband and wife are limited in the amount of FMLA leave taken to a combined total of:~~
   a. ~~12 workweeks of leave for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.~~
   b. ~~26 workweeks of leave to care for a covered service member with a serious injury or illness.~~

E. Designation of FMLA leave. An employee need not specifically request FMLA leave to be placed on FMLA leave. If an eligible employee takes leave for any reason covered by the FMLA and has not already exhausted the employee's available FMLA leave, the agency head shall designate the employee's leave as FMLA leave.

F. Use of paid leave. Except for portions of industrial leave, an employee on FMLA leave shall be required to use the employee's available paid leave while on FMLA leave as follows and in the following order:
1. Sick leave or, as applicable, family sick leave subject to the provisions of R2-5A-B603.
2. Compensatory leave subject to the provisions of R2-5A-B607.
3. Annual leave subject to the provisions of R2-5A-B602.
4. Leave without pay subject to the provisions of R2-5A-C602.

G. Insurance benefits continuation. An employee who is using leave with pay remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay while on FMLA leave may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation. An employee is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in subsection (A).
2. Life insurance plan participation. An employee continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

H. Return from FMLA leave. An agency head shall restore an employee returning from FMLA leave to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. The provisions of the FMLA, not the provisions of R2-5A-C602(C), shall govern return to work from leave without pay granted to complete an FMLA-qualified leave.

I. Employee responsibilities. An employee is required to adhere to the employing agency's call-in procedures, give the agency 30 days' notice in the event of a foreseeable leave, provide requested documentation, and periodic updates of the employee's status and intent to return to work as requested by the agency.

J. Agency rights. Nothing in the FMLA or this rule should be construed as limiting an agency's right to manage, discipline or terminate an employee, including an employee's failure to comply with the agency's request for appropriate documentation to substantiate the employee's need for the leave. However, an employee's use of FMLA leave cannot be considered as a negative factor in any employment decision.

K. Conflict. If there is a conflict between the provisions of these rules and the FMLA, the provisions of the FMLA govern.

R2-5A-D602. Industrial Leave

A. Use of leave.
1. An agency head shall place an employee who sustains a job-related illness or injury that is compensable under the Workers' Compensation Law, A.R.S. Title 23, Chapter 6 on sick leave.
2. If an employee who is on leave under the Worker's Compensation laws meets Family and Medical Leave Act (FMLA) eligibility requirements and the leave qualifies for FMLA leave, an agency head shall count it as FMLA leave. An agency head shall apply industrial leave and FMLA concurrently.
3. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) that do not exceed the gross salary of the employee.
4. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

B. Payments. If an employee receives a retroactive Workers' Compensation payment for any period of industrial illness or injury for which leave payments were received, the employee shall reimburse the agency for Workers' Compensation payments that exceed 100% of the employee's ~~base pay~~ gross salary before the illness or injury, and the agency head shall restore the equivalent value of leave to the employee's appropriate leave account.

C. Light duty. If an employee has a job-related illness or injury that impairs performance on the former job, the agency head shall make every effort to place the employee in a suitable position within the agency, including a light duty assignment.

D. Restriction. An agency head shall not grant sick leave or leave without pay to an employee who fails to accept compensation available under the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.

E. Insurance benefits continuation. An employee who is using leave with pay in accordance with subsection (A) remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay due to an industrial illness or injury may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation.
   a. An employee may continue to participate in the health benefit plan for a maximum of six months from the date of illness or injury by paying the employee premium/contribution.
   b. At the end of the six-month period, an employee who remains on leave without pay due to industrial illness or injury may continue to participate in the health benefit plan by paying both the state and employee premiums/contributions, until the employee returns to work or is determined to be eligible for Medicare coverage or Long-term Disability, whichever occurs first.
2. Life insurance plan participation. An employee who is on leave without pay continues to participate in the basic life and accidental death and dismemberment insurance plan without cost for six months after the month in which the illness or injury occurs. During this six-month period, the employee may continue supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

F. Accrual of leave. An employee shall continue to receive full leave accrual as long as the employee uses two or more hours of paid leave each day.

R2-5A-D603. Military Leave

An employee who requests absence with pay on military leave under A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave. An employee who has not received the orders for duty prior to the start of the military leave shall submit a copy of the orders within five workdays of receipt. An employee may be absent with pay for military purposes for up to ~~thirty days~~ three times the average of regularly scheduled work hours in a weekly work period each year and up to six times the average of regularly scheduled work hours in a weekly work period in any two consecutive federal fiscal years. All state agencies are responsible for complying with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 and all applicable revisions. USERRA Regulations, 20 CFR 1002.1 through 20 CFR 1002.314 (April 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

ARTICLE 7. PERFORMANCE MANAGEMENT

R2-5A-701. General

A. Performance management system. The Director shall establish a performance management system to evaluate the job performance of state employees. The performance management system established by the Director shall contain performance rating levels and shall contain numerical points to apply to each performance rating level established.

B. Administration. The Director shall develop an administrative manual and training on the performance management system.

C. Exceptions. The performance management system may be used:
1. As determined by the appointing authority for the agency head, to evaluate the job performance of the agency head.
2. As determined by the agency head, to evaluate the job performance of~~:~~
   ~~a. Each deputy director, or equivalent, of the agency.~~
   ~~b. Each assistant director, or equivalent, of the agency~~ each subordinate uncovered employee in a position listed in A.R.S. § 41-742(F).

R2-5A-702. Performance Management Process

A. Performance plan. For the purposes of this subsection, "performance plan" means ~~a document prepared~~ a communication by an employee's supervisor that outlines what is expected of the employee and how the employee's performance will be measured. Subject to review by agency management, a supervisor:
1. Shall ~~administer a performance plan for~~ communicate performance expectations with each employee within 30 days of becoming the employee's supervisor.
2. May modify a performance plan at any time during a performance period.
3. Shall modify a performance plan when significant responsibilities or expectations are added to or removed from a position.
4. Shall notify the affected employee of any modifications made to a performance plan under subsection (A)(2) or (3).

B. Performance evaluation requirements.
1. Informal evaluation. A supervisor shall:
   a. Monitor and evaluate an employee's performance throughout the rating period,
   b. Provide feedback to the employee on a regular basis, and
   c. Attempt to correct inadequate performance where possible and appropriate.
2. Formal evaluation. A supervisor shall:
   a. Formally evaluate, document and rate the performance of each employee at least annually.
   b. Submit the evaluation to agency management for review prior to the evaluation being administered to the employee.
3. Covered probationary employees. Prior to granting a covered probationary employee permanent status, a supervisor shall evaluate a probationary employee at least once prior to the end of the employee's probationary period.

C. Responsibilities.
1. An employee shall comply with the performance plan established by the supervisor.
2. A supervisor shall comply with performance evaluation requirements.
3. An agency head shall ensure that all performance evaluations are completed as required by this Section.

ARTICLE 8. DISCIPLINARY ACTIONS

R2-5A-803. Employee Request for Review of Disciplinary Action

A. A covered employee who is issued a disciplinary action may have grievance or appeal rights, as applicable.

B. An uncovered employee does not have grievance rights or the right of appeal to ~~a state merit board or council~~ the State Personnel Board or the Law Enforcement Merit System Council.

C. A covered employee who files a complaint on a disciplinary action alleging discrimination or harassment is precluded from also filing a grievance through the agency's grievance procedure on the same disciplinary action that is the subject of the employee's complaint.

SUBCHAPTER B. COVERED EMPLOYEES

ARTICLE 4. GRIEVANCES

R2-5B-403. Grievance Procedures

Content. The grievance procedure established in each state agency shall include as a minimum:
1. An initial statement that any complaint alleging unlawful discrimination or unlawful harassment will be reviewed or investigated according to the provisions of the separate complaint process outlined in Subchapter A, Article 9, and not the grievance system.
2. A requirement that the grievant have an oral discussion with the ~~immediate supervisor~~ individual designated as the first step in the agency's grievance procedure in an attempt to resolve the employee's disagreement with the disciplinary action, prior to initiating the written grievance procedure.
3. A requirement that the employee file the grievance in writing with the agency grievance coordinator, within 10 business days after the occurrence of the action being grieved. The date of occurrence of a:
   a. Reprimand is the date the reprimand was issued to the employee.
   b. Suspension is the first day of suspension.
4. A requirement that the grievance contain a complete statement of all the facts and circumstances involved and the specific redress sought.
5. A provision that the grievant may select a representative at any step in the procedure after the oral discussion with the immediate supervisor.
6. A requirement that another state employee who serves as the representative of a grievant must receive approval for annual or compensatory leave to represent the grievant.
7. A requirement that the grievant must have a minimum of five business days after receipt of a response to forward the grievance at any step, must sign the grievance at each step, and must state the reasons why the response at the previous step was unsatisfactory.
8. A requirement that the agency head will respond to the grievant not later than 30 business days after receipt of the grievance at the first step. Within the 30 business day period, the time for any step may be extended by the agency head with the concurrence of the grievant.
9. A statement that the decision of the agency head is the final step in the grievance process.

NOTICES OF PROPOSED EXPEDITED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Expedited rulemaking is a rulemaking process that does not increase the cost of regulatory compliance, or increase a fee, or reduce procedural rights of persons regulated. Other requirements to conduct expedited rulemaking are listed under A.R.S. § 41-1027.

Under A.R.S. § 41-1027(C), the Governor's Regulatory Review Council also posts Notices of Proposed Expedited Rulemakings on its website and allows any person to provide written comment for at least 30 days after posting the notice.

Questions about the interpretation of expedited rules should be addressed to the agency promulgating the rules.

Refer to item 4 to contact the person charged with the rulemaking.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES EMERGENCY MEDICAL SERVICES

[R24-164]

PREAMBLE

1. Permission to initiate this rulemaking was granted under A.R.S. § 41-1039(A) by the governor on:
November 20, 2023

2. Article, Part or Section Affected (as applicable) **Rulemaking Action**
R9-25-908 Amend

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. §§ 36-132(A)(1), 36-136(G)
Implementing statute: A.R.S. §§ 36-2201, 36-2202, 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241

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: 30 A.A.R. 436, March 8, 2024

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

Name:	Rachel Zenuk Garcia, Bureau Chief
Address:	Arizona Department of Health Services Bureau of Emergency Medical Services and Trauma System 150 N. 18th Ave., Suite 540 Phoenix, AZ 85007-3248
Telephone:	(602) 364-3150
Fax:	(602) 364-3568
Email:	Rachel.Garcia@azdhs.gov
	or
Name:	Stacie Gravito, Office Chief
Address:	Arizona Department of Health Services Office of Administrative Counsel and Rules 150 N. 18th Ave., Suite 200 Phoenix, AZ 85007-3232
Telephone:	(602) 542-1020
Fax:	(602) 364-1150
Email:	Stacie.Gravito@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. Title 36, Chapter 21.1, Article 2, specifies requirements related to the regulation of ground ambulance services. The Department has adopted rules to implement these statutes in 9 A.A.C. 25, with the rules in Article 9 establishing requirements for ground ambulance certificates of necessity. As part of completing a recent rulemaking that included the rules in 9 A.A.C. 25, Article 9, the Department identified several areas that might require further discussion and revision and included a delayed implementation date for some requirements to allow for additional discussion with stakeholders. The Department initiated this rulemaking to allow for further discussion and possible changes to be made to address stakeholder concerns. After meeting with stakeholders, the Department is making changes

to reduce the regulatory burden while achieving the same objective. The proposed amendments are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and reduces steps, procedures, or processes and amends rules that are outdated and unnecessary, while protecting the health and safety of patients and the general public.

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 statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

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

10. Where, when, and how a person may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):

Close of record: Monday, September 16, 2024, 4:00 p.m.

A person may submit written comments on the proposed expedited rules no later than the close of record to either of the individuals listed in item 5.

11. 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:

Permits are not applicable to the content of this rulemaking. However, with reference to 9 A.A.C. 25, Article 9, a general permit is not applicable under A.R.S. § 41-1037(A)(2). The Department issues certificates of necessity under A.R.S. §§ 36-2202(A), 36-2232, 36-2233, 36-2236, and 36-2240.

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 laws are applicable to this 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 business competitiveness analysis was received by the Department.

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES EMERGENCY MEDICAL SERVICES

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

Section

R9-25-908. Operations (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5), 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

R9-25-908. Operations (Authorized by A.R.S. §§ 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

A. Insurance: A certificate holder shall:

1. Either:
   a. Maintain with an insurance company authorized to transact business in this state:
      i. A minimum single occurrence automobile liability insurance coverage of $1,000,000 for ground ambulance vehicles;
      ii. A minimum single occurrence professional liability insurance coverage for the ground ambulance service of $1,000,000; and
      iii. If the certificate holder provides ALS services or critical care services, a minimum single occurrence professional liability insurance coverage for personnel of the ground ambulance service providing ALS services or critical care services of $1,000,000; or
   b. Be self-insured for the amounts in subsection (A)(1)(a); and
2. Submit to the Department within seven days after renewal of the insurance coverage in subsection (A)(1)(a) or a change in how the insurance coverage in subsection (A)(1)(a) or (b) is obtained:
   a. A copy of the certificate of insurance in subsection (A)(1)(a); or

b. Documentation of self-insurance according to subsection (A)(1)(b).

B. Record Retention: According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:
1. The certificate holder's financial statements;
2. All federal and state income tax records;
3. All employee-related expense reports and payroll records;
4. All bank statements and documents used to reconcile accounts;
5. All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture, and other plant and equipment assets subject to depreciation;
6. All prehospital history incident reports, as specified in subsection (J)(1);
7. All patient billing and reimbursement records;
8. All dispatch records, as specified in subsection (J)(2);
9. All policies and procedures required by this Article or Article 2, 10, or 11 of this Chapter;
10. All plans required by this Article or Article 2, 10, or 11 of this Chapter;
11. Documentation of the analysis of response time performance according to subsection (G)(2);
12. Documentation of the analysis of performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition, according to subsection (H)(1);
13. Documentation of notification to the Department of instances of noncompliance according to subsection (K)(1)(c);
14. All back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, ambulance response, and transport;
15. All written complaints about the ground ambulance service; and
16. Information about destroyed or otherwise irretrievable records in a file including:
    a. A list of each record destroyed or otherwise irretrievable,
    b. A description of the circumstances under which each record became destroyed or otherwise irretrievable, and
    c. The date each record was destroyed or became otherwise irretrievable.

C. Staffing: A certificate holder shall ensure that:
1. If a ground ambulance vehicle is marked with a level of service, the ground ambulance vehicle is staffed to provide the level of service identified;
2. An administrative medical director for the ground ambulance service complies with requirements in R9-25-201(F) and R9-25-502(B);
3. Policies and procedures are established, implemented, and maintained that cover:
    a. Job descriptions, duties, and qualifications, including required skills and knowledge for EMCTs and other employees; and
    b. Orientation and in-service education for EMCTs and other employees;
4. An EMCT employed by the ground ambulance service:
    a. Is assigned patient care duties consistent with the EMCT's scope of practice and the administrative medical director's evaluation of the EMCT's skills and capabilities;
    b. Complies with the protocols required in R9-25-201(E)(2);
    c. Receives training on the policies and procedures required in R9-25-201(E)(3)(b); and
    d. Receives ongoing education, training, or remediation consistent with the policies and procedures required in R9-25-201(E)(3)(b)(x); and
5. Staffing of ground ambulance vehicles:
    a. For the provision of BLS or ALS, is consistent with A.R.S. § 36-2239; and
    b. ~~Effective January 1, 2025, for~~ For critical care services, includes at least one:
        i. Paramedic with an additional endorsement, indicating additional training and authorization from the Department to provide critical care services; or
        ii. Registered nurse.

D. Communications and Advertising: A certificate holder shall ensure that the ground ambulance service:
1. Makes a good faith effort to communicate information:
    a. About its hours of operation to the general public through print media, broadcast media, the Internet, or other means; and
    b. About resource availability and deployment to other EMS providers in overlapping and surrounding service areas;
2. Does not advertise that the ground ambulance service:
    a. Provides a type of service or level of service other than what is granted in the certificate of necessity,
    b. Operates in the service area other than what is granted in the certificate of necessity, or
    c. In a manner that circumvents the use of 9-1-1 or another similarly designated emergency telephone number;
3. Establishes, implements, and maintains the protocol for providing information to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), which includes:
    a. The date and time the dispatch was received by the ground ambulance service;
    b. The unique number used by the ground ambulance service to identify the run;
    c. The name of the ground ambulance service;
    d. The number or other identifier of the ground ambulance vehicle used for the run;
    e. The following information about the patient:
        i. The patient's name;
        ii. The patient's date of birth or age, as available;
        iii. The principal reason for requesting services for the patient;
        iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;

v. The patient's level of consciousness at initial contact and when reassessed;
vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;
vii. The results of an electrocardiograph, if available;
viii. The patient's glucose level at initial contact and when reassessed, if applicable;
ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;
x. The results of the patient's neurological assessment, if applicable; and
xi. The patient's pain level at initial contact and when reassessed; and

f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient; and

4. Establishes, implements, and maintains a protocol for providing information to another certificate holder, ambulance service, EMS provider, or health care institution concurrent with the transfer of care, which includes the information in subsections (D)(3)(c), (d), (e), and (f).

E. Dispatch and Scheduling: A certificate holder shall ensure that:

1. A contract or other agreement, including internal policies and procedures, to provide dispatch exists and includes:
   a. Information about other certificate holders with which the certificate holder has a back-up agreement;
   b. The process and parameters under which a ground ambulance vehicle of another certificate holder will be dispatched to respond to a call to which a ground ambulance vehicle of the certificate holder cannot respond;
   c. Except as specified in subsection (E)(2), for an area within the certificate holder's service area that overlaps with another certificate holder's service area, that the nearest ground ambulance vehicle to the patient's location, under either certificate holder that can provide the necessary level of service, will be directed to respond to a call made through 9-1-1 or a similar dispatch system; and
   d. If the entity providing dispatch is external to the ground ambulance service, a requirement that the certificate holder receive a copy of each dispatch made under the contract or other agreement;
2. If a certificate holder has a ground ambulance service contract under R9-25-1104 with a political subdivision, the ground ambulance service contract contains requirements that specify a method for dispatch, which may differ from requirements in subsection (E)(1)(c); and
3. For an interfacility transport of a patient with no time-critical condition:
   a. Unless already specified in a written agreement between the certificate holder and the person requesting the interfacility transport, the entity receiving the request for the interfacility transport provides an estimated time of arrival to the person requesting the interfacility transport at the time that the interfacility transport is requested;
   b. If the estimated time of arrival provided according to subsection (E)(3)(a) changes to a later time, the ground ambulance service, either directly or indirectly, does one of the following:
      i. Contacts another ground ambulance service to respond to the dispatch, based on the ground ambulance service's back-up plan and back-up agreements;
      ii. Provides to the contact at the requesting health care institution the name and telephone number of another ground ambulance service with which the ground ambulance service has a back-up agreement; or
      iii. Provides an amended estimated time of arrival to the person requesting transport that takes into consideration:
         (1) The patient's condition and needs, and
         (2) Health and safety;
   c. ~~Effective January 1, 2025, unless~~ Unless otherwise specified on the certificate holder's certificate of necessity, the actual time of arrival of a ground ambulance vehicle at a health care institution for an interfacility transport of a patient who does not have a time-critical condition is within 60 minutes of the estimated time of arrival in subsection (E)(3)(a) or amended estimated time of arrival in subsection (E)(3)(b)(iii) for at least 90% of the interfacility transports; and
   d. If the interfacility transport does not meet the standards in subsection (E)(3)(c), factors that may have contributed to not meeting the standards are considered through the quality improvement process in subsection (K)(2)(b).

F. Transport: A certificate holder:

1. Shall only provide ambulance response or transport within the service area identified in the certificate holder's certificate of necessity except:
   a. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene;
   b. According to a back-up agreement; or
   c. If the area is not included in the service area of another certificate holder;
2. Except as specified in subsection (F)(3), shall transport a patient in the certificate holder's service area who requests transport; and
3. May deny transport to a patient in the certificate holder's service area:
   a. As limited by A.R.S. § 36-2224;
   b. If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;
   c. If the transport may result in an immediate threat to the ambulance attendant's safety, as determined by the ambulance attendant, the certificate holder, the administrative medical director, or a physician providing on-line medical direction and does not affect the ground ambulance service's hours of operation;
   d. If the patient is 18 years or age or older, or meets the requirements in A.R.S. § 12-2451, 44-131, or 44-132, and refuses to be transported; or
   e. If the patient is in a health care institution and does not meet the federal requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.

G. Response Time Performance: A certificate holder shall ensure that:

1. Response times resulting from a 9-1-1 or similar system dispatch or, if applicable, a request for the interfacility transport of a patient with a time-critical condition comply with requirements of the certificate holder's certificate of necessity;
2. Response time performance, based on the information is subsection (J)(2), is assessed at least every six months for compliance with requirements of the certificate holder's certificate of necessity;
3. The following are reported to the Department annually, in a Department-provided format, concurrent with the submission of the information required in R9-25-909:
   a. Response time data that complies with requirements in A.R.S. § 36-2232(A)(3), and
   b. The results of the response time performance assessments in subsection (G)(2); and
4. If response time performance does not comply with requirements of the certificate holder's certificate of necessity, either:
   a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (G)(3); or
   b. The certificate holder submits to the Department with the information required in subsection (G)(3) documentation demonstrating that noncompliance was due to:
      i. A situation specified in A.R.S. § 36-2232(G), or
      ii. An external factor beyond the control of the certificate holder.

H. Performance of Interfacility Transports of Patients with No Time-Critical Condition: ~~Effective January 1, 2025, a~~ A certificate holder shall ensure that:

1. The performance of interfacility transports of patients with no time-critical condition~~, including patients with a time-sensitive condition~~:
   a. Is based on the information in subsection (J)(2);
   b. Is assessed at least every six months;
   c. Includes the analysis of:
      i. The number of calls received;
      ii. The time a call was received;
      iii. The initial estimated time of arrival, according to subsection (E)(3)(a); and
      iv. The time of arrival at the patient's location; and
   d. May include:
      ~~v.~~i. Any other information about cancelled calls, amended estimated times of arrival, or delays that may have factored into performance; and
      ~~d.~~ii. ~~Includes a~~ A description of any actions taken by the certificate holder to improve performance;
2. The results of the performance assessments in subsection (H)(1) are reported to the Department annually in a Department-provided format, concurrent with the submission of the information required in R9-25-909; and
3. If the performance of interfacility transports of patients with no time-critical condition does not comply with subsection (E)(3)(c) or requirements of the certificate holder's certificate of necessity, as applicable, either:
   a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (H)(2); or
   b. The certificate holder submits to the Department with the information required in subsection (H)(2) documentation demonstrating that noncompliance was due to an external factor beyond the control of the certificate holder.

I. The Department may require that a certificate holder contract for third-party monitoring of response time performance as part of a:

1. Political subdivision contract, unless both parties to the contract waive the requirement; or
2. Corrective action plan.

J. Records: A certificate holder shall ensure that:

1. A prehospital incident history report, in a Department-provided format, is created for each patient that includes the following information, as available:
   a. The name and identification number of the ground ambulance service;
   b. Information about the software for the storage and submission of the prehospital incident history report;
   c. The unique number assigned to the run;
   d. The unique number assigned to the patient;
   e. Information about the response to the dispatch, including:
      i. The level of service requested;
      ii. Information obtained by the person providing dispatch about the request;
      iii. Information about the ground ambulance vehicle assigned to the dispatch;
      iv. Information about the EMCTs responding to the dispatch;
      v. The priority assigned to the dispatch; and
      vi. Response delays, as applicable;
   f. The date and time that:
      i. The call requesting service was received through the 9-1-1 or similar dispatch system,
      ii. The request was received by the person providing dispatch,
      iii. The ground ambulance service received the dispatch,
      iv. The ground ambulance vehicle left for the patient's location,
      v. The ground ambulance vehicle arrived at the patient's location,
      vi. The EMCTs in the ground ambulance vehicle arrived at the patient's side,
      vii. Transfer of care for the patient occurred at a location other than the destination,
      viii. The ground ambulance vehicle departed the patient's location,
      ix. The ground ambulance vehicle arrived at the destination,
      x. Transfer of care for the patient occurred at the destination, and

xi. The ground ambulance vehicle was available to take another call;
g. Information about the patient, including:
i. The patient's first and last name;
ii. The address of the patient's residence;
iii. The county of the patient's residence;
iv. The country of the patient's residence;
v. The patient's gender, race, ethnicity, and age;
vi. The patient's estimated weight;
vii. The patient's date of birth; and
viii. If the patient has an alternate residence, the address of the alternate residence;
h. The primary method of payment for services and anticipated level of payment;
i. Information about the scene, including:
i. Specific information about the location of the scene;
ii. Whether the ground ambulance vehicle was first on the scene;
iii. The number of patients at the scene;
iv. Whether the scene was the location of a mass casualty incident; and
v. If the scene was the location of a mass casualty incident, triage information;
j. Information about the reason for requesting service for the patient, including:
i. The date and time of onset of symptoms and when the patient was last well;
ii. Information about the principal reason the patient needs services;
iii. The patient's symptoms;
iv. The results of the EMCT's initial assessment of the patient;
v. If the patient was injured, information about the injury and the cause of the injury;
vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and
vii. For an interfacility transport, the reason for the transport;
k. Information about any specific barriers to providing care to the patient;
l. Information about the patient's medical history, including;
i. Known allergies to medications,
ii. Surgical history,
iii. Current medications, and
iv. Alcohol or drug use;
m. Information about the patient's current medical condition, including the information in subsections (D)(2)(e)(v) through (xi) and the time and method of assessment;
n. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;
o. If not specifically included under subsection (J)(1)(l), (l)(iv), (m), or (n), the information required in A.A.C. R9-4-602(A);
p. Information about any procedures performed on the patient and the patient's response to the procedure;
q. Whether the patient was transported and, if so, information about the transport;
r. Information about the destination of the transport, including the reason for choosing the destination;
s. Whether transfer of care for the patient to another EMS provider or ambulance service occurred and, if so, identification of the EMS provider or ambulance service;
t. Unless transfer of care for the patient to another EMS provider or ambulance service occurred, information about:
i. Whether the destination facility was notified that the patient being transported has a time-critical condition and the time of notification,
ii. The disposition of the patient at the destination, and
iii. The disposition of the run;
u. Any other narrative information about the patient, care receive by the patient, or transport; and
v. The name and certification level of the EMCT providing the information; and
2. Dispatch records for each call or request for service, including all cancelled runs, contain the following information, in a Department-provided format:
a. The name of the ground ambulance service;
b. The date;
c. Level of service;
d. Type of service;
e. Staffing of the run;
f. Time of receipt of the call;
g. Time of the dispatch;
~~h. The estimated time of arrival, as provided according to subsection (E)(3)(a) if applicable;~~
~~i.~~h. Departure time to the patient's location;
~~j.~~i. Address of the patient's location;
~~k.~~j. Time of arrival at the patient's location;
~~l.~~k. Departure time to the destination health care institution;
~~m.~~l. Name and address of the destination health care institution;
~~n.~~m. Time of arrival at the destination health care institution;
~~o.~~n. Any type of delay, if applicable;

~~p.~~o. The unique reference number used by the ground ambulance service to identify the patient, dispatch, or run;
~~q.~~p. The number assigned to the ground ambulance vehicle by the certificate holder;
~~r.~~q. The priority assigned by a certificate holder to the response;
~~s.~~r. The scene locality; ~~and~~
~~t.~~s. Whether the dispatch is a scheduled transport; and
t. The estimated time of arrival, as provided according to subsection (E)(3)(a), if applicable.

K. Assuring Consistent, Compliant Performance: A certificate holder shall:
1. Adopt, implement, and maintain policies and procedures for:
   a. Complaint resolution;
   b. Assessing the ground ambulance service's compliance with requirements in this Article, Articles 2, 10, or 11 of this Chapter, or A.R.S. Title 36, Chapter 21.1, including the review of:
      i. The information provided to an emergency receiving facility for compliance with the protocol required in R9-25-201(E)(2)(d),
      ii. Chain of custody for drugs,
      iii. Compliance with minimum equipment requirements for a ground ambulance vehicle,
      iv. Compliance with requirements in R9-25-201(E)(3), and
      v. The quality improvement parameters in subsection (K)(2)(b) related to the provision of services;
   c. Notifying the Department within 30 calendar days after completing an assessment in subsection (K)(1)(b), during which an instance of noncompliance was identified, and submitting a corrective action plan that complies with requirements in R9-25-910(E)(2)(a) through (d); and
   d. A quality improvement process according to subsection (K)(2);
2. Establish, document, and implement a quality improvement process, as specified in policies and procedures, through which:
   a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:
      i. Collected continuously;
      ii. For the information required in subsection (J)(1), submitted to the Department, in a format specified by the Department and within 48 hours after the beginning of a run, for quality improvement purposes; and
      iii. If notified that the submission of information to the Department according to subsection (K)(2)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;
   b. Continuous quality improvement processes are developed and implemented to identify, document, and evaluate issues related to the provision of services to ensure quality patient care, including:
      i. Care provided to patients with time-critical conditions, including deviations from national treatment standards for a patient with a time-critical condition;
      ii. Transport, including an interfacility transport of a patient that does not have a time-critical condition;
      iii. Documentation; and
      iv. Patient status upon arrival at the destination;
   c. A committee consisting of the administrative medical director, the individual managing the ground ambulance service or designee, and other employees as appropriate:
      i. Review the data in subsection (K)(2)(a) and any issues identified in subsection (K)(2)(b) on at least a quarterly basis; and
      ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and
   d. The activities in subsection (K)(2)(c) are documented, consistent with A.R.S. §§ 36-2401, 36-2402, and 36-2403; and
3. Ensure that the information required in ~~subsection (J)(2)~~ subsections (J)(2)(a) through (s) is submitted to the Department, in a Department-provided format, and within 48 hours after the receipt of a call or request for service.

L. If a certificate holder has a reasonable basis to believe that a situation or circumstance specified according to A.R.S. § 36-2211(A) has occurred, the certificate holder shall:
1. If applicable, take immediate action to prevent the recurrence of the situation or circumstance;
2. Report the suspected situation or circumstance to the Department and, if applicable, according to A.R.S. § 13-3620 or 46-454;
3. Document:
   a. The suspected situation or circumstance;
   b. Any action taken according to subsection (L)(1); and
   c. The report in subsection (L)(2);
4. Maintain the documentation in subsection (L)(3) for at least 12 months after the date of the report in subsection (L)(2);
5. Initiate an investigation of the situation or circumstance and document the following information within five working days after the report required in subsection (L)(2):
   a. The dates, times, and description of the situation or circumstance;
   b. A description of any injury to a patient related to the suspected situation or circumstance and any change to the patient's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected situation or circumstance; and
   d. The actions taken by the certificate holder to prevent the suspected situation or circumstance from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (L)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

M. A certificate holder shall notify the Department of a change in the number or location of suboperation stations in the certificate holder's service area, according to A.R.S. § 36-2232(C)(4), and include:

1. The certificate of necessity number for the ground ambulance service;
2. The name of the ground ambulance services on the certificate of necessity;
3. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the notification; and
4. Information about the change, including, as applicable:
   a. How the number of suboperation stations is changed from the information on the certificate holder's certificate of necessity;
   b. The address of each suboperation station that is being removed from service; and
   c. The address, hours of operation, and telephone number of each new suboperation station located within the service area.

N. A certificate holder shall submit to the Department, no later than 180 days after the certificate holder's fiscal year end, the information in the Ambulance Revenue and Cost Report specified in R9-25-909(A) or (C), as appropriate to the certificate holder's business organization.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY SAFE DRINKING WATER

[R24-165]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024

2. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R18-4-103	Amend
R18-4-603	Amend

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

Authorizing statute: A.R.S. §§ 49-104(B)(4), 49-353(A)(2)
Implementing statute: A.R.S. § 49-353.01

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2087, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-104

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

Name:	Tiffany Tom
Title:	Attorney
Division:	Office of Administrative Counsel
Address:	Arizona Department of Environmental Quality Office of Administrative Counsel 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(520) 628-6355
Email:	waterqualityrulecorrections@azdeq.gov
Website:	https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

Summary

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 4; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 4, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to the safe drinking water program. An expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1) and 41-1027(A)(6). Under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace a repealed statute in a definition with a current and correct definition. Under A.R.S. § 41-1027(A)6), ADEQ proposes to update cross-references to other ADEQ rules that have changed due to previous rulemakings. Furthermore, none of the proposed amendments will increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

Section by Section Explanation of Proposed Rules:

R18-4-103(B): Incorporation of 40 CFR 141, Subpart A by reference and Definitions

This rule incorporates by reference 40 CFR 141, Subpart A, and establishes specific sections of Subpart A of the Code of Federal Regulations that are not incorporated by reference. The rule defines important terms in 18 A.A.C. Chapter 4 so that the rules are understandable to the general public. This rule also establishes which sections of the Code of Federal Regulations are modified to convey the proper context that Arizona is the regulator, not the EPA. In defining "protected water source," this rule contains an outdated reference to A.R.S. § 49-331, which was repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace the statutory reference with a reference to the correct definition found in R18-9-101(21).

R18-4-603(3): Infrastructure, Treatment, and Storage Design Requirements to Demonstrate Adequate Technical Capacity for New Public Water Systems

This rule contains references to applicable ADEQ rules which have since become outdated following previous recodifications of referenced Articles. The references to 18 A.A.C. 4, Articles 3 and 5 are now incorrect. The applicable infrastructure, treatment, and storage design requirements can now be found in 18 A.A.C. 4, Articles 1, 2, and 4 and 18 A.A.C. 5, Article 5. The following rulemakings impacted the outdated references:

1. In 2008, 18 A.A.C. 4, Article 3 was amended and treatment requirements were removed and replaced with the Monitoring Assistance Program rules. *See* 14 A.A.R. 2978, 2982 and 3015 (Aug. 1, 2008). Treatment requirements can now be found in 18 A.A.C. 4, Article 1 concerning the "National Primary Drinking Water Regulations" and Article 2 "Safe Drinking Water Regulations." *See* 14 A.A.R. 2978, 3013-3015 (Aug. 1, 2008).
2. In 2004, the minimum design criteria for public water systems (PWS) were recodified from 18 A.A.C. 4, Article 5 to 18 A.A.C. 5, Article 5. *See generally* 10 A.A.R. 585 (Feb. 20, 2004).
3. In 2023, ADEQ updated 18 A.A.C. 4 to conform with the EPA's final regulation entitled "Use of Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water," which applies to new PWSs. *See generally* 29 A.A.R. 1472 (Jun. 30, 2023).

Updating the references to the applicable infrastructure, treatment, and storage requirements for new PWSs serves to clarify the language of R18-4-603(3) by removing references that are no longer necessary for the operation of state government. Therefore, pursuant to its authority A.R.S. § 41-1027(A)(6), ADEQ proposes to amend the outdated references to the relevant ADEQ rules.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2024

Written comments may be sent to the individual listed in item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in item 5 by the close of record.

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

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

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

Not applicable

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

The Safe Drinking Water Act, as amended, is applicable to the subject of this rule. *See* 40 CFR 141, Subpart A. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY SAFE DRINKING WATER

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Section
R18-4-103. General – 40 CFR 141, Subpart A

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

Section
R18-4-603. Technical Capacity Requirements

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

R18-4-103. General – 40 CFR 141, Subpart A

A. 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4- 102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.

B. The definition of "State" in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49- 201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

"Air-gap separation" means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

"ANSI/NSF Standard 60" means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"ANSI/NSF Standard 61" means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"Backflow" means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

"Backflow-prevention assembly" means a mechanical device used to prevent backflow.

"Capacity" means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

"Capacity development" means improving public water system finances, management, infrastructure, and operations, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

"Capacity development report" means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

"Cross connection" means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

"Distribution system" means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

"Department" means the Arizona Department of Environmental Quality.

"Double check valve assembly" means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

"Elementary business plan" means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

"Entry point to the distribution system" means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

"EPA" means the United States Environmental Protection Agency.

"Exclusion" means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

"Exemption" means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

"Financial capacity" means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

"Groundwater system" means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

"Lead-free" has the same meaning prescribed in A.R.S. § 49-353(B).

"Major stockholder" means a person who has 20% or more ownership interest in a public water system.

"Master priority list" means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

"Monitoring assistance program" means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

"Operational assistance" means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

"Protected water source" means a groundwater source that:

- Meets the requirements of A.A.C. R18-5- 502(D);
- Is not located within 100 feet of a drywell as defined by ~~A.R.S. § 49-331(3)~~ A.A.C. R18-9-101(21), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

"Reduced pressure principle backflow-prevention assembly" means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

"Service connection" means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

"Service line" means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

"State" means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term "State" means the Regional Administrator of EPA Region 9.

"System evaluation assistance" means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

"Technical assistance" means operational assistance, system evaluation assistance, or both.

"Treatment" means a process that changes the quality of water by physical, chemical, or biological means.

"Treatment technique" means a treatment procedure promulgated by EPA in lieu of an MCL.

"Variance" means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology treatment techniques, or other means available to the system.

"Water main" means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

"Water Infrastructure Finance Authority" means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

C. 40 CFR 141.4, entitled "variances and exemptions," is incorporated by reference subject to the following modifications:

1. The phrase "entity with primary enforcement responsibility" is changed to "Department."
2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
   a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
   b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.

c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
d. "Treatment technique requirement," for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
e. If the Department grants a variance or exemption, the Department shall prescribe:
i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.

D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4- 102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.
1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
2. 40 CFR 142.20(a), (b). The phrase "States with primary enforcement responsibility" is changed to "the Department"; the second sentences in 142.20(a) and 142.20(b) are deleted.
3. 40 CFR 142.60(b), 142.61(b). The phrase "Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances" is changed to "Department."
4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase "a State that does not have primary enforcement responsibility" is changed to "Arizona".
5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase "Administrator or [`primacy' or `primary'] state that issues variances" is changed to "Department."
6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase "Administrator or [the] primacy state" is changed to "Department"; the phrase "Administrator's or primacy state's" is changed to "Department's."
7. In 40 CFR 142, Subpart K:
a. The phrases "[`a' or `the'] State or [the] Administrator," "Administrator or State," "the public water system, State and the Administrator," and "a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)" are changed to "the Department."
b. 40 CFR 142.301. The last sentence is deleted.
c. 40 CFR 142.303(b). The phrase "a State exercising primary enforcement responsibility for public water systems" is changed to "the Department."
d. 40 CFR 142.306(b)(2). The phrase "(or by the Administrator in States which do not have primary enforcement responsibility)" is deleted.
e. 40 CFR 142.308(a), 142.309(c). The phrase "the State, Administrator, or [the] public water system as directed by the State or Administrator" is changed to "the Department or the public water system, as determined by the Department."
f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: "At the time of proposal, the Department must publish a notice in the *Arizona Administrative Register* or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section."
g. 40 CFR 142.308(c)(7). The phrase "the primacy agency" is changed to "the Department."
8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term "Administrator" is changed to "Department"; the pronoun "he" is changed to "the Department"; and the pronoun "his" is changed to "the Department's."
9. In all parts of 40 CFR 142 incorporated by reference, the term "a state" or "the state" is changed to "the Department"; the term "the State's" is changed to "the Department's."
10. 40 CFR 142.62(h)(3). The term "State-approved" is changed to "Department-approved."
11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401."
12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1- 401."
13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: "A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402."

E. 40 CFR 141.5 is not incorporated by reference.

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:
1. Documentation of a drinking water source minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles ~~2, 3, and 5~~ 1, 2, and 4, and Chapter 5, Article 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and

5. Documentation that contains at least the following:
   a. Day 1 to final build-out technical and engineering needs projections;
   b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
   c. Information describing the life of the plant;
   d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
   e. Manufacturers' specifications on components used in the construction of the water system; and
   f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specification.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL REVIEWS AND CERTIFICATION

[R24-166]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024

2. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R18-5-116	Amend
R18-5-208	Amend
R18-5-408	Amend

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

Authorizing statute: A.R.S. §§ 49-104(B)(11)-(13)

Implementing statute: A.R.S. § 49-352, 49-353(A)(2), 49-353.01(A)(1), 49-361

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-105

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

Name:	Tiffany Tom
Title:	Attorney
Division:	Office of Administrative Counsel
Address:	Arizona Department of Environmental Quality Office of Administrative Counsel 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(520) 628-6355
Email:	waterqualityrulecorrections@azdeq.gov
Website:	https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

Summary:

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 5; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 5, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules in Title 18, Chapter 5, Articles 1, 2, and 4. The purpose of Chapter 5, Articles 1, 2, and 4, respectively, is to establish requirements for facility operators under water quality programs, regulate the design and construction of public and semipublic pools and spas, as well as set requirements for subdivision development relative to water quality programs. Expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1), 41-1027(A)(3), and 41-1027(A)(6) as explained below.

Section by Section Explanation of Proposed Rules:

R18-5-116: Initial Grading and Regrading of Facilities

This rule contains references to A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 regarding appeal rights concerning ADEQ initially grading or regrading a facility. Appeal rights are embedded in the program and, consequently, the references

are redundant. In addition, almost all of the rules in 18 A.A.C. 1, Article 2 have either expired or been repealed, with the exception of R18-1-205, an inapplicable rule related to license applications. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1) and A.R.S. § 41-1027(A)(6), ADEQ proposes to remove these references.

R18-5-208(C): Maximum Bathing Load

This rule contains an incorrect citation to R18-5-242, concerning semipublic pools. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the incorrect citation from R18-5-242, concerning semipublic pools, to R18-5-241, concerning public pools.

18 A.A.C. 5, Article 4 provides the requirements for obtaining approval for the design, installation, and operation of on-site wastewater treatment facilities on subdivision plats. In addition, 18 A.A.C. 9, Articles 1 and 3 prescribe the requirements for permitting on-site wastewater treatment facilities under the Aquifer Protection Permit program. Currently 18 A.A.C. 5, Article 4 does not contain any reference to 18 A.A.C. 9, concerning requirements for on-site wastewater treatment facilities on subdivision plats. Therefore, ADEQ proposes updating and clarifying the rule to ensure it is congruous with the relevant on-site wastewater treatment facility requirements in Chapter 9.

R18-5-408: Requirements for the Approval of Subdivisions that Use On-site Wastewater Treatment Facilities

The rule's section heading as well as references in subsections (A), (B), (C), and (E) utilize the term "individual sewage disposal systems." "Individual sewage disposal systems" is not defined in the A.A.C. and is not a definition that is utilized in Chapter 9 to refer to these types of facilities. The correct term utilized in Chapter 9 is "on-site wastewater treatment facilities." This term is a synonym of "individual sewage disposal systems" and is, in fact, defined and utilized in Chapter 9. Therefore, the term "individual sewage disposal systems" is incorrect, and confusing to the general public.

ADEQ proposes replacing the term "individual sewage disposal systems" with "on-site wastewater treatment facilities" in the rule. This amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the heading and R18-5-408(A), (B), (C), and (E) to change "individual sewage disposal systems" to "on-site wastewater treatment facilities."

Next, subsection (A) references guidance found in engineering bulletins for on-site wastewater treatment facilities. The applicable engineering bulletin is Engineering Bulletin #12 titled, "Minimum Requirements for the Design and Installation of Septic Tank Systems and Alternative On-site Disposal Systems," published in June 1989. Engineering Bulletin #12 is no longer used and has been replaced with the current rules found in A.A.C. Title 18, Chapter 9, Articles 1 and 3, which were adopted in 2001. In addition, subsection (A) states that there may be additional requirements provided by local health departments to assist in approval of on-site wastewater treatment facilities. Removing a reference to engineering bulletins from this subsection will not impact the availability of these bulletins to the public as a resource. In addition, removing from this subsection a reference to local health departments that may exist will not impact any applicable local health department requirements. Therefore, pursuant to A.R.S. § 41-1027(A)(6), ADEQ proposes to remove language in subsection (A) that references engineering bulletins and local health department requirements that may be required and replace the language with a reference to the applicable rules at 18 A.A.C. 9, Articles 1 and 3.

Next, subsection (E)(1) describes the qualifications of a person submitting a geological report containing the percolation tests and boring logs, which includes an engineer, geologist or other qualified person. R18-9-A310, which covers the method for percolation tests for subsurface characterization, describes in R18-9-A310(H) the qualifications for a person performing a percolation test. R18-5-408(E)(1) uses the term "geological report," while R18-9-A310(H) uses the term "site investigation," but the terms are synonyms. While the requirements of R18-9-A310(H) apply to this rule currently, including a reference to the applicable Chapter 9 rule in this rule would clarify the language in subsection (E)(1). The proposed amendment provides clarity to R18-5-408(E)(1) as to who can perform and submit a report, without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(H).

Next, subsection (E)(1) sets forth requirements for conducting percolation testing for subdivision plats, but it does not reference the applicable rules guiding percolation testing methods for on-site wastewater treatment facilities. These requirements are found in R18-9-A310(F)(1), which describes percolation test methods for subsurface characterization of on-site wastewater treatment facilities. While the requirements of R18-9-A310(F)(1) apply to the rule currently, a reference to the percolation test methods for subsurface characterization in Chapter 9 would clarify the language in the rule, and make subsection (E)(1) more user-friendly.

ADEQ proposes referencing the requirements of R18-9-A310(F)(1), with the exception of the requirement in R18-9-A310(F)(1)(a) because R18-5-408(E)(1) already delineates the number of percolation tests required to be performed for a subdivision. The proposed amendment to R18-5-408(E) clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(F)(1), with the exception of the requirements of R18-9-A310(F)(1)(a).

Finally, ADEQ proposes to insert a reference to the total nitrogen discharge requirements found in R18-9-A309(8)(c) for subdivisions, which are required to be included in the geological report in R18-5-408(E)(1). The proposed amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A309(8)(c).

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2024

Written comments may be sent to the individual listed in item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in item 5 by the close of record.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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

Not applicable

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

The Safe Drinking Water Act, as amended, is applicable to the subject of this rule. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Section
R18-5-116. Initial Grading and Regrading of Facilities

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

Section
R18-5-208. Maximum Bathing Load

ARTICLE 4. SUBDIVISIONS

Section
R18-5-408. ~~Individual sewage disposal systems~~ On-Site Wastewater Treatment Facilities

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-116. Initial Grading and Regrading of Facilities

~~**A.** The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when regrading a facility.~~

~~**B.**~~**A.** If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:

1. The facility has special design features or characteristics that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety or welfare.

~~**C.**~~**B.** The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-208. Maximum Bathing Load

A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.
B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.
C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in ~~R18-5-242~~ R18-5-241.
D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.
E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

ARTICLE 4. SUBDIVISIONS

R18-5-408. ~~Individual sewage disposal systems~~ On-Site Wastewater Treatment Facilities

A. ~~Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.~~ On-site wastewater treatment facilities shall be governed by A.A.C. Title 18, Chapter 9, Articles 1 and 3.
B. Where soil conditions and terrain features or other conditions are such that ~~individual sewage disposal systems~~ on-site wastewater treatment facilities cannot be expected to function satisfactorily or where groundwater or soil conditions are such that ~~individual sewage disposal systems~~ on-site wastewater treatment facilities may cause pollution of groundwater, they are prohibited.
C. Where such installations may create an unsanitary condition or public health nuisance, ~~individual sewage disposal systems~~ on-site wastewater treatment facilities are prohibited.
D. The use of cesspools is prohibited.
E. Where an ~~individual sewage disposal system~~ on-site wastewater treatment facility is proposed, the following conditions shall be satisfied:
1. A geological report shall be made by an engineer, geologist or other ~~qualified~~ person who meets the qualifications in R18-9-A310(H). The geological report shall include the total nitrogen discharge requirements of R18-9-A309(8)(c). The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that ~~individual disposal systems~~ on-site wastewater treatment facilities could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. Percolation tests shall be performed in accordance with all of the requirements in R18-9-A310(F), except for the requirements in R18-9-A310(F)(1)(a). The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of ~~individual sewage disposal systems~~ on-site wastewater treatment facilities.
3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER POLLUTION CONTROL

[R24-167]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:
May 6, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-9-101	Amend
R18-9-A213	Amend
R18-9-B201	Amend
R18-9-B205	Amend
R18-9-C301	Amend
R18-9-C302	Amend
R18-9-C304	Amend
R18-9-D302	Amend
R18-9-C620	Amend
R18-9-D635	Amend
R18-9-F645	Amend
R18-9-I650	Amend
R18-9-A701	Amend

R18-9-A902	Amend
R18-9-A904	Amend
R18-9-A907	Amend
R18-9-1001	Amend

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

Authorizing statute: A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11)

Implementing statute: A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), 49-255.02

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 Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-106.

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

Name: Katherine Silvestri

Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007

Telephone: (602) 809-4869

Fax: (602) 771-2366

Email: waterqualityrulecorrections@azdeq.gov

Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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 objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 9, as well as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The proposed amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conduct an expedited rulemaking only if the rulemaking "does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]". The applicable requirements relied upon in this rulemaking include the following, which are individually assigned for each proposed amendment (as shown in the section by section explanation below): (A)(1) "Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority'; (A)(3) "Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect"; and (A)(6) "Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government".

Section by Section Explanation of Proposed Rules:

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 1. Aquifer Protection Permits - General Provisions
This rule provides definitions for Title 18, Chapter 9, Articles 1, 2, 3, and 4 in addition to those established in A.R.S. § 49-201.	101(21)	Update following repeal	This rule contains an outdated reference to A.R.S. § 49-331 which is repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to remove the statutory reference in the definition, and un-italicize the definition accordingly.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 2. Aquifer Protection Permits - Individual Permits
This rule contains the requirements for the suspension, revocation, denial, or termination of an Aquifer Protection Permit (APP) individual permit.	R18-9-A213(C)(1)	Correction	This rule contains an incorrect reference to R18-9-A209 in subsection (C)(1) when referencing ADEQ's issuance of a Permit Release Notice. The rule directs that the Director shall terminate an individual permit if the facility covered under the permit has closed and the Director has issued a Permit Release Notice. Currently the rule cites R18-9-A209(B)(3)(a)(ii) which discusses the elements of a site investigation plan under a closure plan. The reference for the Director's determination to send a Permit Release Notice is found, instead, at R18-9-A209(B)(4)(a)(ii). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to update the rule with the correct reference to R18-9-A209(B)(4)(a)(ii).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 2. Aquifer Protection Permits - Individual Permits
This rule contains general considerations and prohibitions for sewage treatment facilities permitted under an Aquifer Protection Permit (APP) individual permit.	R18-9-B201(I)	Clarification	There are two proposed amendments to this rule in subsection (I). First, ADEQ proposes adding a clarification to the rule language. This rule establishes setback requirements for new sewage treatment facilities or facilities undergoing a major modification. Currently the rule provides a setback table and prescribes setbacks to be measured from the treatment and disposal components within the facility. However, the rule does not clearly explain that the setbacks must be measured from the noise or odor-producing treatment and disposal components within the facility, despite this being the interpretation consistently applied by ADEQ and most reasonably applied when reading the rule as a whole and analyzing the corresponding setback table. The setback table, itself, details the required distance (in feet) of the setbacks depending on the proposed level of noise, odor, or aesthetic controls, corresponding with the design flow of the sewage treatment facility. Clarifying that the setbacks are measured from the noise or odor-producing components will assist the public with understanding how to apply and follow the required setbacks to achieve the goal and intention of the subsection, which is to mitigate and control noise and odor from facilities. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to clarify the rule by explicitly stating that setbacks are measured from the noise or odor-producing components of the facility. Next, ADEQ proposes clarifying the setback table within subsection (I). Currently, the setback table, as described above, prescribes the required distance (in feet) of the setbacks depending on the proposed level of noise, odor, or aesthetic controls, corresponding with the design flow of the sewage treatment facility. The table would be better understood by the public if the setback distances were, instead, clarified as "minimum" distances. This proposal clarifies the rule in accordance with the original intention of the rule, itself, evidenced by the original setback table in Chapter VI, "Sewage Treatment Works Design Considerations", of Engineering Bulletin No. 11, published by ADHS in July 1978, upon which the setback table in R18-9-B201 was based (*see* 7 A.A.R. 294 (January 12, 2001)). There, the setback table is entitled "Minimum Setback vs. Treatment Plant Size" and the corresponding explanation of the table further explains that the distances are the required "minimum setback[s]". Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to clarify the rule by updating the setback table to make clear the fact that the setbacks are minimum distances.
This rule contains treatment performance requirements for an existing sewage treatment facility permitted under an Aquifer Protection Permit (APP) individual permit.	R18-9-B205	Update	This rule contains an outdated reference to A.R.S. § 49-201(16) for the definition of "existing facility". The reference has since changed to A.R.S. § 49-201(18). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(16) to A.R.S. § 49-201(18).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 3. Aquifer Protection Permits - General Permits
This rule sets forth the requirements for a 2.01 Aquifer Protection Permit (APP) general permit for drywells that drain areas where hazardous substances are used, stored, loaded, or treated.	R18-9-C301(B) & (H)(2)(b)	Update following repeal	This rule requires an applicant for a 2.01 general permit to submit to the Department a Notice of Intent to discharge along with their "Department registration number" for the drywell. This refers to a state-based drywell registration program, previously authorized by A.R.S. Title 49 Article 8, which was repealed on September 24, 2022 in anticipation of ADEQ's impending primacy over the Underground Injection Control (UIC) program. The UIC program regulates drywells as a Class V underground injection well which must be inventoried pursuant to A.A.C. R18-9-I652. The reference to a "Department registration number" in this rule is inconsistent with the requirement in R18-9-I652 to submit "inventory information" and is, furthermore, outdated following the repeal of Article 8. An applicant for a 2.01 general permit must demonstrate compliance with the UIC rules and related requirements. Removal of the outdated reference to "Department registration number" is necessary to retain functionality of the rule and increase public understanding of the requirements incumbent upon applicants for a 2.01 general permit. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to update the language in the rule to include a reference to the "Class V injection well inventory".
This rule sets forth the requirements for a 2.02 Aquifer Protection Permit (APP) general permit for intermediate stockpiles at mining sites.	R18-9-C302(A)	Update	This rule contains an outdated reference to A.R.S. § 49-201(19) for the definition of "inert material". The reference has since changed to A.R.S. § 49-201(22). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(19) to A.R.S. § 49-201(22).
This rule sets forth the requirements for a 2.04 Aquifer Protection Permit (APP) general permit for drywells that drain areas at motor fuel dispensing facilities where motor fuels are used, stored, or loaded.	R18-9-C304(B) & (I)(2)(b)	Update following repeal	This rule requires an applicant for a 2.04 general permit to submit to the Department a Notice of Intent to discharge along with their "Department registration number" for the drywell. This refers to a state-based drywell registration program, previously authorized by A.R.S. Title 49 Article 8, which was repealed on September 24, 2022 in anticipation of ADEQ's impending primacy over the Underground Injection Control (UIC) program. The UIC program regulates drywells as a Class V underground injection well which must be inventoried pursuant to A.A.C. R18-9-I652. The reference to a "Department registration number" is inconsistent with the requirement in R18-9-I652 to submit "inventory information" and is, furthermore, outdated following the repeal of Article 8. An applicant for a 2.04 general permit must demonstrate compliance with the UIC rules and related requirements. Removal of the outdated reference to "Department registration number" is necessary to retain functionality of the rule and increase public understanding of the requirements incumbent upon applicants for a 2.04 general permit. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to update the language in the rule to include a reference to the "Class V injection well inventory".
This rule sets forth the requirements for a 3.02 Aquifer Protection Permit (APP) general permit for process water discharges from water treatment facilities.	R18-9-D302(A)(2)	Update	This rule contains an outdated reference to A.R.S. § 49-201(19) for the definition of "inert material." This has changed in statute to (22). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(19) to A.R.S. § 49-201(22).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 6. Underground Injection Control (UIC)
This rule outlines the public notice requirements for the UIC program	R18-9-C620(D)(1)(f)	Update	Subsection (D)(1) in the rule is not correctly scoped to encompass the federal UIC rules in 40 CFR 124.10(C)(1)(VIII) & (XI). Currently, the language states that the Director shall give public notice of UIC permit actions and public hearings, and shall deliver a copy of the public notice to certain entities. ADEQ is applying for primacy of the Safe Drinking Water Act - Underground Injection Control regulatory program (*see* A.R.S. §§ 49-203(A)(6), 49-257.01). One of the requirements is for ADEQ to have rules that are at least as stringent as the Federal analog. Therefore, the rule needs to be scoped to match the federal rules by clarifying that a copy of the notice shall be provided to state and local oil and gas regulatory agencies for Classes I and VI injection wells. Notably, the requirement in 40 CFR 124.10(C)(1)(XI) to notify the state Director of the Public Water Supply Supervision (PWSS) program is not necessary to add in the A.A.C. because the Director of the PWSS is the Director of ADEQ, and is therefore not separately notified of permit actions. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to amend the language in this subsection to align the public notice requirements with the federal UIC rules by scoping Class I wells into the public notice requirements.
This rule provides the general permit conditions applicable to all UIC permits	R18-9-D635(9)(d)	Correction	This rule contains a typographical error. The language in subsection (9)(d) provides that the permittee shall allow the Director to sample or monitor for the purposes of assuring permit compliance "or as otherwise authorized by this Article the SDWA…". The language should, instead, say "...by this Article or the SDWA…". Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to revise the language and add the word "or".
This rule sets forth the information that must be considered by the Director in authorizing Class II wells under the UIC program.	R18-9-F645(B)(2)	Correction	This rule contains a typographical error. The language in subsection (B)(2) discusses the requirement for the Director to consider a map which may show pertinent surface features "if known or suspended". The language should, instead, say "suspected". Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to revise the language to "suspected".
This rule sets forth general requirements for Class V UIC wells	R18-9-I650(A)(4)(b)	Correction	This rule contains a typographical error to an incorrect citation. Subsection (A)(4)(b) cites a transfer fee rule in R18-14-111(3). The correct citation is, instead, R18-14-111(A)(3). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to fix the error by changing the reference to R18-14-111(A)(3).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 7. Use of Recycled Water
This rule provides definitions for Title 18, Chapter 9, Article 7 in addition to those established in A.R.S. § 49-201.	R18-9-A701(5)	Update	This rule contains an outdated reference to A.R.S. § 49-201(18) for the definition of "gray water". The reference has since changed to A.R.S. § 49-201(20). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(18) to A.R.S. § 49-201(20).
This rule provides definitions for Title 18, Chapter 9, Article 7 in addition to those established in A.R.S. § 49-201.	R18-9-A701(11)	Update	This rule contains an outdated reference to A.R.S. § 49-201(32) for the definition of "reclaimed water". The reference has since changed to A.R.S. § 49-201(41). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(32) to A.R.S. § 49-201(41).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 9. Arizona Pollutant Discharge Elimination System
This rule outlines the relevant sections of Arizona assuming regulatory authority over the Environmental Protection Agency's National Pollutant Discharge System (NPDES).	R18-9-A902(A) & (F)	Clarification	This rule should be revised to exclude outdated criteria under the public notice requirements for NPDES permittees in Arizona. Currently, the rule requires ADEQ to provide notice to all Arizona NPDES permittees, through one or more newspapers, which shall contain certain requirements as detailed in the rule. ADEQ has primacy over the Environmental Protection Agency's (EPA) NPDES program, and is authorized to implement and regulate a state-based program, AZPDES. ADEQ received authorization from the EPA to administer the NPDES Program on December 5, 2002. Now that ADEQ has administered the AZPDES program for roughly twenty-two years, these sections under R18-9-A902 are no longer necessary or appropriate. By updating this rule such that the Department would not be required to publish the date of EPA's approval of the AZPDES program, as well as information related to state and federal laws related to the permitting program, the contents of the public notice will be clearer and concise, fostering more public awareness of the most relevant aspects of a permit at issue. ADEQ proposes removing paragraphs (A) and (F) under this section pursuant to its authority under A.R.S. § 41-1027(A)(6) to update this rule.
This rule intends to clarify that the scope of AZPDES permits do not convey property rights or special privileges.	R18-9-A904(B)	Clarification	This rule would benefit from improving grammar of the language so as to make it clearer for AZPDES permittees. The purpose of this rule is to more clearly delineate that an authorization to discharge under the AZPDES program does not instill property rights in the permittee (e.g., property rights over surface water or specialized licenses/privileges beyond the scope of the AZPDES permit). While the rule currently includes language to this effect, it would benefit from clarification to the grammar and the addition of the term "to the permittee" to further clarify to whom the prohibition applies. Therefore, ADEQ seeks to add clarifying language pursuant to its authority under A.R.S. § 41-1027(A)(3).
This rule outlines public notice requirements for Individual AZPDES permits.	R18-9-A907(A)(1) & (B)	Clarification	This rule outlines public notice requirements for AZPDES individual permits. Subsection (A)(1) of this rule addresses public notice requirements for Individual AZPDES Permits. Subsection (B) outlines requirements for General Permits. ADEQ seeks to add clarifying language pursuant to its authority under A.R.S. § 41-1027(A)(3) for Individual Permits to make it clear that the Department has authority to post public notice to its website in order to make the information more widely available online. Furthermore, this change comports with notice requirements of the National Pollutant Discharge Elimination System (NPDES) as set forth in the Code of Federal Regulations (CFR) under 40 C.F.R. 124.10. Additionally, in subsection (B), the rule prescribes notice requirements for General Permits. ADEQ proposes updating the rule to add the option for ADEQ to post notice on the website, in addition to its requirement to post in the *Arizona Administrative Register*. This will allow the notice to reach potentially broader audiences and boost public engagement in the permitting process. Therefore, pursuant to its authority in A.R.S. § 41-1027(A)(3), ADEQ proposes to add this notice option to the language of the rule.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 10. Arizona Pollutant Discharge Elimination System – Disposal, Use, and Transportation of Biosolids
This rule provides definitions for Title 18, Chapter 9, Article 10 in addition to those established in A.R.S. § 49-225 and R18-9-A901.	R18-9-1001(26)	Correction	This rule contains an incorrect reference to A.R.S. § 49-201(21) for the definition of "navigable waters." There are three issues with this rule: 1) A.R.S. § 49-201(21) defines "hazardous substance" and the reference is therefore incorrect; 2) There is no corresponding definition for "navigable waters" in the statute; and 3) The definition in the rule is not actually defining the term "navigable waters". The language in the rule more appropriately and accurately defines "WOTUS" which is defined in statute at A.R.S. § 49-201(53). ADEQ proposes to correct and clarify the rule by changing "navigable waters" to "WOTUS". Additionally, ADEQ proposes to update the reference to the definition of WOTUS in A.R.S. § 49-201(53) Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to change the definition to "WOTUS" and update the statutory reference accordingly.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 10. Arizona Pollutant Discharge Elimination System – Disposal, Use, and Transportation of Biosolids
This rule provides definitions for Title 18, Chapter 9, Article 10 in addition to those established in A.R.S. § 49-225 and R18-9-A901.	R18-9-1001(29)	Update	This rule contains an outdated reference to A.R.S. § 49-201(26) for the definition of "person". The reference has since changed to A.R.S. § 49-201(33). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(26) to A.R.S. § 49-201(33).

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2024.

Written comments may be sent to the individual listed in Item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in Item 5 by the close of record.

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

There are no other matters prescribed by statute applicable specifically to ADEQ for this specific rulemaking.

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

Not applicable.

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

40 CFR 124.10 is applicable to the subject of R18-9-C620.

Additionally, 40 C.F.R. 124.10 and 40 C.F.R. 123.25 are applicable to the subject of R18-9A902, R18-9-A904, and R18-9-A907.

However, these rules are not more stringent than federal law in accordance with A.R.S. § 49-104(A)(16).

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

Section
R18-9-101. Definitions

ARTICLE 2. AQUIFER PROTECTION PERMITS – INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

Section
R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions
R18-9-B205. Treatment Performance Requirements for an Existing Facility

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

Section
R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated
R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites
R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

PART D. TYPE 3 GENERAL PERMITS

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

ARTICLE 6. UNDERGROUND INJECTION CONTROL

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

Section
R18-9-C620. Public Notice of Permit Actions and Public Comment Period

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. Conditions Applicable to All Permits

PART F. CLASS II INJECTION WELL REQUIREMENTS

R18-9-F645. Class II; Information to be Considered by the Director

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V; General Requirements

ARTICLE 7. USE OF RECYCLED WATER

PART A. GENERAL PROVISIONS

Section
R18-9-A701. Definitions

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

Section
R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions
R18-9-A904. Effect of a Permit
R18-9-A907. Public Notice

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Section
R18-9-1001. Definitions

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change

21. "Drywell" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended. ~~A.R.S. § 49-331(3)~~.
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change
39. No change
40. No change
41. No change
42. No change
43. No change
44. No change
45. No change
46. No change
47. No change
48. No change
49. No change
50. No change

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A213. Permit Suspension, Revocation, Denial, Or Termination

A. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
   a. No change
   b. No change

B. No change
1. No change
2. No change
   a. No change
   b. No change
   c. No change
3. No change

C. The Director shall terminate an individual permit if each facility covered under the individual permit:
1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or ~~A209(B)(3)(a)(ii)~~ A209(B)(4)(a)(ii) for the closed facility, or
2. Is covered under another Aquifer Protection Permit.

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

A. No change
B. No change
C. No change
D. No change
1. No change
2. No change
3. No change

4. No change

E. No change

F. No change

G. No change

H. No change

I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the noise or odor-producing treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

	Minimum Setback Distance (feet)	
Sewage Treatment Facility Design Flow (gallons per day)	**No Noise, Odor, or Aesthetic Controls ~~(feet)~~**	**Full Noise, Odor, and Aesthetic Controls ~~(feet)~~**
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
   a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
   b. All odor-producing components of the sewage treatment facility are fully enclosed,
   c. Odor scrubbers or other odor-control devices are installed on all vents, and
   d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
   a. Allowed by local ordinance; or
   b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design of the sewage treatment facility, and the potential for noise and odor.

J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in ~~A.R.S. § 49-201(16)~~ A.R.S. § 49-201(18), the BADCT shall conform with the following:

1. No change
2. No change
3. No change

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

A. No change

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:

1. The ~~Department registration~~ Class V injection well inventory number for the drywell or documentation that ~~a drywell registration form~~ inventory information was submitted to the Department;
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
3. No change
4. No change

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

D. No change

1. No change
2. No change

3. No change
4. No change
5. No change
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
   e. No change
6. No change
   a. No change
   b. No change
   c. No change
   d. No change

E. No change
1. No change
2. No change

F. No change
1. No change
2. No change
3. No change
4. No change
   a. No change
   b. No change
   c. No change
   d. No change
5. No change
6. No change

G. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
2. No change

H. Closure and decommissioning requirements.
1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The ~~drywell registration~~Class V injection well inventory number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under ~~A.R.S. § 49-201(19)~~ A.R.S. § 49-201(22) at a mining site.

B. No change
C. No change
1. No change
2. No change
3. No change
4. No change
5. No change

D. No change
1. No change
2. No change

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

A. No change
1. No change
2. No change
3. No change

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The ~~Department registration~~Class V injection well inventory number for the drywell or documentation that ~~a drywell registration form~~inventory information was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
   a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
   d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
   g. No change
   h. No change
   i. No change

D. No change
1. No change
   a. No change
   b. No change
      i. No change
      ii. No change
   c. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
2. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
   b. No change
      i. No change
      ii. No change
   c. No change
      i. No change
      ii. No change
   d. No change

i. No change
ii. No change

E. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change

F. No change
1. No change
2. No change

G. No change
1. No change
2. No change
3. No change
4. No change
   a. No change
   b. No change
   c. No change
   d. No change
5. No change
6. No change

H. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
2. No change

I. Closure and decommissioning requirements.
1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The ~~drywell registration~~ Class V injection well inventory number or;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

PART D. TYPE 3 GENERAL PERMITS

R18-9-D302. 3.02 General Permit: Process Water Discharges From Water Treatment Facilities

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:
1. Liquid fraction. The discharge meets:
   a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
   b. The discharge meets one of the following criteria for microbiological contaminants:

i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of E. coli bacteria is not more than 1/ 100 ml, or
ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of E. coli bacteria is less than 126/ 100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and

2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in ~~A.R.S. § 49-201(19)~~ A.R.S. § 49-201(22).

B. No change
1. No change
2. No change

C. No change
1. No change
2. No change
3. No change
4. No change
   a. No change
   b. No change
   c. No change
5. No change

D. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change
   a. No change
   b. No change
   c. No change

E. No change
1. No change
2. No change
3. No change
4. No change
5. No change

F. No change
1. No change
2. No change

ARTICLE 6. UNDERGROUND INJECTION CONTROL

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C620. Public Notice of Permit Actions and Public Comment Period

A. No change
1. No change
2. No change

B. No change

C. No change
1. No change
2. No change

D. Public notice of activities described in subsection (A) shall be given by the following methods:
1. Delivery of a copy of the notice to:
   a. The applicant;
   b. Any affected federal, state, tribal, or local agency, or council of government;
   c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
   d. Any person who requested, in writing, notification of the activity;
   e. Any persons on a contact list developed from past permit proceedings and public outreach; and
   f. ~~For Class VI injection well UIC permits, mailing or e-mailing a notice to~~ State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State for Classes I and VI injection well UIC permits.
2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. Conditions Applicable To All Permits

1. No change
2. No change
3. No change

4. No change
5. No change
6. No change
7. No change
8. No change
9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
   a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
   b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
   c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
   d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article or the SDWA, any substances or parameters at any location.
10. No change
    a. No change
    b. No change
       i. No change
       ii. No change
    c. No change
       i. No change
       ii. No change
       iii. No change
       iv. No change
       v. No change
       vi. No change
    d. No change
11. No change
12. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
       i. No change
       ii. No change
    g. No change
    h. No change
13. No change
    a. No change
    b. No change
       i. No change
       ii. No change
14. No change
15. No change
16. No change
    a. No change
    b. No change
17. No change
    a. No change
    b. No change
    c. No change

PART F. CLASS II INJECTION WELL REQUIREMENTS

R18-9-F645. Class II; Information to be Considered by the Director

A. No change

B. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:
1. Information required in R18-9-C616.
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or ~~suspended~~ suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.

3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.
4. Proposed operating data:
   a. Average and maximum daily rate and volume of fluids to be injected;
   b. Average and maximum injection pressure; and
   c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.
5. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth.
6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.
7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.
9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. No change
1. No change
2. No change
3. No change
4. No change
5. No change

D. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

E. No change
1. No change
2. No change
3. No change
4. No change
5. No change

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V; General Requirements

A. The following requirements apply to Class V Wells authorized by rule:
1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
   a. Upon the effective date of an applicable permit denial;
   b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9- C616;
   c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.
4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
   a. An inventory, and
   b. Class V authorized by rule transfer fee pursuant to ~~R18-14-111(3)~~ R18-14-111(A)(3).

B. No change
1. No change
2. No change
   a. No change
   b. No change
      i. No change
      ii. No change
   c. No change
3. No change
4. No change

ARTICLE 7. USE OF RECYCLED WATER

PART A. GENERAL PROVISIONS

R18-9-A701. Definitions

1. No change
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
3. No change
4. No change
5. "Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet. ~~A.R.S. § 49-201(18)~~ A.R.S. § 49-201(20).
6. No change
7. No change
8. No change
9. No change
10. No change
11. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility. ~~A.R.S. § 49-201(32)~~ A.R.S. § 49-201(41).
12. No change
13. No change
14. No change
15. No change
16. No change

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

R18-9-A902. AZPDES Permit Transition, Applicability, And Exclusions

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.

1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
   ~~a. The effective date of EPA approval of the AZPDES program;~~
   ~~b.~~a. The name and address of the Department;
   ~~c.~~b. The name of each individual permitted facility and its permit number;
   ~~d.~~c. The title of each general permit administered by the Department;
   ~~e.~~d. The name and address of the contact person, to which the permittee will submit notification and monitoring reports; and
   ~~f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and~~
   ~~g.~~e. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
2. The Department shall provide the following entities with a copy of the notice:
   a. Each county department of health, environmental services, or comparable department;
   b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
   c. Any person who requested, in writing, notification of the activity;
   d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
   e. The United States Section of the International Boundary and Water Commission.
3. If a timely application for a NPDES permit was ~~is~~ submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
4. The terms and conditions under which the permit was issued remain the same until the permit is modified.

B. No change

1. No change
2. No change
3. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   b. No change
4. No change

5. No change
6. No change
7. No change
8. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
   d. No change

C. No change
1. No change
2. No change

D. No change
1. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change
      vii. No change
   b. No change
2. No change
3. No change

E. No change

F. No change
1. No change
   a. No change
   b. No change
2. No change

G. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

H. No change
1. No change
2. No change
   a. No change
   b. No change
   c. No change

R18-9-A904. Effect of a Permit

A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.

B. The issuance of a permit does not convey any property rights ~~of any sort,~~ or ~~any~~ exclusive privilege to the permittee.

C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

R18-9-A907. Public Notice Requirements

A. Individual permits.
1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied~~,~~ and may publish all notices of these activities in one or more newspapers of general circulation where the facility is located, or to the Department's website. If the Department publishes notice of a draft individual permit on the website, it shall additionally post on the website the draft permit and fact sheet for the duration of the public comment period. The notice shall contain:
   a. The name and address of the Department;
   b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;

c. A brief description of the business conducted at the facility or activity described in the permit application;
d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
i. Any additional information considered necessary to the permit decision.

2. No change
3. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
   g. No change

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9- C901, the Director shall publish a general notice of the draft permit in the Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied~~,~~ and may publish all notices of these activities in one or more newspapers of general circulation where the facility is located, or to the Department's website. If the Department publishes notice of a draft individual permit on the website, it shall additionally post on the website the draft permit and fact sheet for the duration of the public comment period. The notice shall contain:

1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. ~~*"Navigable waters"*~~ "WOTUS" *means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)).* ~~*A.R.S. § 49- 201(21)*~~ *A.R.S. § 49- 201(53).*

27. No change
28. No change
29. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity.* ~~*A.R.S. § 49-201(26)*~~ *A.R.S. § 49-201(33)*.
30. No change
31. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change
39. No change
40. No change
41. No change
42. No change
43. No change
44. No change
45. No change
46. No change
47. No change
48. No change
49. No change
50. No change
51. No change

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY STANDARDS

[R24-168]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024

2. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R18-11-101	Amend
R18-11-301	Amend

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

Authorizing statute: A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)

Implementing statute: A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2089, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-107

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

Name:	Matthew O'Donnell
Title:	Attorney
Division:	Office of Administrative Counsel
Address:	Arizona Department of Environmental Quality Office of Administrative Counsel 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 809-4869
Email:	waterqualityrulecorrections@azdeq.gov
Website:	https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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 Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to water quality standards. The objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 11, as well as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The purpose of Chapter 11, Articles 1 and 3 is to establish standards for surface waters and reclaimed water.

The proposed amendments to Title 18, Chapter 11, Articles 1 and 3 are limited to correcting errors and amending references that are outdated.

The proposed amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conducting an expedited rulemaking only if the rulemaking "does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]". The applicable requirements relied upon in this rulemaking include the following: (A)(3) "Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect" and (A)(6) "Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government". This proposed expedited rulemaking is expected to fix and clarify rules without adding regulatory burden because this rulemaking consists only of minor spelling and grammar corrections and updates to reflect statute/rule renumbering and repeal. Indeed, this cleanup will serve to reduce regulatory burden by removing confusion and enhancing public understanding of the rules.

Section-by-Section Explanation of Proposed Rules:

R18-11-101 Amend to update definitions section: Add reference to A.R.S. § 49-255 to Definition (9); update A.R.S. reference in definition (33) to reflect renumbering; miscellaneous spelling and grammar changes to (51);

R18-11-301 Amend to update definitions section: Update references to A.R.S, A.A.C. to reflect renumbering; miscellaneous spelling and grammar changes.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This proposed expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2004

Written comments may be sent to the individual listed in Item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in Item 5 by the close of record.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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

The proposed changes to these rules do not require a permit.

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

The Clean Water Act (CWA) [33 U.S.C. § 1251, *et seq.*], as amended, is applicable to the subject of this rule. The changes to the rule proposed in this rulemaking are not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY STANDARDS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Section
R18-11-101. Definitions

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Section
R18-11-301. Definitions

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

R18-11-101. Definitions

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation (AgI)" means the use of a surface water for crop irrigation.
3. "Agricultural livestock watering (AgL)" means the use of a surface water as a water supply for consumption by livestock.
4. "Annual mean" is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. "Aquatic and wildlife (cold water) (A&Wc)" means the use of a surface water by animals, plants, or other coldwater organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. "Aquatic and wildlife (effluent-dependent water) (A&Wedw)" means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. "Aquatic and wildlife (ephemeral) (A&We)" means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. "Aquatic and wildlife (warm water) (A&Ww)" means the use of a surface water by animals, plants, or other warmwater organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. "Arizona Pollutant Discharge Elimination System (AZPDES)" means the point source discharge permitting program established under A.R.S. § 49-255, et seq., and 18 A.A.C. 9, Article 9.
10. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. "Clean Water Act" means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. "Criteria" means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
    a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
    b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
    c. For human health based water quality standard criteria, the discharge flow critical condition is the longterm arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
    a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
    b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
    c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.
17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water or portion of a surface water, that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
20. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.

22. "Fish consumption (FC)" means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. "Full-body contact (FBC)" means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. "Geometric mean" means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3)\ldots(Y_n)}$$

25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO3) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.
27. "Intermittent water" means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.
28. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. "Outstanding Arizona water (OAW)" means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. "Partial-body contact (PBC)" means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.
33. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. ~~A.R.S § 49-201(29)~~ A.R.S § 49-201(35).
34. "Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. "Reference condition" means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.
37. "Regional Administrator" means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. "Regulated discharge" means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. "Riffle habitat" means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. "Run habitat" means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. "Sedimentary lake" means a lake or reservoir in sedimentary or karst geology and soils.
42. "Shallow lake" means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. Significant degradation" means:
    a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
    b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. "Surface water" means "WOTUS" as defined in A.R.S. § 49-201(53).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH3), ammonium ion (NH4+), nitrite (NO2), and nitrate (NO3), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. "Total phosphorus" means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. "Urban lake" means a manmade lake within an urban landscape.
49. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.

50. "Variance" means a time-limited designated use and criterion for a specific ~~pollutant(s)~~ pollutant or pollutants or water quality ~~parameter(s)~~ parameter or parameters that reflect the highest attainable condition during the term of the variance.
51. "Wadable" means a surface water can be safely crossed on foot and sampled without a boat.
52. "Wastewater" does not mean:
    a. Stormwater,
    b. Discharges authorized under ~~the~~ a De ~~Minimus~~ Minimis General Permit, or
    c. Other allowable non-stormwater discharges permitted under ~~the~~ a Construction General Permit or ~~the~~ Multi-sector General Permit, or Stormwater discharges from a municipal separate storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.
54. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

"Direct reuse" has the meaning prescribed in ~~R18-9-701(1)~~R18-9-A701(2).

"Disinfection" means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

"Filtration" means a treatment process that removes particulate matter from wastewater by passage through porous media.

"Gray water" means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

"Industrial wastewater" means wastewater generated from an industrial process.

"Landscape impoundment" means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

"NTU" means ~~nepholometric~~ nephelometric turbidity unit.

"On-site wastewater treatment facility" has the meaning prescribed in ~~A.R.S. § 49-201(24)~~ A.R.S. § 49-201(29).

"Open access" means that access to reclaimed water by the general public is uncontrolled.

"Reclaimed water" has the meaning prescribed in ~~A.R.S. § 49- 201(31)~~ A.R.S. § 49- 201(41).

"Recreational impoundment" means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

"Restricted access" means that access to reclaimed water by the general public is controlled.

"Secondary treatment" means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

"Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

NOTICES OF PUBLIC INFORMATION

Agencies use Notices of Public Information to notify stakeholders about other information that pertains to rulemaking notices under A.R.S. § 41-1013(B)(14). When required by law, agencies also use this notice to notify the public about information not related to rulemaking.

The most common use for this notice is to correct errors printed in a rulemaking notice or extend a public comment period.

The Administrative Rules Division of the Office does not provide a standard template for Notices of Public Information because the content of this type of notice varies.

An agency shall follow the Office's formatting standards when preparing this type of notice and use a numbered list of questions and answers. Additionally, an agency receipt shall be filed with a Notice of Public Information.

NOTICE OF PUBLIC INFORMATION

DEPARTMENT OF PUBLIC SAFETY

[M24-52]

1. Agency Name:

Department of Public Safety

2. The public information related to this notice:

The Department provides notice to the public that effective August 27, 2024, the Department has rescinded Substantive Policy Statement #HPDCVE-2, *School Bus Driver Hours Limitations* and the Department will no longer enforce R13-13-104(C) as interpreted in the statement.

Substantive Policy Statement #HPDCVE-2 originally appeared in the *Administrative Register* at 30 A.A.R. 821, dated April 26, 2024.

3. The agency contact person who can answer questions about this notice:

Name:	Vernon Havens
Title:	Captain, Commercial Vehicle Enforcement District, Student Transportation
Division:	Highway Patrol
Address:	2102 W. Encanto Blvd. Phoenix, AZ 85009
Telephone:	(602) 223-2047
Email:	vhavens@azdps.gov
Website:	https://www.azdps.gov/services/enforcement-services/student-transportation

NOTICES OF SUBSTANTIVE POLICY STATEMENT

SUMMARIES AND LOCATION OF STATEMENTS

Substantive policy statements are written expressions that inform the general public of an agency's current approach to rule or regulation practice as defined under A.R.S. § 41-1001(24).

Agencies are required to prepare a Notice of Substantive Policy Statement and publish the titles of its substantive policy statements, a summary of statements, and its website where full statements can be reviewed under A.R.S. § 41-1013(B)(9). These notices are published in this section of the *Register*.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency's internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

Any person may petition an agency under A.R.S. § 41-1033(A)(2) to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

Contact the agency liaison listed under Item #6.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

[M24-51]

1. Statement title and policy number:

Arizona Department of Agriculture, Animal Services Division, Substantive Policy Statement 24-02, Exception to the Entry Permit Number Requirement under A.A.C. R3-2-602(B)

2. Is this a new policy or revision:

New

3. Date issued and effective date (if different from the date issued):

Date issued and effective: September 1, 2024

4. Policy summary:

The Arizona Department of Agriculture (the "Department"), Animal Services Division is the agency that shall exercise general supervision over the livestock interests of the state of Arizona, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 3-1201, *et seq.*, and Title 3, Chapter 2 of the Arizona Administrative Code ("A.A.C."). If importers, who ship livestock from another state into Arizona, utilize electronic Certificates of Veterinary Inspection (CVI) which are messaged directly to Arizona's, U.S. Animal Health Emergency Reporting Diagnostic System ("USAHERDS") database, the substantive policy statement provides an exception to the requirement in A.A.C. R3-2-602(B) to provide entry permit numbers for livestock imported into Arizona.

5. Authority (include the federal or state constitutional provision or statute, administrative rule, or regulation; or final court judgment):

General authority: A.R.S. § 3-107

Specific authority: A.R.S. § 3-1203, and A.A.C. R3-2-101 and R3-2-602

6. Agency contact information:

Name:	Ryan Wolker
Title:	State Veterinarian
Division:	Arizona Department of Agriculture, Animal Services Division
Address:	1802 W. Jackson St., #78 Phoenix, AZ 85007
Telephone:	(602) 542-4293
Fax:	(602) 542-4290
Email:	rwolker@azda.gov
Website:	https://agriculture.az.gov/animals

7. An electronic copy of the complete policy can be viewed at:

The substantive policy statement may be found on the official website of the Department. The URL for Department policies is https://agriculture.az.gov/about-us/policies-statutes/substantive-policy-statements

8. A paper copy of complete policy can be obtained at:

You may obtain a paper copy of the policy, free of charge, from the Department at 1110 W. Washington St., Suite 450, Phoenix, AZ, 85007. Business hours are from 8:00 a.m. to 5 p.m., Monday through Friday, except for all major holidays. You may also contact the person listed in #6 above for other options.

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See "General Information" in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING
PN = Proposed new Section
PM = Proposed amended Section
PR = Proposed repealed Section
P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING
SPN = Supplemental proposed new Section
SPM = Supplemental proposed amended Section
SPR = Supplemental proposed repealed Section
SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING
FN = Final new Section
FM = Final amended Section
FR = Final repealed Section
F# = Final renumbered Section

SUMMARY RULEMAKING
PROPOSED SUMMARY
PSMN = Proposed Summary new Section
PSMM = Proposed Summary amended Section
PSMR = Proposed Summary repealed Section
PSM# = Proposed Summary renumbered Section
FINAL SUMMARY
FSMN = Final Summary new Section
FSMM = Final Summary amended Section
FSMR = Final Summary repealed Section
FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING
PROPOSED EXPEDITED
PEN = Proposed Expedited new Section
PEM = Proposed Expedited amended Section
PER = Proposed Expedited repealed Section
PE# = Proposed Expedited renumbered Section
SUPPLEMENTAL EXPEDITED
SPEN = Supplemental Proposed Expedited new Section
SPEM = Supplemental Proposed Expedited amended Section
SPER = Supplemental Proposed Expedited repealed Section
SPE# = Supplemental Proposed Expedited renumbered Section
FINAL EXPEDITED
FEN = Final Expedited new Section
FEM = Final Expedited amended Section
FER = Final Expedited repealed Section
FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING
EXEMPT
XN = Exempt new Section
XM = Exempt amended Section
XR = Exempt repealed Section
X# = Exempt renumbered Section
EXEMPT PROPOSED
PXN = Proposed Exempt new Section
PXM = Proposed Exempt amended Section
PXR = Proposed Exempt repealed Section
PX# = Proposed Exempt renumbered Section
EXEMPT SUPPLEMENTAL PROPOSED
SPXN = Supplemental Proposed Exempt new Section
SPXR = Supplemental Proposed Exempt repealed Section
SPXM = Supplemental Proposed Exempt amended Section
SPX# = Supplemental Proposed Exempt renumbered Section
FINAL EXEMPT RULEMAKING
FXN = Final Exempt new Section
FXM = Final Exempt amended Section
FXR = Final Exempt repealed Section
FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING
EN = Emergency new Section
EM = Emergency amended Section
ER = Emergency repealed Section
E# = Emergency renumbered Section
EEXP = Emergency expired

RECODIFICATION OF RULES
RC = Recodified

REJECTION OF RULES
RJ = Rejected by the Attorney General

TERMINATION OF RULES
TN = Terminated proposed new Sections
TM = Terminated proposed amended Section
TR = Terminated proposed repealed Section
T# = Terminated proposed renumbered Section

RULE EXPIRATIONS
EXP = Rules have expired
See also "emergency expired" under emergency rulemaking

CORRECTIONS
C = Corrections to Published Rules

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RULEMAKING ACTIVITY INDEX

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 35 OF VOLUME 30.

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other legal notices required to be published under the Administrative Procedure Act, such as Rulemaking Docket Openings, are included in this Index by volume page number. Notices of Agency Ombudsman, Substantive Policy Statements, Proposed Delegation Agreements, and other applicable public records as required by law are also listed in this Index by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 35 OF VOLUME 30.

Docket Opening, Notices of Rulemaking

2024 RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		**February**		**March**		**April**		**May**		**June**	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
1/1	3/1	2/1	4/1	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/2	2/2	4/2	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/3	2/3	4/3	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/4	2/4	4/4	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/5	2/5	4/5	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/6	2/6	4/6	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/7	2/7	4/7	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/8	2/8	4/8	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/9	2/9	4/9	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/10	2/10	4/10	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/11	2/11	4/11	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/12	2/12	4/12	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/13	2/13	4/13	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/14	2/14	4/14	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/15	2/15	4/15	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/16	2/16	4/16	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/17	2/17	4/17	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/18	2/18	4/18	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/19	2/19	4/19	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/20	2/20	4/20	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/21	2/21	4/21	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/22	2/22	4/22	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/23	2/23	4/23	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/24	2/24	4/24	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/25	2/25	4/25	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/26	2/26	4/26	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/27	2/27	4/27	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/28	2/28	4/28	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/29	2/29	4/29	3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/30			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	3/31			3/31	5/30			5/31	7/30		

July		August		September		October		November		December	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1

REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the *Register* weekly. There is a three-week delay between the deadline date and the *Register* publication date. The weekly deadline dates (*first column*) and issue dates (*second column*) are shown below. Council meetings and *Register* deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements, following publication of the notice in the *Register*.

Deadline Date Friday, 5:00 p.m.	***Register* Publication Date**	**Oral Proceeding may be scheduled on or after** *(*later date due to holiday)*
July 5, 2024	July 26, 2024	August 26, 2024
July 12, 2024	August 2, 2024	September 3, 2024
July 19, 2024	August 9, 2024	September 9, 2024
July 26, 2024	August 16, 2024	September 16, 2024
August 2, 2024	August 23, 2024	September 23, 2024
August 9, 2024	August 30, 2024	September 30, 2024
August 16, 2024	September 6, 2024	October 7, 2024
August 23, 2024	September 13, 2024	October 15, 2024
August 30, 2024	September 20, 2024	October 21, 2024
September 6, 2024	September 27, 2024	October 28, 2024
September 13, 2024	October 4, 2024	November 4, 2024
September 20, 2024	October 11, 2024	*November 12, 2024
September 27, 2024	October 18, 2024	November 18, 2024
October 4, 2024	October 25, 2024	November 25, 2024
October 11, 2024	November 1, 2024	December 2, 2024
October 18, 2024	November 8, 2024	December 9, 2024
October 25, 2024	November 15, 2024	December 16, 2024
November 1, 2024	November 22, 2024	December 23, 2024
November 8, 2024	November 29, 2024	December 30, 2024
November 15, 2024	December 6, 2024	January 6, 2025
November 22, 2024	December 13, 2024	January 13, 2025
November 29, 2024	December 20, 2024	January 20, 2025
December 6, 2024	December 27, 2024	January 27, 2025
December 13, 2024	January 3, 2025	February 3, 2025
December 20, 2024	January 10, 2025	February 10, 2025
December 27, 2024	January 17, 2025	February 17, 2025
January 3, 2025	January 24, 2025	February 24, 2025
January 10, 2025	January 31, 2025	March 3, 2025

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor's Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council's office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit https://grrc.az.gov.

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2024

(MEETING DATES ARE SUBJECT TO CHANGE)

[M23-72]

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday February 20, 2024	*Tuesday* March 19, 2024	*Tuesday* March 26, 2024	*Tuesday* April 2, 2024
Tuesday March 19, 2024	*Tuesday* April 23, 2024	*Tuesday* April 30, 2024	*Tuesday* May 7, 2024
Tuesday April 23, 2024	*Tuesday* May 21, 2024	***Wednesday*** May 29, 2024	*Tuesday* June 4, 2024
Tuesday May 21, 2024	*Tuesday* June 18, 2024	*Tuesday* June 25, 2024	*Tuesday* July 2, 2024
Tuesday June 18, 2024	*Tuesday* July 23, 2024	*Tuesday* July 30, 2024	*Tuesday* August 6, 2024
Tuesday July 23, 2024	*Tuesday* August 20, 2024	*Tuesday* August 27, 2024	***Wednesday*** September 4, 2024
Tuesday August 20, 2024	*Tuesday* September 17, 2024	*Tuesday* September 24, 2024	*Tuesday* October 1, 2024
Tuesday September 17, 2024	*Tuesday* October 22, 2024	*Tuesday* October 29, 2024	*Tuesday* November 5, 2024
Tuesday October 22, 2024	*Tuesday* November 19, 2024	*Tuesday* November 26, 2024	*Tuesday* December 3, 2024
Tuesday December 24, 2024	*Tuesday* January 21, 2025	*Tuesday* January 28, 2025	*Tuesday* February 4, 2025

F-10.

WATER QUALITY ASSURANCE BOARD
Title 2, Chapter 17, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: **September 12, 2024**

SUBJECT: **WATER QUALITY ASSURANCE BOARD**
Title 2, Chapter 17, Article 1

Summary

This Five Year Review Report (5YRR) from the Water Quality Assurance Board (Board) covers twenty-seven (27) rules in Title 2, Chapter 17, Article 1 related to Appeals. The Board is required to adopt rules to conduct hearings regarding appeals and render decisions between individuals and public or private entities that have been denied a permit by the Arizona Department of Environmental Quality. These rules implement the statutory requirements imposed on the Board.

The Board completed its course of action proposed in its 5YRR submitted to Council in November of 2019.

Proposed Action

The Board anticipates submitting a Notice of Final Expedited Rulemaking to the Council to address the issues identified in this report by December 2025.

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

The Board cites both specific statutory authority for these rules.

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

According to the Water Quality Appeals Board (Board), there are no differences between the anticipated and actual benefits caused by the reviewed rules. The Board states that between 2019 and through 2024, the Board has received 8 appeals, has held 11 regular meetings, and has referred 3 appeals to the Office of Administrative Hearings (OAH) to conduct hearings for the Board. The rules provide clear guidance regarding processes, and the burdens of the processes are similar to the State's OAH processes for administrative appeals.

Stakeholders include the Board and individuals and public or private entities that have been denied a permit by the Arizona Department of Environmental Quality.

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

The Board believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Board has made every effort to ensure that the rules of procedure to govern hearings before the Board are followed and provide a fair, impartial process for rendering decisions on appeals while maintaining a process that is efficient, cost effective and necessary to achieving the regulatory objectives for the Board.

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

The Board has not received written criticism of the rules in the past five years.

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 indicates the rules are generally consistent with other rules and statutes with the following exceptions:

- R2-17-103.A: rule should be updated to address recent legislative changes
- R2-17-114: rule should be updated to address recent legislative changes

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

The Board states the rules are effective in achieving their objectives.

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

The Board states the rules are generally enforced as written, however to address any potential unfairness in the inconsistent filing instructions in A.R.S. § 49-324.E, the Board immediately copies any appeals received directly from an appellant to the Department of Environmental Quality.

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

The Board indicates there are no corresponding federal laws related to these rules.

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

The Board indicates that these rules do not require a permit, license, or agency authorization and therefore A.R.S. § 41-1037 does not apply.

11. **Conclusion**

This Five Year Review Report from the Water Quality Assurance Board covers twenty-seven rules in Title 2, Chapter 17, Article 1 related to Appeals. As indicated above, the rules are clear, concise, and understandable and are effective in achieving its objectives. The Board anticipates submitting a Notice of Final Expedited Rulemaking to the Council by December 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Katie Hobbs
Governor

Elizabeth
Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

ARIZONA DEPARTMENT OF ADMINISTRATION

GENERAL SERVICES DIVISION
1400 W WASHINGTON • SUITE B200
PHOENIX, ARIZONA 85007
(602) 542-1796

June 24, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

To the Council:

In response to the request from the GRRC under A.R.S. § 41-1056(A) for the Water Quality Appeals Board ("Board") to prepare a five year review report, the Board has reviewed its rules contained in Title 2, Chapter 17 of the Arizona Administrative Code, Sections R2-17-101 through R2-17-128 to determine whether any of its rules should be amended or repealed. This five year report is meant to summarize the Board's findings and propose a course of action if applicable.

Per the requirements in A.R.S. §41-1091, the Water Quality Appeals Board is in compliance with the requirement to publish substantive policy statements as the Board has no such statements. The Arizona Department of Administration's website has a short summary of the Board. The Board will request to add a short statement containing a citation to the Board's rule numbers with a link to the Administrative Code at that location to comply with A.R.S. §41-1091.C.

If you have any questions regarding this five year review report or you need additional information prior to the Council meeting at which the Board's report will be considered, please contact Michele Van Quathem, Chairperson of the Board, at (602) 357-7586.

Sincerely,

Michele Van Quathem

Michele Van Quathem,
Chairperson

encl: WQAB 5 Year Review Report 2024

cc: Michele Van Quathem, WQAB, Chairperson
Fred E. Brinker. P.E.
Keith Bowers, WQAB
Dena R. Benjamin, OAG

Katie Hobbs
Governor

Elizabeth
Alvarado-Thorson
Cabinet Executive Officer
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ARIZONA DEPARTMENT OF ADMINISTRATION

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Five-Year-Review Report Title 2,
Chapter 17, Article 1 Water Quality
Appeals Board

Introduction

The Water Quality Appeals Board ("Board" or "WQAB") has adopted rules as authorized by statute to conduct hearings regarding appeals and render decisions between individuals and public or private entities that have been denied a permit by the Arizona Department of Environmental Quality. These rules were originally adopted effective January 8, 1998 and include Chapter 17 consisting of Article 1, Sections R2-17-101 through R2-17-128, inclusive.

In November 2019 the Board submitted a five-year review report to the GRRC in which it stated that the Board identified four areas for potential rulemaking action. The proposed rule changes were finalized in May 2021.

In response to the 2024 request from the GRRC under A.R.S. § 41-1056(A) for the Board to prepare a five year review report, the Board made the determination that a minor rulemaking is needed to address minor rule inconsistencies. One inconsistency is in the body to whom appeal filings are addressed in R2-17-103.A and A.R.S. § 49-324.E. The second inconsistency is an outdated reference to Appendix B in R2-17-114 that can be removed since Appendix B was repealed in 2021. These are the only changes identified.

1. General and specific statutes authorizing the rules:

A.R.S. §49-322 (D) provides specific authority for the Board's rules.

2. Objective of the rules including the purpose for the existence of the rules:

R2-17-101 Scope of Article; General Considerations

The rules of procedure state the applicability of the rules to the Water Quality Appeals Board in order for the Board to govern all appeals taken under A.R.S. § 49-323. The rule also allows the Board to refer to the Arizona Rules of Civil Procedure for guidance in instances where a procedure is not established by law, but the Board or the parties are not bound by these procedures unless the Board issues an order to that effect.

R2-17-102 Definitions

This rule defines terms used in appeals. The definitions are necessary for understanding the terminology used throughout these rules.

R2-17-103 Commencement of an Appeal; Copies; Informal Settlement Conference

This rule discusses how to file an appeal and how to request an informal settlement conference. The rule is necessary so that individuals understand how to do and complete these two processes.

R2-17-104 Docket; Case Number; Information on Documents

This rule sets forth what information has to be contained in an appeal. The rule is necessary so that individuals understand what information they must provide on required documents for an appeal.

R2-17-105 Filing and Service of Pleadings, Motions, or Other Documents

This rule defines the procedures in which documents are filed. The rule is necessary so parties understand what they are required to follow for filing and service of pleadings, motions, or other documents.

R2-17-106 Contents of a Notice of Appeal

This rule sets forth what needs to be contained in the Notice of Appeal. The rule is necessary for parties to understand what must be included with a notice of appeal.

R2-17-107 Time for Filing an Answer to a Notice of Appeal

This rule sets forth the amount of days within which a party shall file an answer to the Notice of Appeal. The rule is necessary so individuals know how many days they have to file an answer to the notice of appeal.

R2-17-108 Content of an Answer to a Notice of Appeal

This rule sets forth the information that should be in an answer of a Notice of Appeal. The rule is necessary so that parties understand what information is required to be provided in an answer to a notice of appeal.

R2-17-109 Prehearing Disclosure

This rule discusses what each party shall disclose in writing to every other party. The rule is necessary so parties disclose the required information to every other party and within the timeframe set forth within the rule prior to the hearing.

R2-17-110 Depositions

This rule gives the Board the right to allow a deposition of a witness who cannot be subpoenaed or is unable to attend the hearing as well as designating the responsible party for the deposition expense. The rule is necessary so the Board may allow for a deposition of a party who can't attend the hearing and requires the party requesting the deposition to pay for the expenses of it.

R2-17-111 Motions

This rule discusses how a motion is made, and how a response is filed to the motion. The rule is necessary so a party understands how to make a motion and how to file a response to that motion.

R2-17-112 Duties of the Board During a Hearing

This rule distinguishes what the Board is required to do during a hearing and what actions the Board may do during a hearing. The rule is necessary so the Board has clear guidelines on their duties and actions they may take during the course of a hearing.

R2-17-113 Location of Hearings

This rule requires that all hearings be held in Maricopa County, unless the Board determines the hearing should be held elsewhere. The rule is necessary so that parties know the location of the hearings.

R2-17-114 Notice of Hearing

This rule sets forth the time allowed to set a date for the hearing and the information that the notice of hearing must provide. A minor update to the rule is required to remove the reference to Appendix B that was repealed in 2021. The sentence to Appendix B can be removed to address this issue. The rule is necessary so that parties understand the timeframe allowed in setting a date for a hearing and the information required to be included in the notice of hearing.

R2-17-115 Consolidation

The rule provides the Board the ability to consolidate two or more appeals involving a common question of law.

R2-17-116 Continuances

This rule states when a party can move for a continuance of a hearing, with whom the motion is filed and the response time for an opposing party. The rule is necessary so that parties understand the process when a move for a continuance of a hearing is requested.

R2-17-117 Subpoenas

This rule states how a subpoena is requested, complying with a subpoena, and how to quash a subpoena. The rule is necessary so that all parties involved understand actions regarding subpoenas.

R2-17-118 Prehearing Conferences

This rule states who can request a Prehearing conference and the action required of the Board. The rule is necessary so that parties understand the process to request a prehearing conference and the role of the Board as it relates to that request.

R2-17-119 Hearing

This rule states how the Board shall conduct the hearing. The rule is necessary as it provides clear guidelines for the Board to follow in conducting a hearing and for parties to understand how the Board conducts a hearing.

R2-17-120 Evidence

The purpose of this rule is to inform the parties of the types of evidence permitted at the hearing, presentation of direct testimony, cross-examination of parties or witnesses, and how documentary evidence will be handled at the hearing. The rule is necessary so that parties understand the procedures during a hearing in regards to evidence.

R2-17-121 Recording Hearings

This rule states that the Board may tape record the hearing or have the hearing recorded by a court reporter. The rule is necessary so that the meeting or hearing is properly recorded and is available for review by interested parties.

R2-17-122 Ex Parte Communications

The purpose of this rule is to put all parties and the Board on notice that ex parte communications are prohibited. The rule also sets forth the proper procedure to be followed if an ex parte communication occurs.

R2-17-123 Notification of Decisions and Orders

The purpose of this rule is to require that the Clerk notify each party of all decisions and orders promptly, by either delivering or mailing copies of all decisions and orders. The rule is necessary so that parties are provided prompt notification of all decisions by the Board.

R2-17-124 Decision of the Board

If the Board chooses to use the Office of Administrative Hearings, the Board shall review the decision and accept, reject or modify it. The rule also sets forth the requirements for Board decisions. The rule is necessary so that the Board has actions they must follow in rendering decisions and parties understand the actions the Board can take in making their final decisions.

R2-17-125 Rehearing or Review of Decision

The purpose of this rule is to set forth a party's rehearing rights, the deadline for filing for rehearing and the Board's duties regarding petitions for rehearing. The rule is necessary so that parties understand their requirements and rights to a rehearing or a review of decision.

R2-17-126 Judicial Review

The purpose of this rule is to inform parties on notice of their right to judicial review. The rule is necessary so parties understand their right to a judicial review.

R2-17-127 Record

The purpose of this rule is to require the Board's Clerk to maintain a case record for at least five years. The rule is necessary in providing case history in the event information needs to be reviewed by the Board or interested parties.

R2-17-128 Renumbered

3. Effectiveness of the rules in achieving the objective, including a summary of any available data supporting the conclusion reached:

   The Board's rules effectively achieve their objectives.

4. Consistency of the rules with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency:

   The rules are generally consistent with other rules and statutes with the exception of two items. One inconsistency created by a recent legislative change to A.R.S. § 49-324.E is in the body to whom appeal filings are addressed in R2-17-103.A (to the Arizona Department of Environmental Quality). A.R.S. § 49-324.E describes appeals as being submitted to the Water Quality Appeals Board. The second inconsistency is an outdated reference to Appendix B in R2-17-114 that can be removed since Appendix B was repealed in 2021. These are the only inconsistencies identified.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

   The Water Quality Appeals Board enforces all the rules as written. To address potential unfairness in the inconsistent filing instructions in A.R.S. § 49-324.E and R2-17.103.A., the Board immediately copies any appeals received directly from an appellant to the Department of Environmental Quality.

6. Clarity, conciseness, and understandability of the rules:

   All of the rules are generally clear, concise, and understandable.

7. Summary of the written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report:

The Board has not received any written criticisms regarding any of the rules during the last five years.

8. A comparison of the current economic, small business, and consumer impact of the rules with economic, small business, and consumer impact statement prepared on the last rulemaking of the rule or, if no economic, small business, and consumer impact statement was prepared on the last rulemaking of the rule, an assessment of the actual economic, small business, and consumer impact of the rules:

A review of the anticipated economic, small business, and consumer impact of the rules explained in the Board's previous 5-year review compared with the actual economic, small business, and consumer impacts in the past 5 years reveals no differences between anticipated and actual impacts caused by the reviewed rules. During the period 2019 through 2024 the Board has received 8 appeals, has held 11 regular meetings, and has referred 3 appeals to the Office of Administrative Hearings ("OAH") to conduct hearings for the Board. The rules provide clear guidance regarding processes, and the burdens of the processes are similar to the State's OAH processes for administrative appeals.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

The Board has not received any written analysis regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states during the last five years.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:

The Board has completed all proposed courses of action indicated in the 2019 Five Year Review Report approved by GRRC in November 2019.

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

The Board believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Board has made every effort to ensure that the rules of procedure to govern hearings before the Board are followed and provides a fair, impartial process for rendering decisions on appeals while maintaining a process that is efficient, cost effective and necessary to achieving the regulatory objectives for the Board.

12. A determination that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Not applicable; there are no corresponding federal laws.

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

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

A.R.S. § 41-1037 does not apply to the Board's rules because the Board does not issue regulatory permits, licenses, or agency authorizations.

14. Course of action the agency proposes to take .

The Board intends to request the assistance of ADOA staff to initiate an expedited rulemaking to correct the two inconsistencies identified in section 4 above prior to December 31, 2024, and submit a Notice of Final Rulemaking to the Council by December 31, 2025.

Expedited Rulemaking

R2-17-103.A.

The Board wishes to review and amend R2-17-103.A. to be made consistent with A.R.S. section 49-324.E. The Board will submit a docket opening to the Secretary of State by January 2025.

The Water Quality Appeals Board is established under Arizona Revised Statutes Title 49, Chapter 2, Article 7. There have been no statutory changes to these authorities since 2001, other than a sunset review was completed to extend the board, and there were two text changes in A.R.S. section 49-324 in 2021. The two changes clarified that an appeal is to be filed "with the water quality appeals board," and that the stay described in subsection 49-324.E. applies to appeals pending "before the board."

Subsection R2-17-103.A. currently requires an appellant to file a notice of appeal with the Department of Environmental Quality and will be changed to match current A.R.S. § 49 324.E.

The Board will further remove the reference to "Appendix B" in R2-17-114 since Appendix B was repealed in 2021.

§ R2-17-101. Scope of Article; General Considerations

A. These rules of procedure and the statutes and administrative rules governing administrative hearing procedures under Title 41, Chapter 6, Article 10, A.R.S. §§ 41-1092.03 through 41-1092.12 and A.A.C. R2-19-101 through A.A.C. R2-19-122 govern all appeals to the Water Quality Appeals Board taken under A.R.S. §49-323. In case of a conflict, this Article governs when the Board directly conducts an administrative hearing whereas the procedures under Title 41, Chapter 6, Article 10 govern when the Board uses the services of the Office of Administrative Hearings, except that in all appeal hearings A.R.S. §49-324(C) prescribes the standard of review.

B. Where a procedure is not established by law, this Article, or an order of the Board, the Board may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure are not binding on the Board or the parties unless the Board issues an order to that effect.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-102. Definitions

The definitions in A.R.S. 41-1092 apply to this Article. In addition, the terms in this Article have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Department of Environmental Quality under A.R.S. § 49323.

2. "Board" means the Water Quality Appeals Board appointed by the Governor according to A.R.S. §49-322, but includes an individual Board member or administrative law judge acting on behalf of the Board according to a lawful delegation of authority.

3. "Clerk" means the person designated as Clerk of the Board.

4. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-17-107(B)(2), and any interested person the Board has permitted to intervene in the appeal as a matter of right.

5. "Record" has the meaning found in A.R.S. §12-904(B) and includes records of proceedings before the Office of Administrative Hearings when the Board uses those services.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference

A. To commence an appeal, the appellant shall file a notice of appeal with the Department of Environmental Quality. The Department of Environmental Quality shall deliver or mail a copy of the notice of appeal to the Clerk of the Water Quality Appeals Board. The appellant shall file the notice of appeal within 30 days after receiving the notice of appealable agency action. The date of filing is the date the Department of Environmental Quality receives the notice of appeal.

B. The Clerk shall make available to all persons copies of this Article. The Clerk shall charge a reasonable fee for the cost of copies.

C. If an informal settlement conference is requested by the appellant under A.R.S. §41-1092.06, the Department of Environmental Quality shall notify the Board in writing of the request and the outcome of the conference.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-104. Docket; Case Number; Information on Documents

A. The Clerk shall maintain a docket of all appeals and assign each appeal a case number. For each appeal, the Clerk shall enter all of the following information on the docket:

1. The case number;

2. The case name;

3. The filing date of the notice of appeal;

4. The receipt date of any answer;

5. The receipt date of any disclosures;

6. The receipt date of prehearing motions, responses, and replies;

7. The dates of the evidentiary hearing;

8. The dates of orders by the Board and the Board's decision;

9. The receipt date of any motion for rehearing or review;

10. The Board's decision on any motion for rehearing or review and the date of the decision; and

11. The Board's final decision and the date of the final decision.

B. A party shall place the case number and the name, address, telephone number and email address of the party or party's attorney on all pleadings, motions, or other documents filed with the Board.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-105. Filing and Service of Pleadings, Motions, or Other Documents

A. Within the time limits for filing, a party shall file the original and 1 copy of all pleadings, motions, or other documents with the Clerk and serve a copy on each party and the administrative law judge, if the Board has delegated hearing powers and duties to the Office of Administrative Hearings.

B. A party shall serve documents other than subpoenas by personal service or by regular mail. A party is considered served at the time of personal service of the document or upon deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the party being served, at the party's last address of record with the Department of Environmental Quality or the Board. If there is a discrepancy between the records of these agencies, the party serving the document shall use the last address of record with the Board. Each party shall inform the Board of any change of address within 5 days of the change.

C. A party shall demonstrate proof of service by filing with the Clerk a written statement, signed by the party, indicating that service was made in person or by mail. The statement shall be attached to the pleading, motion, or other document being filed.

D. After receiving the Notice of Appeal or an Answer of a party, or when the Board finds that the interest of justice so requires, the Board may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested in the appellant's Notice of Appeal. The party shall publish the notice in the manner prescribed by the Arizona Rules of Civil Procedure, unless the Board determines that another method of publication is more appropriate.

History:

Adopted effective January 8, 1998 (Supp. 98-1).

§ R2-17-106. Contents of a Notice of Appeal

A. The notice of appeal shall contain the following statements:

1. "The appellant files this notice of appeal with the Department of Environmental Quality according to A.R.S. §49-323."

2. "Under A.A.C. R2-17-107, if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."

B. The notice of appeal shall contain the following information:

1. The name, address, email and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number, email and Arizona Bar number of the appellant's attorney;

2. The names, mailing addresses, email, and telephone numbers of all of the following interested parties:

a. The permittee or registrant, if the permittee or registrant is not the appellant;

b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and

c. The Department of Environmental Quality.

3. The specific action of the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. §49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§49-303 and 49-304;

4. The date of the action by the Department of Environmental Quality;

5. The date the notice of action by the Department of Environmental Quality was received by the appellant;

6. The relief requested by the appellant and a concise statement of the reasons for the appeal;

7. The date of the notice of appeal;

8. The signature of the appellant or the appellant's attorney;

9. A verification that the appellant has served or caused to be served, a copy of the notice of appeal on the Department of Environmental Quality and all parties named by the appellant.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-107 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-107. Time for Filing an Answer to a Notice of Appeal

The Department of Environmental Quality and all parties named by the appellant shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered from R2-17-108 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-108. Contents of an Answer to a Notice of Appeal

The answer of each respondent shall contain the following information:

1. The name, address, email and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number, email and Arizona Bar number of the respondent's attorney;

2. A response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. §49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§49-303 and 49-304;

3. The relief requested by the respondent;

4. The date of the answer;

5. The signature of the respondent or the respondent's attorney;

6. A verification that the respondent has served or caused to be served a copy of the answer on all other parties.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered from R2-17-109 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-109. Prehearing Disclosure

A. Within the times set forth in subsection (B), each party shall disclose in writing to every other party:

1. The factual basis of the appeal or response;

2. The legal theory upon which the appeal or response is based, including citations of pertinent legal authorities;

3. The names, addresses, email and telephone numbers of all witnesses the party expects to call at the hearing, with a description of the substance of each witness' expected testimony;

4. If a party is a corporation, the name of the state of incorporation. If the party is not an Arizona corporation, the party shall state whether it is qualified to do business in the state by the Arizona Corporation Commission;

5. If the party is a partnership, the name, address, email and telephone number of each partner;

6. The names, mailing addresses, email and telephone numbers of all of the following interested persons:

a. The permittee or registrant, if the permittee or registrant is not the appellant;

b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing;

7. The name and address of each person whom the party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;

8. A list of documents which indicates the location, custodian, and a general description of any tangible evidence or relevant documents that the party plans to use during the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the party shall indicate the name and address of the custodian of the document. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

B. The parties shall make the initial disclosure required by subsection (A) at least 15 days prior to the date set for hearing, unless the parties otherwise agree, or the Board shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the parties shall serve the disclosures as prescribed in R2-17-105. At the same time the parties shall file with the Clerk the disclosures and 1 copy of each document listed.

C. The duties described in subsections (A) and (B) are continuing duties, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. A party shall serve additional or amended disclosures seasonably, but in no event later than 3 days before the hearing, except by leave of the Board.

D. A party shall include in its disclosure, information and data in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reason- able inquiry and investigation.

E. Each party shall make the disclosure in writing under oath and sign the disclosure.

F. When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the party making the claim shall do so expressly and shall support the claim with a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-110 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-110. Depositions

The Board may allow the deposition of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the Board. The party requesting a deposition shall bear the expense of the deposition.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered from R2-17-111 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-111. Motions

A. To obtain an order or other relief from the Board other than for rehearing or review as provided in R2-17-125, a party shall make a motion at least 15 days before the Board hearing. Unless the motion is made during a hearing, the party shall make the motion in writing. For all motions, the party shall state the grounds on which the motion is based and the relief or order sought. The Board shall decide prehearing motions based on the written materials submitted by the parties.

B. Any party may file a response to a prehearing motion within five days after service of the motion and serve the response on all parties. The moving party has two days after service of a response to file a reply.

C. For a written motion, a party shall state the grounds on which the motion is based and the relief or order sought in a supporting memorandum. A party's supporting memorandum shall not exceed 15 pages, exclusive of pages containing the table of contents, the table of cases, statutes or other authorities, and the appendix, if any. A reply memorandum shall not exceed five pages.

D. A party shall support motion documents by affidavit or other satisfactory evidence if they contain facts not apparent in the record or facts that are not cognizable through judicial notice.

E. When the Board directly conducts an administrative hearing, the Board shall rule on all motions. When the Board uses the services of the Office of Administrative Hearings, the administrative law judge shall rule on all motions.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-112 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-112. Duties of the Board During a Hearing

A. The Board shall:

1. Conduct the hearing in an impartial, orderly, and informal manner;

2. Regulate the course of the hearing;

3. Rule upon procedural matters incidental to the hearing;

4. Designate the order in which parties introduce their evidence; and

5. Exercise the powers granted in A.R.S. §41-1092.07.

B. The Board may:

1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses;

2. Set time limitations for arguments;

3. Exclude a person from the hearing who is disruptive to the proceedings;

4. Administer oaths and affirmations to witnesses; and

5. Issue any orders necessary for the impartial, orderly, and informal conduct of the hearing.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-113 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-113. Location of Hearings

All hearings shall be held in Arizona, in Maricopa County, unless the Board finds that it will be more cost effective for the Board and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered from R2-17-114 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-114. Notice of Hearing

A. If the Board conducts an administrative hearing, the Clerk shall set a date for the hearing no later than 60 days from the date the appellant filed the notice of appeal with the Department of Environmental Quality. The Clerk shall prepare and serve a notice of hearing as prescribed in A.R.S. §41-1092.05. The Clerk may use the Notice of Hearing Form in Appendix B. If the Board uses the services of the Office of Administrative Hearings, the Clerk shall set the hearing date in consideration of and in conjunction with the Office of Administrative Hearings.

B. The notice of hearing shall contain the following information and statements:

1. The date, time, and place of the hearing;

2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality;

3. A.R.S. §49-323 provides the authority and jurisdiction under which the hearing will be held;

4. The particular sections of the statutes and rules involved in the substantive appeal are A.R.S. §§49-323 - 49-324 and A.A.C. R2-17-101 et seq. The parties should also refer to procedural statutes and rules which may be applicable to this appeal, to the extent they do not conflict with Board statutes and rules, including A.R.S. §§41-1092.03 through 41-1092.12 and A.A.C. R2-19-101 through A.A.C. R2-19-122;

5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. §49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§49-303 and 49-304;

6. The date the appellant filed the notice of appeal;

7. The name of the administrative law judge, if any, when known at the time the notice of hearing is served;

8. The Board may issue subpoenas on behalf of any party;

9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties;

C. The Clerk shall provide written notification that reasonable accommodation will be made for a person with a disability, if the accommodation is requested. The notification shall be served with the notice of hearing.

D. At least 30 days prior to the date of the hearing the Clerk shall serve a copy of the notice of hearing on each Board member, the administrative law judge, if any, and each party.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-115 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-115. Consolidation

Upon the motion of a party, the Board may consolidate two or more appeals involving a common question of law or fact when consolidation will avoid unnecessary cost or delay.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-116 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-116. Continuances

A. A party applying for a continuance of a hearing shall file a motion with the Clerk and serve all parties no later than 10 days before the scheduled date of the hearing. The Board may accept a motion filed later than 10 days before the hearing for good cause. The motion shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.

B. Any opposing party may, within five days after service of the motion, file and serve a response. The Board may permit a reply.

C. The parties may stipulate to a continuance. The Board is not required to accept the stipulation.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-117 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-117. Subpoenas

A. A party shall make a written request for a subpoena which clearly identifies the person, documents, or other evidence desired and the reason the evidence is relevant to the proceeding. The party requesting the subpoena shall file the request at least 15 days prior to the date set for hearing, provide the Board with a proposed subpoena for electronic signature, and ensure that any subpoena issued is served in the manner prescribed by the Arizona Rules of Civil Procedure.

B. The person to whom a subpoena is directed shall comply with its provisions unless:

1. The person serving the subpoena has failed to comply with subsection (A) of this rule; or

2. The person to whom the subpoena is directed, at least 10 days prior to the date set for the hearing, files a motion to quash or modify the subpoena and the motion is granted in whole or in part, prior to the hearing.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-118 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-118. Prehearing Conferences

A. Upon a motion by a party or on the initiative of the Board, the Board may order a prehearing conference, if the Board finds that a prehearing conference will assist the Board to:

1. Conduct the hearing within the 60-day period prescribed by A.R.S. §41-1092.05(A); or

2. Reach a just, speedy, and less expensive determination of the appeal.

B. If the Board takes any action at or after the prehearing conference, the Board shall prepare a written order reciting the action taken. The order shall become a part of the record of the appeal.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-119 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-119. Hearing

A. The Board shall conduct a full evidentiary hearing. A party may introduce new evidence or evidence that was considered by the Department of Environmental Quality when it took the action being appealed.

B. The Board and the administrative law judge if the matter is referred to the Office of the Administrative Hearings shall use the standard of review prescribed in A.R.S. §49-324(C) to decide an appeal.

C. Noncompliance with any order of the Board or disruption of any hearing is improper conduct and grounds for exclusion from the hearing.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-120 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-120. Evidence

A. All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present evidence and to conduct cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious.

B. Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal, answer, initial prehearing disclosure, or an additional or amended disclosure if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal, answer, initial prehearing disclosure, and additional or amended disclosure.

C. The Board may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings or follow that portion of the Arizona Rules of Evidence that the Board deems appropriate.

D. The Board may question any witness.

E. The Board may take judicial notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the board members' specialized knowledge. The Board shall notify the parties either before or during the hearing, by reference in a preliminary report or otherwise, of the material noticed, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the noticed material. The board members' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered from R2-17-121 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-121. Recording Hearings

A. The Board shall tape-record the hearing unless it determines there will be a court reporter and is able to obtain state funds for the cost of the court reporter.

B. Any party may use a court reporter to produce a record of the hearing, but that party shall pay for all costs of the court reporter. Where a hearing is recorded by a party's court reporter, the Board shall determine whether the tape recording or the court reporter's recording will be used to prepare the hearing transcript. The Clerk shall ensure that the proceedings are transcribed and provide copies of the transcript to the Board at the time the Board meets to consider its decision on the appeal.

C. Any party that requests a transcript of the proceeding from the Board shall pay the Clerk a fee for the cost of copying the transcript.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-122 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-122. Ex Parte Communications

Ex parte communications with Board members and staff are prohibited as provided in A.A.C. R2-19-105. The prohibition applies to any Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-123 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-123. Notification of Decisions and Orders

The Clerk shall notify each party promptly by either delivering or mailing copies of all decisions and orders, including the findings of fact, conclusions of law, and the final administrative decision of the Board to each party's last known address.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered from R2-17-124 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-124. Decision of the Board

A. If the Board uses the services of the Office of Administrative Hearings, the Board will receive a copy of the administrative law judge's decision under A.R.S. §41-1092.08. Within 30 days after receipt, the Board may review the decision and accept, reject, or modify it.

1. If the Board does not make a decision within 30 days, the Board has accepted the administrative law judge's decision as the final administrative decision.

2. If the Board reviews the administrative law judge's decision, it shall request the record of the hearing, described in A.R.S. §41-1092.08(A), and may accept, reject, or modify the decision. If the Board rejects or modifies the decision, the Board shall file with the Office of Administrative Hearings a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives. Under the circumstances in this subsection, the decision of the Board is the final administrative decision.

B. If the Board directly conducts an administrative hearing, the Board shall meet and render its final administrative decision on the appeal in writing within 30 days after the hearing. The Board's decision shall contain its findings of fact and conclusions of law, separately stated, and its decision.

C. The Board's final administrative decision shall contain the following statement: "This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. §49-323. You may file a motion for rehearing or review of this decision under R2-17-126. If you file a motion for rehearing or review, you shall file your motion within 30 days after service of this decision. You are not required to file a motion for rehearing or review before seeking judicial review. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. § 12-901, et seq."

D. The Board may incorporate by reference findings, conclusions, or a decision previously made by an administrative law judge.

E. When the Board has rendered a final administrative decision, it shall serve a copy of the decision on all parties and the Office of Administrative Hearings if an administrative law judge conducted the hearing.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-125 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-125. Rehearing or Review of Decision

A. Except as provided in subsection (H), any party to an appeal before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. The party shall attach a supporting memorandum, specifying the grounds for the motion. The party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. Any other party may file a response within 15 days after service of a motion for rehearing or review. The party shall support the response with a memorandum, discussing legal and factual issues.

C. The moving party, the responding party, or the Board may request oral argument.

D. The Board may grant a rehearing or review for any of the following causes materially affecting a party's rights:

1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;

2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;

3. Accident or surprise that could not have been prevented by ordinary prudence;

4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;

5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or

6. That the findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

G. Not later than 15 days after the date of the decision, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue a final administrative decision without an opportunity for rehearing or review. A party may seek judicial review of the decision under A.R.S. §§49-323(B) and 12-901, et seq.

I. The Board shall rule on the motion for rehearing or review within 15 days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. If a rehearing is granted, the Board shall hold the rehearing within 90 days after the issue date on the order granting the rehearing.

J. If a motion for rehearing or review is denied, the Clerk shall serve a notice of denial on all parties within 15 days after the denial.

K. If the motion for rehearing or review is granted, the Clerk shall serve the Board's final administrative decision on all parties within 15 days after the Board renders the decision.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-126 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-126. Judicial Review

The final administrative decision of the Board may be reviewed as provided by A.R.S. §49-323(B) and A.R.S. §12-901 et seq. (Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act). The Clerk shall transmit the record to the superior court in all actions seeking judicial review under A.R.S. §12-901 et seq., including when the Board uses the services of the Office of Administrative Hearings.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-127 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-127. Record

The Clerk shall keep the record and ensure that it is preserved for a minimum of five years from the date of the final administrative decision.

History:

Adopted effective January 8, 1998 (Supp. 98-1). Amended and renumbered from R2-17-128 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

§ R2-17-128. Renumbered

History:

Adopted effective January 8, 1998 (Supp. 98-1). Renumbered to R2-17-127 by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

APPENDIX A. [Repealed]

History:

Adopted effective January 8, 1998 (Supp. 98-1). Repealed by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

APPENDIX B. [Repealed]

History:

Adopted effective January 8, 1998 (Supp. 98-1). Repealed by final expedited rulemaking at 27 A.A.R. 815, effective 5/5/2021.

49-322. Water quality appeals board

A. A water quality appeals board is established in the department of administration consisting of three members appointed by the governor pursuant to section 38-211 to terms of three years. One member of the board shall be an attorney licensed to practice law in this state, and all members shall possess technical competence to perform the duties of the board. Board members are entitled to compensation determined under section 38-611.

B. Members of the board are subject to title 38, chapter 3, article 8 and shall not receive a significant portion of their income directly or indirectly from persons subject to individual permits or enforcement orders under this chapter. In addition, the members shall not have been employed by such persons, other than state agencies, within two years before appointment and may not be employed by such persons, other than state agencies, within two years after their appointment expires. For purposes of this subsection "significant portion of income" means ten per cent or more of gross personal income for a calendar year or fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension or similar benefits.

C. The board may employ a staff. The real party in interest shall represent the board in any appeals from decisions of the board.

D. The board shall adopt rules of procedure to govern the conduct of hearings before the board.

F-11.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 9

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024

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

FROM: Council Staff

DATE: September 9, 2024

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 9

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to two (2) rules in Title 6, Chapter 9, Article 3 regarding Decisions, Hearings, and Orders before the Appellate Services Administration (ASA).

In the prior 5YRR for these rules, which was approved by the Council in June 2019, the Department proposed to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by May 2020 that would consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code. The Department filed a Notice of Proposed Rulemaking and Notice of Docket Opening with the Secretary of State's Office in April 2021; however, the Notice of Final Rulemaking was not submitted to the Council due to substantial changes. The Department filed a Notice of Supplemental Proposed Rulemaking to address the changes and published the draft rules on the Department's website to collect informal stakeholder input in September 2021. The Department received 39 comments, identifying additional concerns to be addressed. Given the complexity of the comments received, the Department did not proceed with the rulemaking at that time.

The Department requested and received permission to proceed with a current rulemaking for Title 6, Chapter 9 from the Governor's Office on March 4, 2024. The Department indicates it

is currently in the process of addressing and implementing informal external stakeholder input received in June 2024.

Proposed Action

The Department indicates the Governor's Office approved the Department's request to conduct rulemaking for Title 6, Chapter 9 on March 4, 2024. The Department indicates it intends to consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code into Chapter 9. The elements of due process are consistent across multiple programs for which the Appellate Services Administration provides hearings and creating a single source of hearing procedure rules will provide significantly better service and understanding to customers and stakeholders. The Department completed informal internal stakeholder input in May 2024, ensuring all Department programs had an opportunity to work collaboratively to address the needs of the clients they serve. The Department then proceeded with obtaining informal external stakeholder input in June 2024. The Department is currently in the process of addressing and implementing informal stakeholder input received. The Department anticipates submitting a Notice of Final Rulemaking to the Council by March 2025.

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

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

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

The Department states there was no economic, small business, and consumer impact statement provided with the last rulemaking for Chapter 9, which became effective June 1, 2013. The Department indicates that in SFY 2023, it resolved 56,652 appeals at an average cost of $3.42. The Department indicates that these rules do not directly impact public and private employment or small businesses and have no negative financial impact on private persons or consumers.

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

The Department believes the benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules. These rules provide Department clients with information on how to exercise their due process rights when appealing adverse actions. The rules are necessary to ensure clarity, consistency, and transparency in the appeals and hearings process administered by the Department.

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

The Department indicates it received no written criticisms of the rules in the last five years other than those comments submitted as part of the rulemaking process.

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

The Department indicates the rules are not clear, concise, and understandable. Specifically, the Department indicates rule R6-9-301 is not clear, concise, and understandable because it does not provide clear expectations to the public about hearing procedures. The Department proposes to amend this rule to include more terms associated with decisions, hearings, and orders from ASA. Furthermore, the Department indicates rule R6-9-302 is not clear, concise, and understandable because it's not clear what is meant when referencing electronic service and because the rules regarding Department decisions, hearings, and orders don't provide clear expectations to the public about hearing procedures. The Department proposes to amend this rule to specify what electronic service entails and when the Department may provide documentation to a party via electronic service, and provide more detailed information about the Department's hearing procedures.

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

The Department indicates the rules are consistent with other rules and statutes.

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

For the same reasons outlined in Section 5 above, the Department indicates both rules R6-9-301 and R6-9-302 are not effective in achieving their objectives. The Department proposes to amend R6-9-301 to include more terms associated with decisions, hearings, and orders from ASA. The Department proposes to amend R6-9-302 to specify what electronic service entails and when the Department may provide documentation to a party via electronic service, and provide more detailed information about the Department's hearing procedures.

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

The Department indicates the rules are currently enforced as written.

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

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

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

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

11. Conclusion

This 5YRR from the Department relates to two rules in Title 6, Chapter 9, Article 3 regarding Decisions, Hearings, and Orders before the Appellate Services Administration. The Department is proposing to update the rules to improve their clarity, conciseness, understandability, and effectiveness. Specifically, the Department proposes to amend rule R6-9-301 to include more terms associated with decisions, hearings, and orders from ASA and rule R6-9-302 to specify what electronic service entails and when the Department may provide documentation to a party via electronic service, and provide more detailed information about the Department's hearing procedures.

The Department indicates the Governor's Office approved the Department's request to conduct rulemaking for Title 6, Chapter 9 on March 4, 2024. The Department indicates it intends to consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code into Chapter 9. The elements of due process are consistent across multiple programs for which the ASA provides hearings and creating a single source of hearing procedure rules will provide significantly better service and understanding to customers and stakeholders. The Department completed informal internal stakeholder input in May 2024, ensuring all Department programs had an opportunity to work collaboratively to address the needs of the clients they serve. The Department then proceeded with obtaining informal external stakeholder input in June 2024. The Department is currently in the process of addressing and implementing informal stakeholder input received. The Department anticipates submitting a Notice of Final Rulemaking to the Council by March 2025.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Vacant
Director

July 10, 2024

Ms. Jessica Klein
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Klein:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 9, Appellate Service Administration.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Study Session and Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Hiroko Flores, Deputy Rules Administrator, at (480) 487-7694 or hflores@azdes.gov.

Sincerely,

Nicole Davis

Nicole Davis
General Counsel/Chief Governance Officer

Attachment

Department of Economic Security
Title 6, Chapter 9 - Appellate Service Administration
Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 41-1092.01

2. Analysis of rules:

Rule **Analysis**

R6-9-301 Title: Definitions

Objective: The objective of this rule is to define the terms in this Chapter and promote a uniform understanding of terms used by the Appellate Services Administration (ASA).

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: *This rule is ineffective in meeting its objective and is not clear or concise because the rules regarding DES decisions, hearings, and orders don't provide clear expectations to the public about hearing procedures. The Department proposes to amend this rule to include more terms associated with decisions, hearings, and orders from ASA.*

Rule **Analysis**

R6-9-302 Title: Electronic Service of Documents by the Appellate Services Administration

Objective: The objective of this rule is to describe under what conditions ASA provides electronic copies of documents to a party.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**

- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: *This rule is ineffective in meeting the objective and is not clear, concise, and understandable because it's not clear what is meant when referencing electronic service and because the rules regarding DES decisions, hearings, and orders don't provide clear expectations to the public about hearing procedures. The Department proposes to amend this rule to specify what electronic service entails and when the Department may provide documentation to a party via electronic service, and provide more detailed information about the Department's hearing procedures.*

3. Has the Department received written criticisms of the rules within the last five years?

Yes ☐ No X

4. Economic, small business, and consumer impact comparison:

There was no economic, small business, and consumer impact statement provided with the last rulemaking for Chapter 9, which became effective June 1, 2013. In SFY 2023, the Department resolved 56,652 appeals at an average cost of $3.42. These rules do not directly impact public and private employment or small businesses and have no negative financial impact on private persons or consumers.

5. Has the agency received any business competitiveness analyses of the rules?

Yes ☐ No X

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

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

Yes ☐ No X

In the previous Five-Year Review Report for Chapter 9, the Department stated a plan to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by May 2020 that would consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code. The Department filed a Notice of Proposed Rulemaking and Notice of Docket Opening with the Secretary of State's Office in April 2021; however, the Notice of Final Rulemaking was not submitted within 120

days of filing the NPR due to substantial changes. The Department filed a Notice of Supplemental Proposed Rulemaking to address the changes and published the draft rules on the Department's website to collect informal stakeholder input in September 2021. The Department received 39 comments, identifying additional concerns to be addressed. Given the complexity of the comments received, the Notice of Supplemental Proposed Rulemaking was not filed by April 2022 and the docket for this rulemaking closed. The Department requested and received permission to proceed with the rulemaking for Chapter 9 from the Governor's Office on March 4, 2024. The Department is currently in the process of addressing and implementing informal external stakeholder input received in June 2024.

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

The Department believes the benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules. These rules provide DES clients with information on how to exercise their due process rights when appealing adverse actions. The rules are necessary to ensure clarity, consistency, and transparency in the appeals and hearings process administered by the Department.

8. Are the rules more stringent than corresponding federal laws?

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

Yes ☐ No X

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

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because the rules do not require the issuance of a permit, license, or agency authorization.

10. Proposed course of action:

The Governor’s Office approved the Department's request to conduct rulemaking for Chapter 9 on March 4, 2024. The Department’s intent is to consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code into Chapter 9. The elements of due process are consistent across multiple programs for which the Appellate Services Administration provides hearings and creating a single

source of hearing procedure rules will provide significantly better service and understanding to customers and stakeholders. The Department completed informal internal stakeholder input in May 2024, ensuring all Department programs had an opportunity to work collaboratively to address the needs of the clients they serve. The Department then proceeded with obtaining informal external stakeholder input in June 2024. The Department is currently in the process of addressing and implementing informal stakeholder input received. The Department anticipates submitting the NFR to GRRC by March 2025.

TITLE 6. ECONOMIC SECURITY

CHAPTER 9. APPELLATE SERVICE ADMINISTRATION

A.R.S. § 41-1954(A)(3)

ARTICLE 1. RESERVED

ARTICLE 2. RESERVED

ARTICLE 3. DECISIONS, HEARINGS, AND ORDERS

Article 3, consisting of Sections R6-9-301 and R6-9-302, made by final rulemaking at 19 A.A.R. 823, effective June 1, 2013 (Supp. 13-2).

Sections

R6-9-301. Definitions

1. "ASA" means the Appellate Services Administration within the Arizona Department of Economic Security.
2. "Electronic transmission" means the service of documents via facsimile transmission ("fax") and electronic mail ("email").
3. "On the record" means audio recorded during a formal proceeding conducted by a hearing officer.
4. "Party" means an appellant, appellee, or the Department.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 823, effective June 1, 2013 (Supp. 13-2).

R6-9-302. Electronic Service of Documents by the Appellate Services Administration

A. ASA may transmit documents electronically, rather than by conventional mail, to parties who have consented to electronic service.

B. Consent to Electronic Service.

1. A party may only consent to be electronically served documents by:
   a. Submission of a written consent to ASA; or
   b. Consenting on the record.
2. The party consenting to electronic service of documents shall provide ASA with either a valid e-mail address or a fax number for service of documents.
3. The party consenting to electronic service of documents shall also provide ASA with a physical mailing address for ASA to use at its discretion to serve documents. A party may use a post office box as its physical mailing address.

C. Withdrawal of Consent to Electronic Service.

1. A party may withdraw consent to receive documents by electronic means at any time. The withdrawal shall be on the record or in writing to ASA. The withdrawal is effective upon receipt by ASA.
2. ASA shall treat a notice of a change of electronic address as both a withdrawal of the consent to receive documents at the prior address, and as a new consent to receive documents at the new address.
3. ASA shall not send documents by electronic means after a party withdraws consent.
4. ASA shall consider service of a document to have no force or effect if ASA sent the document electronically after a party withdrew consent to receive the document electronically even if the party actually received the electronically transmitted document.

D. ASA shall consider a document sent by ASA and received by a party at the Mountain Standard Time and date ASA transmits the document to the electronic address provided by the party.

E. ASA shall encrypt any document sent by e-mail.

F. Failure of Electronic Service; Effect on Timeliness of Filing.

1. When a party notifies ASA that the party did not receive an e-mail message from ASA, was unable to open or download an attached document, or was otherwise unable to access the document to be served, ASA shall re-send the document.
2. ASA shall calculate any filing deadline that is based on the date ASA electronically sends a document as follows:
   a. If the party does not receive the original e-mail message due to equipment malfunction, action, or inaction of either ASA or a service provider, then the date of service shall be the date ASA re-sends the documents.
   b. If the party does not receive the original e-mail message due to the party's own equipment malfunction, action, or inaction:
      i. The date of service shall be the date of original electronic transmission by ASA, and
      ii. ASA shall exclude from the calculation the time from when the party gave notice of non-receipt and requested that the document be re-sent until ASA re-sends or mails the document.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 823, effective June 1, 2013 (Supp. 13-2).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that is judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.

2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.

4. Records of occupational and professional licenses.

5. Records concerning the ownership and control of corporations, partnerships and other business entities.

6. Employment security records.

7. Records of agencies administering public assistance programs.

8. Records of the motor vehicle division of the department of transportation.

9. Records of the state department of corrections.

10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.